

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Marriage (Prohibited Degrees of Relationship) Act 1986. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 1(4).

AMENDMENTS OF MARRIAGE ACT 1949

1 The ^{M1}Marriage Act 1949 shall have effect subject to the following amendments.

Marginal Citations

M1 1949 c. 76.

2 In section 1 (prohibited degrees) after subsection (1) there shall be inserted the following subsections—

“(2) Subject to subsection (3) of this section, a marriage solemnized between a man and any of the persons mentioned in the first column of Part II of the First Schedule to this Act, or between a woman and any of the persons mentioned in the second column of the said part II, shall be void.

(3) Any such marriage as is mentioned in subsection (2) of this section shall not be void by reason only of affinity if both the parties to the marriage have attained the age of twenty-one at the time of the marriage and the younger party has not at any time before attaining the age of eighteen been a child of the family in relation to the other party.

(4) Subject to subsection (5) of this section, a marriage solemnized between a man and any of the persons mentioned in the first column of Part III of the First Schedule to this Act or between a woman and any of the persons mentioned in the second column of the said Part III shall be void.

(5) Any such marriage as is mentioned in subsection (4) of this section shall not be void by reason only of affinity if both the parties to the marriage have attained the age of twenty-one at the time of the marriage and the marriage is solemnized—

- (a) in the case of a marriage between a man and the mother of a former wife of his, after the death of both the former wife and the father of the former wife;
- (b) in the case of a marriage between a man and the former wife of his son, after the death of both his son and the mother of his son;
- (c) in the case of a marriage between a woman and the father of a former husband of hers, after the death of both the former husband and the mother of the former husband;
- (d) in the case of a marriage between a woman and a former husband of her daughter, after the death of both her daughter and the father of her daughter.”

3 In section 5 (marriages according to rites of Church of England) there shall be added at the end the words “except that paragraph (a) of this section shall not apply

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in relation to the solemnization of any marriage mentioned in subsection (2) of section 1 of this Act.”

4 In section 16 (common Licences)—

(a) after subsection (1) there shall be inserted the following subsections—

“(1A) A common licence shall not be granted for the solemnization of a marriage mentioned in subsection (2) of section 1 of this Act unless—

- (a) the person having authority to grant the licence is satisfied by the production of evidence that both the persons to be married have attained the age of twenty-one; and
- (b) he has received a declaration in writing made by each of those persons specifying their affinal relationship and declaring that the younger of those persons has not at any time before attaining the age of eighteen been a child of the family in relation to the other.

(1B) In the case of a marriage mentioned in subsection (4) of section 1 of this Act which by virtue of subsection (5) of that section is valid only if at the time of the marriage both the parties to the marriage have attained the age of twenty-one and the death has taken place of two other persons related to those parties in the manner mentioned in the said subsection (5), a common licence shall not be granted for the solemnization of the marriage unless the person having authority to grant the licence is satisfied by the production of evidence—

- (a) that both the parties to the marriage have attained the age of twenty-one; and
 - (b) that both those other persons are dead.”;
- (b) in subsection (2) at the beginning there shall be inserted the words “Subject to subsection (2A) of this section”; and
- (c) after subsection (2) there shall be inserted the following subsections—

“(2A) Where in the case of a marriage mentioned in subsection (2) of section 1 of this Act a caveat is entered under subsection (2) of this section on the ground that the persons to be married have not both attained the age of twenty-one or that one of those persons has at any time before attaining the age of eighteen been a child of the family in relation to the other, then, notwithstanding that the caveat is withdrawn by the person who entered it, no licence shall be issued unless the judge has certified that he has examined into that ground of objection and is satisfied that that ground ought not to obstruct the grant of the licence.

(2B) In the case of a marriage mentioned in subsection (2) of section 1 of this Act, one of the persons to be married may apply to the ecclesiastical judge out of whose office the licence is to issue for a declaration that, both those persons having attained the age of twenty-one and the younger of those persons not having at any time before attaining the age of eighteen been a child of the family in relation to the other, there is no impediment of affinity to the solemnization of the marriage; and where any such declaration is

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obtained the common licence may be granted notwithstanding that no declaration has been made under the said subsection (1A).”

