

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

### **THE MARRIAGE AND MARRIAGE REGISTRATION (PRESCRIPTION OF FORMS) (SCOTLAND) AMENDMENT REGULATIONS 2023**

**AND**

### **THE MARRIAGE BETWEEN CIVIL PARTNERS (PROCEDURE FOR CHANGE AND FEES) (SCOTLAND) AMENDMENT REGULATIONS 2023**

#### **Purpose and intended effect**

The Marriage and Marriage Registration (Prescription of Forms) (Scotland) Amendment Regulations 2023 (the “Marriage and Marriage Registration SSI”) would be made by the Registrar General for Scotland (“the Registrar General”) with the approval of the Scottish Ministers.

The Marriage and Marriage Registration SSI would amend the Marriage (Prescription of Forms) (Scotland) Regulations 1997 (SI 1997/2349) to replace:

- the form by which each party to a proposed marriage gives notice to the district registrar of their intention to marry; and
- the form by which a married couple can apply to have the marriage re-registered after either or both has been issued with a full gender recognition certificate (“GRC”).

The only difference in these forms from the previous forms would be the addition of an optional designation as “Groom” to the existing options of “Bride”, “Bridegroom”, or the option not to be designated in the registration documentation relating to the marriage.

The Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Amendment Regulations 2023 (the “Marriage between Civil Partners SSI”) would require to be made by the Scottish Ministers following consultation with the Registrar General for Scotland. The Marriage between Civil Partners SSI would amend the Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Regulations 2014 (“the 2014 Regulations”) to:

- replace the form the form by which a couple can apply to have their civil partnership changed into a marriage under the 2014 Regulations to add the designation of “Groom”;
- increase the fee payable for submission of an application to change a civil partnership to a marriage from £30 to £45;
- repeal now obsolete provisions of the 2014 Regulations; and
- make other minor amendments for clarification purposes and to correct an error in the 2014 Regulations.

This BRIA focuses on the key policy changes proposed which are the change to the registration forms to make provision for the designation of “Groom” and the proposed increase in the fee for an application to change a civil partnership to a marriage.

## Background

### Marriage Designations

The Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) made a number of changes to the law on marriage, civil partnership, and gender recognition. In particular, the 2014 Act allows: same sex couples to get married; for a couple in a civil partnership to change that civil partnership to a marriage; and for married people to obtain a full GRC without being required to divorce.

These changes required a number of changes to forms. A change was made so that it is no longer automatic that couples would be described as “Bridegroom” and “Bride” in the documentation relating to the marriage. Instead, each is now asked whether they wish to be described as “Bridegroom” or “Bride” or to have no designation. However, individuals have subsequently raised concerns with National Records of Scotland (“NRS”) and with the Scottish Ministers noting that in a male same sex marriage, “Bridegroom” is inappropriate because there is no “Bride”.

### Fee for changing a civil partnership to a marriage

Where the parties to a qualifying civil partnership<sup>1</sup> wish to change their civil partnership into a marriage, the parties must complete an application form and appear in person before a district registrar.

The level of fee is, in this case, set by the Scottish Ministers following consultation with the Registrar General. Local authority registrars and other staff employed by local authorities deliver the service, as is the case for registration of marriage and civil partnership more generally. Local authorities determine how their registration services are delivered in practice and the appropriate staff resources and the chosen service model can affect the level of costs incurred in delivery. However, fixing statutory registration fees centrally ensures consistency of access to these services across Scotland.

The current fee for an application to change a civil partnership to a marriage is £30 per application. This fee has remained unchanged since introduction in 2014.

## Objective

### Marriage designations

The addition of the designation of “Groom” to certain registration forms is intended to address the concern that in a male same sex marriage, “Bridegroom” is inappropriate because there is no “Bride”.

