

2016 No. 67

GENDER RECOGNITION

MARRIAGE

CIVIL PARTNERSHIP

**The Gender Recognition (Marriage and Civil Partnership
Registration) (Modification) (Scotland) Order 2016**

Made - - - - - *2nd February 2016*

Laid before the Scottish Parliament *4th February 2016*

Coming into force - - - *24th March 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 23(1) and 24(1) of the Gender Recognition Act 2004^(a) and all other powers enabling them to do so.

In accordance with section 23(5) of that Act, the Scottish Ministers have undertaken appropriate consultation with persons likely to be affected by it.

Citation and commencement

1. This Order may be cited as the Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016 and comes into force on 24th March 2016.

Interpretation

2. In this Order—

“the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965^(b);

“the 2004 Act” means the Gender Recognition Act 2004; and

“the 2016 Regulations” mean the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016^(c).

(a) 2004 c.7 (“the 2004 Act”). The power conferred by section 23(1) of the 2004 Act is exercisable by the Scottish Ministers rather than the Secretary of State where the provision to be made is within the legislative competence of the Scottish Parliament, by virtue of section 23(2) of the 2004 Act.

(b) 1965 c.49.

(c) S.S.I. 2016/66.

Modification of the operation of Registration of Births, Deaths and Marriages (Scotland) Act 1965

3.—(1) The operation of the 1965 Act(a), in relation to qualifying Scottish marriages registered under regulation 7 of the 2016 Regulations, is modified as follows.

(2) The Registrar General must remove reference to the existing register of marriages entry in the alphabetical index of the entries in the register of marriages, for the purposes of section 38(1) of the 1965 Act(b) (search of indexes kept by Registrar General).

(3) The alphabetical index of the entries in the register of marriages that the district registrar has access to under section 39C of the 1965 Act (provision of information to district registrars) must no longer include reference to the existing register of marriages entry.

(4) An extract of the existing register of marriages entry or copy of that entry (whichever is applicable) is not to be issued to a person under sections 37(1) (issuing of extracts of entries in current registers), 38(2)(b) (search of indexes kept by Registrar General) or 39D(1)(b) (searching of indexes and issuing of extracts by district registrars) of the 1965 Act unless that person is a party to the qualifying Scottish marriage.

(5) The Registrar General must make traceable the connection between an existing register of marriages entry and a corresponding new register of marriages entry.

(6) Information kept by the Registrar General for the purposes of paragraph (5) is not to be open to public inspection or search.

(7) The Registrar General may disclose any such information only in accordance with paragraph (8).

(8) Information is disclosed in accordance with this paragraph if disclosed—

- (a) under an order of the Court of Session or a sheriff; or
- (b) to a party to the qualifying Scottish Marriage.

(9) In section 41A(2) of the 1965 Act (admissibility of registration information as evidence), where the extract issued is an extract of a new register of marriages entry it shall be sufficient evidence of the date the marriage recorded in that entry was solemnised only where that date is the same as it is on the corresponding existing register of marriages entry.

(10) In this article—

“existing register of marriages entry” and “new register of marriages entry” have the same meaning as in regulation 2 of the 2016 Regulations;

“qualifying Scottish marriage” has the same meaning as in paragraph 20A(4) of Schedule 3 to the 2004 Act(c); and

“register of marriages” means the register of marriages provided by the Registrar General under section 32(1) of the 1965 Act(d).

Modification of the operation of section 98 of the Civil Partnership Act 2004

4.—(1) The operation of section 98 of the Civil Partnership Act 2004(e), in relation to qualifying Scottish civil partnerships registered under regulation 10 of the 2016 Regulations, is modified as follows.

(2) The modifications made under—

- (a) article 3(2) and (4) to the operation of section 38 of the 1965 Act; and

(a) 1965 c.49.

(b) Section 38(1) was amended by the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“the 2006 Act”), section 44(4).

(c) Paragraph 20A of Schedule 3 was inserted by the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5), Schedule 2, paragraph 9(2)(b). By virtue of section 25(3) to (5) of the 2004 Act certain marriages solemnised outside the United Kingdom are treated as solemnised in Scotland for the purposes of the 2004 Act.

(d) Section 32(1) was amended by the Marriage (Scotland) Act 1977, Schedule 2, paragraph 8.

(e) 2004 c.33; section 98 was amended by the 2006 Act, section 52(6).

(b) article 3(3) to the operation of section 39C of that Act, apply in relation to the civil partnership register as they apply in relation to the register of marriages.

(3) The Registrar General must make traceable the connection between an existing civil partnership register entry and a corresponding new civil partnership register entry.

(4) Information kept by the Registrar General for the purposes of paragraph (3) is not to be open to public inspection or search.

(5) The Registrar General may disclose any such information only in accordance with paragraph (6).

(6) Information is disclosed in accordance with this paragraph if disclosed—

(a) under an order of the Court of Session or a sheriff; or

(b) to a party to the qualifying Scottish civil partnership.

(7) In this article—

“civil partnership register” means the register established under section 95 of the Civil Partnership Act 2004^(a);

“existing civil partnership register entry” and “new civil partnership register entry” have the same meaning as in regulation 2 of the 2016 Regulations;

“qualifying Scottish civil partnership” has the same meaning as in paragraph 20A(4) of Schedule 3 to the 2004 Act; and

“register of marriages” means the register of marriages provided by the Registrar General under section 32(1) of the 1965 Act.

MARCO BIAGI

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2nd February 2016

(a) 2004 c.33.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the operation of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”) in relation to qualifying Scottish marriages registered under regulation 8 of the Gender Recognition (Marriage and Civil Partnership) (Scotland) Regulations 2016 (the “2016 Regulations”) to ensure that the information on the register of marriages does not identify a party or both parties as having obtained gender recognition certificates.

The operation of the 1965 Act is modified so that the reference to the existing entry in the alphabetical index of the entries in the register of marriages will be removed by the Registrar General (article 3(2)). Article 3(3) makes similar provision in relation to the alphabetical index district registrars have access to under section 39C of the 1965 Act.

Article 3(4) also provides that extracts of the existing entry in the register of marriages may only be issued to the parties to the marriage, under sections 37(1), 38(2)(b) and 39D(1)(b) of the 1965 Act.

Article 3(5) to (7) provide that the Registrar General must make traceable the connection between the existing entry and the new entry but this information must not be open to public inspection or search. Only a court or the parties to the marriage may have access to this information.

Finally article 3(9) modifies the operation of section 41A of the 1965 Act. Where the date of marriage on the new entry is not the same as on the existing entry, by virtue of the 2016 Regulations, any extract of the new entry will not be sufficient evidence of the date of marriage for the purposes of section 41A.

Article 4 makes equivalent modifications are made to the operation of the Civil Partnership Act 2004 with regard to the civil partnership register where a new entry is made under the 2016 Regulations to register a civil partnership following the issue of a full gender recognition certificate to each of the parties to the civil partnership.

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