5 After section 27A there shall be inserted the following sections—

“27B Provisions relating to section 1(3) marriages.

- (1) This section applies in relation to any marriage mentioned in subsection (2) of section 1 of this Act which is intended to be solemnized on the authority of a certificate of a superintendent registrar.
- (2) The superintendent registrar shall not enter notice of the marriage in the marriage notice book unless—
 - (a) he is satisfied by the production of evidence that both the persons to be married have attained the age of twenty-one; and
 - (b) he has received a declaration made in the prescribed form by each of those persons, each declaration having been signed and attested in the prescribed manner, specifying their affinal relationship and declaring that the younger of those persons has not at any time before attaining the age of eighteen been a child of the family in relation to the other.
- (3) The fact that a superintendent registrar has received a declaration under subsection (2) of this section shall be entered in the marriage notice book together with the particulars given in the notice of marriage and any such declaration shall be filed and kept with the records of the office of the superintendent registrar or, where notice of marriage is required to be given to two superintendent registrars, of each of them.
- (4) Where the superintendent registrar receives from some person other than the persons to be married a written statement signed by that person which alleges that the declaration made under subsection (2) of this section is false in a material particular, the superintendent registrar shall not issue a certificate or licence unless a declaration is obtained from the High Court under subsection (5) of this section.
- (5) Either of the persons to be married may, whether or not any statement has been received by the superintendent registrar under subsection (4) of this section, apply to the High Court for a declaration that, both those persons having attained the age of twenty-one and the younger of those persons not having at any time before attaining the age of eighteen been a child of the family in relation to the other, there is no impediment of affinity to the solemnization of the marriage; and where such a declaration is obtained the superintendent registrar may enter notice of the marriage in the marriage notice book and may issue a certificate, or certificate and licence, whether or not any declaration has been made under subsection (2) of this section.
- (6) Section 29 of this Act shall not apply in relation to a marriage to which this section applies, except so far as a caveat against the issue of a certificate or licence for the marriage is entered under that section on a ground other than the relationship of the persons to be married.

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27C Provisions relating to section 1(5) marriages.

In the case of a marriage mentioned in subsection (4) of section 1 of this Act which by virtue of subsection (5) of that section is valid only if at the time of the marriage both the parties to the marriage have attained the age of twenty-one and the death has taken place of two other persons related to those parties in the manner mentioned in the said subsection (5), the superintendent registrar shall not enter notice of the marriage in the marriage notice book unless satisfied by the production of evidence—

- (a) that both the parties to the marriage have attained the age of twenty-one, and
- (b) that both those other persons are dead.”.

- 6 In section 39 (notice of marriage given on board Her Majesty’s ships)—
- (a) in subsection (2) for the words “excluding section 27A” there shall be substituted the words “excluding sections 27A and 27B”;
 - (b) in subsection (3) for the words “excluding section 27A” there shall be substituted the words, “excluding sections 27A and 27B”.
- 7 In section 78 (interpretation) after the definition of “brother” there shall be inserted—
- ““child of the family”, in relation to any person, means a child who has lived in the same household as that person and been treated by that person as a child of his family”.
- 8 In the First Schedule—
- (a) in Part I—
 - (i) in the first column the words from “Wife’s mother” to “Daughter’s son’s wife”; and
 - (ii) in the second column the words from “Husband’s father” to “Daughter’s daughter’s husband” shall cease to have effect; and
 - (b) at the end of Part I there shall be added—

“PART II

Degrees of affinity referred to in section 1(2) and (3) of this Act

Daughter of former wife	Son of former husband
Former wife of father	Former husband of mother
Former wife of father’s father	Former husband or father’s mother
Former wife of mother’s father	Former husband of mother’s mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

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PART III

Degrees of affinity referred to in section 1(4) and (5) of this Act

Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter”

SCHEDULE 2

Section 2.