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<sup>1</sup> These are a (a) civil partnership registered in the United Kingdom which has not been dissolved, annulled or ended by death or (b) an [overseas relationship](#) registered outwith the UK which is treated as a civil partnership in UK and has not been dissolved, annulled or ended by death: [I want to change my Civil Partnership into a Marriage. How do I go about it? | National Records of Scotland \(nrscotland.gov.uk\)](#)

The other designation options of “Bridegroom” and “Bride” would be retained. This reflects that when the Scottish Government undertook a consultation on changes to forms following the 2014 Act, some religious bodies indicated that it is particularly important to retain the terms “Bridegroom” and “Bride” in relation to marriage.

### Fee for changing a civil partnership to a marriage

The Scottish Government’s policy as set out in guidance in the Scottish Public Finance Manual is that charges for public services should allow for full cost recovery. Consequently, the aim of regulations affecting fees for registration services delivered by local authority registrars is for each fee set to recover, as far as possible, the actual cost of the statutory service to which they relate.

This is the first change in the fee for this application since it became possible for civil partners change their relationship to a marriage in late 2014. At that time, the fee for submitting a notice of intention to marry was £30 per party (£60 altogether). A change of civil partnership to a marriage by application was generally expected to cost less than the costs of processing the paperwork associated with a new marriage or civil partnership and the Scottish Ministers decided to fix the new fee for changing a civil partnership to a marriage at £30, half the total cost, at the time, of submitting the two required notices of intention to marry or enter a civil partnership (£60).

The fee for submitting a notice of intention to marry or a notice of proposed civil partnership was increased to £45 per party with effect from 1 May 2022. As set out in the Business and Regulatory Impact Assessment<sup>2</sup> published in connection with this change notes that the increase was needed to better reflect the actual costs of the service being provided by local authority registrars and thereby avoid other local authority revenue being used to subsidise the services.

Consequently, the Scottish Ministers propose to increase the fee for changing a civil partnership to a marriage to £45 so that it continues to be half of the fees charged for a couple submitting their marriage or civil partnership notices.

In comparison to the number of marriages each year (around 27,000), few couples (less than 60 in 2019) change their civil partnership to a marriage in practice. The proposed increase in the fee for changing to a marriage will not have a significant impact from the perspective of local authorities, but the increase will also reflect that their costs in delivering registration services are known to have increased generally.

### National Performance Framework

The proposals, if implemented, would contribute to the achievement of the following outcomes of the [National Performance Framework](#):

- we live in communities that are inclusive, empowered, resilient and safe; and
- we respect, protect, and fulfil human rights and live free from discrimination

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<sup>2</sup> [The Registration Services \(Fees, etc.\) \(Scotland\) Amendment Regulations 2022 \(legislation.gov.uk\)](#) (BRIA,pdf)

## **Consultation**

### **Within Government**

Officials in the Family Law Policy Unit at Scottish Government and National Records of Scotland have worked closely together on the proposals.

NRS has consulted with the Association of Registrars of Scotland (ARoS) and the Convention of Scottish Local Authorities (CoSLA) on the level of fees.

### **Public Consultation**

This work has taken account of the concerns of some individuals regarding the lack of a designation of “Groom” raised in ministerial correspondence or with National Records of Scotland and in questions from some MSPs raised in the Scottish Parliament.

No further public consultation has been carried out on the intention to add the designation of groom or in respect of the proposal to increase the fee for an application to change a civil partnership to a marriage.

### **Business**

Neither proposal has an impact for business. The increase in the fee would affect couples who wish to change their civil partnership to a marriage. Whether to choose to be designated as “Groom” is a choice for each party to a marriage.

### **Options**

There are four potential options.

Option A is to “do nothing” by retaining the existing fee of £30 for an application to change a civil partnership to a marriage and not adding the additional option to be designated as “groom” to any of the three relevant registration forms.

Option B (Change Fee Only) is to implement only the change to the fee but not add the option of “groom” to any of the relevant registration forms.

Option C (Change Forms Only) is not to change the fee but to add the option of “groom” to the relevant registration forms.

Option D (Change Fee and Forms) is for the Scottish Ministers and the Registrar General to make the appropriate Scottish Statutory Instruments (SSIs) to increase the fee for an application to change a civil partnership to a marriage and amend the three relevant registration forms to include an additional option to be designated as “Groom”.

If any of the proposed changes are to be implemented, this will require regulations: there is no ‘non-regulatory’ option.

## Sectors and groups affected

- Couples intending to marry, change their civil partnership to a marriage or re-register their marriage after gender recognition
- Local authorities
- NRS

## Benefits and costs

### Marriage designations

Individuals who do not consider that “Bridegroom” is an appropriate designation for them could choose to be designated as “Groom” in the marriage documentation if either of Option C (Change Forms Only) or Option D (Change Fee and Forms) is taken. They would not similarly benefit if either Option A (Do nothing) or B (Change Fee Only) were chosen.

There would be costs for NRS if either of Option C (Change Forms Only) or D (Change Fee and Forms) is taken. NRS’ information technology systems supporting marriage registration would require to be updated to take account of the inclusion of the additional designation option of “Groom” and NRS would need to update their website guidance. NRS expect any additional costs of either IT or website guidance updates arising from these two options to be minimal. NRS consider these costs can be absorbed within their existing budget.

Although in the context of marriage “Groom” may be considered a synonym of, or shorthand for, “Bridegroom”, it seems likely that there will be continuing criticism if Option A (Do nothing) or Option B (Change Fee Only) is taken from individuals who do not identify with “Bridegroom” as they do not have a “Bride”.

### Fee for applications to change civil partnership to a marriage

Couples who intend to change their civil partnership to a marriage will benefit if either of Options A (Do nothing) or C (Change Forms Only) is taken: the fee for such an application would remain at £30.

Options B (Change Fee Only) or D (Change Fee and Forms) would affect such couples as they would need to pay an additional £15.

Increasing the fee could have an impact for couples with limited incomes. The available evidence suggests that fewer individuals who are married or in a civil partnership are in relative poverty. The Scottish Government Report “Poverty and Income Inequality in Scotland 2017- 2020”<sup>3</sup> notes that this rate was lowest for married adults: in the period, 13% of married<sup>4</sup> adults were reported to be in relative poverty compared to 27% of single adults.

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<sup>3</sup> [Poverty and Income Inequality in Scotland 2017-20](#) (data.gov.scot)

<sup>4</sup> The report confirms that this includes those in a civil partnership.

The number of couples who change their civil partnership to a marriage by making an application or by way of a marriage ceremony is very low. Statistics published by NRS show that in 2019 fewer than sixty civil partnerships were changed to a marriage.<sup>5</sup> (This includes those which were changed by way of a marriage ceremony and not by making an application to the registrar.)

Local authorities would be affected whichever option is selected. Taking either Option A (Do nothing) or Option C (Change Forms Only) would not increase the fee to £45 in alignment with the change in 2022 for the fees for marriage and civil partnership notices. Aligning the fee for these applications with the recently increased fees for lodging a notice of intention to marry or enter a civil partnership (but which are higher overall at £45 per party) would be more consistent and also increase the likelihood that the actual costs of handling these applications are being recovered in practice. However, as set out above, the numbers of applications to change a civil partnership to a marriage are extremely low.

There might be some minimal costs for local authorities in updating their website information for couples if any of Options B (Change Fee Only) or Option D (Change Fee and Forms) is taken.

NRS would not be affected by Option A (Do nothing) but would have costs if either of Option B (Change Fee Only) or Option D (Change Fee and Forms) is taken. These would relate to updating their website information for couples about the change of fee and would be minimal.

## **Regulatory and EU Alignment Impacts**

### **Intra-UK Trade**

Taking forward any of options B, C or D will not impact on intra-UK trade.

### **International Trade**

Taking forward any of options B, C or D will not impact on international trade.

### **EU Alignment**

Taking forward any of options B, C or D will not impact on the Scottish Government's Policy of maintaining alignment with the EU.