AMENDMENTS OF MARRIAGE (SCOTLAND) ACT 1977

- 1 The Marriage (Scotland) Act 1977 shall be amended as follows.
- 2 In section 2 (prohibited degrees for marriage of related persons)—
- (a) at the beginning of subsection (1) there shall be inserted the words “Subject to subsections (1A) and (1B) below,”;
 - (b) after subsection (1) there shall be inserted the following subsections—
 - “(1A) Subsection (1) above does not apply to a marriage between a man and any woman related to him in a degree specified in column 1 of paragraph 2 of Schedule 1 to this Act, or between a woman and any man related to her in a degree specified in column 2 of that paragraph, if—
 - (a) both parties have attained the age of 21 at the time of the marriage; and
 - (b) the younger party has not at any time before attaining the age of 18 lived in the same household as the other party and been treated by the other party as a child of his family.
 - (1B) Subsection (1) above does not apply to a marriage between a man and any woman related to him in a degree specified in column 1 of paragraph 2A of Schedule 1 to this Act, or between a woman and any man related to her in a degree specified in column 2 of that paragraph, if both parties to the marriage have attained the age of 21 and the marriage is solemnized—
 - (a) in the case of a man marrying the mother of a former wife of his, after the death of both the former wife and the former wife’s father;
 - (b) in the case of a man marrying a former wife of his son, after the death of both his son and his son’s mother;
 - (c) in the case of a woman marrying the father of a former husband of hers, after the death of both the former husband and the former husband’s mother;
 - (d) in the case of a woman marrying a former husband of her daughter, after the death of both her daughter and her daughter’s father.” and
 - (c) after subsection (4) there shall be inserted the following new subsection—

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- “(5) Where the parties to an intended marriage are related in a degree specified in paragraph 2 of Schedule 1 to this Act, either party may (whether or not an objection to the marriage has been submitted in accordance with section 5(1) of this Act) apply to the Court of Session for a declarator that the conditions specified in paragraphs (a) and (b) of subsection (1A) above are fulfilled in relation to the intended marriage.”.
- 3 In section 3(1) (notice of intention to marry), after paragraph (c) there shall be inserted the following paragraph—
- “(d) where he is related to the other party in a degree specified in paragraph 2 of Schedule 1 to this Act, a declaration in the prescribed form stating—
- (i) the degree of relationship; and
- (ii) that the younger party has not at any time before attaining the age of 18 lived in the same household as the other party and been treated by the other party as a child of his family.”.
- 4 In section 5 (objections to marriage)-
- (a) at the beginning of subsection (3) there shall be inserted the words “Subject to subsection (3A) below,”;
- (b) after subsection (3) there shall be inserted the following subsection—
- “(3A) Where—
- (a) an objection of which the Registrar General has received notification under subsection (2)(b)(i) above is on the ground that—
- (i) the parties are related in a degree specified in paragraph 2 of Schedule 1 to this Act; and
- (ii) the conditions specified in paragraphs (a) and (b) of section 2(1A) of this Act are not satisfied; and
- (b) an extract decree of declarator that those conditions are satisfied, granted on an application under section 2(5) of this Act, is produced to the Registrar General,
- the Registrar General shall inform the district registrar that there is no legal impediment to the marriage on that ground.”; and
- (c) in subsection (4), for the words “subsection (3) above” there shall be substituted the words “this section”.
- 5 In section 6(1) (the Marriage Schedule), after “5(3)(b)” there shall be inserted “or (3A)”.
- 6 In section 7(1) (marriage outside Scotland where a party resides in Scotland), for the words “(a) and (b)” there shall be substituted the words “(a), (b) and (d)”.
- 7 For paragraph 2 of Schedule 1 (relationships by affinity) there shall be substituted the following paragraphs—
- “2 —Relationships by affinity referred to in section 2(1A)
- 2A —Relationships by affinity referred to in section 2(1B)

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