### **Scottish Firms Impact Test**

There is no impact for business.

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<sup>5</sup> [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/list-of-data-tables-national-records-of-scotland), Table 7.03(b). We have referred to statistics for 2019, to avoid reference to statistics that might have been affected by the coronavirus pandemic.

## **Competition and Consumer Assessment**

The services affected by the proposals are statutory and administrative and there is no impact on business or competition.

## **Test run of business forms**

There are no new business forms proposed.

## **Digital Impact Test**

The proposed changes have no adverse impact for future digital provision of registration services for couples in the future. The measures would be applicable to any provision of the services involved on an online basis.

## **Legal Aid Impact Test**

The proposals would not create any new rights or responsibilities and so we do not anticipate any increased use of legal processes as a result.

## **Enforcement, sanctions, and monitoring**

The local authority registrar handing an application to change a civil partnership to a marriage collects the fee. The sanction for non-payment is that the registrar will not proceed to change the couple's civil partnership to a marriage.

In respect of the proposal to add the designation of "Groom" as an option for designation to the specified registration forms, it is a matter for the individual(s) preparing their form for submission to select their preference. The registrar will not seek to direct them in that regard but would ensure that they have made a choice from the options of "Bride" "Bridegroom", "Groom" or have selected the option to have no designation recorded.

## **Implementation and delivery plan**

We intend the proposals to take effect from 24 April 2023. From that date, the fee for an application to change a civil partnership to a marriage would increase to £45 from £30, and the additional optional designation of "Groom" would be available for individuals who complete a notice of intention to marry, application to change their civil partnership to a marriage or application to re-register their marriage.

## **Post-implementation review**

Before the COVID-19 pandemic, regular reviews of registration fees were carried out by NRS with input from CoSLA, local authorities and the Association of Registrars of Scotland. The Registrar General intends to start a review of registration fees generally in 2023. The content of registration forms is similarly kept under regular review by NRS in the light of feedback from registrars and customers.

## Summary and recommendation

We have chosen Option D (Change Fee and Forms) because:

- there will be an improved designation option for those individuals who do not identify as a “Bridegroom” which does not affect the existing options preferred by others; and
- the fee for an application to change a civil partnership to a marriage will better reflect the costs involved in handling that application, better aligning with the general policy in the Scottish Public Finance Manual and being more consistent with the fees for marriage and civil partnership notices.

## Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<b>A Do nothing</b>	£Nil	Fee would remain inconsistent with other related registration fees and local authority costs likely not covered.  There may be a social cost in that some individuals' concerns about their designation in the public records of their marriage will not be alleviated.
<b>B Change Fee Only</b>	£Nil (increased fee is not intended to generate profit, only to align with other associated registration fees and offset processing costs)	Minimal costs of updating public facing guidance and IT systems from existing resources.  There may be a social cost in that some individuals' concerns about their designation in the public records of their marriage will not be alleviated.
<b>C Change Forms Only</b>	£Nil  There could be a social benefit, in that some individuals will feel better recognised and included because they can choose their preferred designation for the record of their marriage.	Minimal costs of updating public facing guidance and IT systems from existing resources.  Fee would remain inconsistent with other related registration fees and local authority costs likely not covered.
<b>D Change Fee and Forms</b>	£Nil (increased fee is not intended to generate profit, only to align with other associated registration fees and offset processing costs).  There could be a social benefit, in that some individuals will feel better recognised and	Minimal costs of updating public facing guidance and IT systems from existing resources.



	included because they can choose their preferred designation for the record of their marriage.	
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### Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits, and impact of the policy, and (b) that the benefits justify the costs.

<p><b>Signed:</b> Angus Robertson</p> <p>Date: 22 February 2023</p> <p>Angus Robertson</p> <p>Cabinet Secretary for Constitution, External Affairs and Culture</p>	<p><b>Signed:</b> Anne Slater</p> <p>Date: 22 February 2023</p> <p>Anne Slater</p> <p>Deputy Registrar General for Scotland</p>
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