



# Marriage and Civil Partnership (Scotland) Act 2014

2014 asp 5

## PART 1

### MARRIAGE

#### CHAPTER 1

##### SAME SEX MARRIAGE

### 1 Marriage of related persons

(1) The Marriage (Scotland) Act 1977 (“the 1977 Act”) is amended as follows.

(2) In section 2 (marriage of related persons)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (1A), a marriage between persons who are related to each other in a forbidden degree is void if solemnised—

(a) in Scotland; or

(b) at a time when either party is domiciled in Scotland.

(1ZA) For the purposes of subsection (1), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 1.”

(b) in subsection (1A), for the words from the beginning to “paragraph,” substitute “A person who is related to another person in a degree specified in paragraph 2 of Schedule 1 (relationships by affinity) is not related to that person in a forbidden degree”;

(c) after subsection (1A) insert—

“(1C) For the purposes of paragraph 2 of Schedule 1, “spouse” means—

(a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife; and

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- (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.”,
  - (d) in subsection (7)—
    - (i) for “those provisions” substitute “subsection (1C)(a) as it applies to paragraph 2 of Schedule 1”, and
    - (ii) the word “former” in each place where it appears is repealed, and
  - (e) in subsection (7A)—
    - (i) for “mother” substitute “parent”, and
    - (ii) the words “in either column” are repealed.
- (3) For schedule 1 substitute—

“SCHEDULE 1

*(introduced by section 2)*

DEGREES OF RELATIONSHIP

1. ***Relationships by consanguinity***
  - Parent
  - Child
  - Grandparent
  - Grandchild
  - Sibling
  - Aunt or uncle
  - Niece or nephew
  - Great-grandparent
  - Great-grandchild
2. ***Relationships by affinity referred to in section 2(1A)***
  - Child of former spouse
  - Child of former civil partner
  - Former spouse of parent
  - Former civil partner of parent
  - Former spouse of grandparent
  - Former civil partner of grandparent
  - Grandchild of former spouse
  - Grandchild of former civil partner
3. ***Relationships by adoption***
  - Adoptive parent or former adoptive parent
  - Adopted child or former adopted child.”.

**2 Objections to marriage**

In section 5(4) of the 1977 Act (objections to marriage)—

- (a) paragraph (e) is repealed, and
- (b) in paragraph (f), for “than one mentioned in paragraphs (a) to (e) above,” substitute “than—
  - (i) one mentioned in paragraphs (a) to (d) above; or

(ii) the ground that the parties are of the same sex.”.

### **3 Preliminaries to marriage**

- (1) The 1977 Act is amended as follows.
- (2) In section 3 (notice of intention to marry)—
  - (a) in subsection (1)—
    - (i) for paragraph (b) substitute—

“(b) if the person has previously been married and the marriage ended on the death of the other party to that marriage, the death certificate of that other party;”,
    - (ii) after that paragraph insert—

“(ba) if the person has previously been in a civil partnership which ended on the death of the other party to the civil partnership, the death certificate of that other party;”,
  - (b) in subsection (2), for “or (b)” substitute “, (b), (ba) or (bb)”, and
  - (c) in subsection (5), after paragraph (ii)(b) of the proviso insert “; or
  - (c) if no such certificate has been issued only by reason of the fact that the parties to the intended marriage are of the same sex.”.
- (3) In section 7(1) (marriage outside Scotland where a party resides in Scotland), after “(b)” insert “, (ba), (bb)”.

### **4 Meaning of marriage and related expressions in enactments and documents**

- (1) References (however expressed) in any enactment to—
  - (a) marriage (including a marriage that has ended),
  - (b) a person who is (or was) married to another person, and
  - (c) two people who are (or were) married to each other,are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (2) Subsection (3) applies to references (however expressed) in any enactment to two people who—
  - (a) are (or were) not married to each other, but
  - (b) are (or were) living together as if they were husband and wife.
- (3) The references include two people of the same sex who are (or were) not married to, nor in civil partnership with, each other but who are (or were) living together as if they were married to each other.
- (4) References (however expressed) in any enactment to two people of the same sex who are (or were) living together as if they were in a civil partnership cease to have effect.
- (5) Subsections (1) to (4)—
  - (a) apply to enactments (other than private Acts) passed or made before the commencement of this section, and

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- (b) do not apply in so far as the enactment, or any other enactment, provides otherwise.
- (6) In so far as being (or having been) married or in a purported marriage is relevant for the operation of any rule of law, the rule of law applies equally in relation to marriage or purported marriage to a person of a different sex and marriage or purported marriage to a person of the same sex.
- (7) Subsections (1) to (6) are subject to an order under subsection (8).
- (8) The Scottish Ministers may by order provide for any of subsections (1) to (6)—
- (a) to have effect subject to provision made by the order, or
  - (b) not to apply in cases specified in the order.
- (9) An order under subsection (8)—
- (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) is (except where subsection (10) applies) subject to the negative procedure.
- (10) An order under subsection (8) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- (11) References (however expressed) in any document to—
- (a) marriage (including a marriage that has ended),
  - (b) a person who is (or was) married to another person, and
  - (c) two people who are (or were) married to each other,
- are references to marriage whether between persons of different sexes or persons of the same sex and to a party (or former party), or as the case may be the parties (or former parties), to such a marriage.
- (12) The following expressions in any document have the meanings given—
- (a) “widow” includes a woman whose marriage to another woman ended with the other woman’s death,
  - (b) “widower” includes a man whose marriage to another man ended with the other man’s death.
- (13) Subsections (11) and (12)—
- (a) apply to documents executed on or after the commencement of this section, and
  - (b) do not apply in so far as the document provides otherwise.
- (14) In section 26(2) of the 1977 Act (interpretation), after the definition of “authorised registrar” insert—
- ““marriage” means marriage between persons of different sexes and marriage between persons of the same sex;”.
- (15) In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (definitions of words and expressions), insert at the appropriate place in alphabetical order—
- ““marriage” means marriage between persons of different sexes and marriage between persons of the same sex (and any reference to a person being (or having

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been) married to another person, or to two people being (or having been) married to each other, is to be read accordingly),”

““widow” includes a woman whose marriage to another woman ended with the other woman’s death,”

““widower” includes a man whose marriage to another man ended with the other man’s death,”.

## **5 Same sex marriage: further provision**

(1) For the avoidance of doubt, the rule of law which provides for a marriage to be voidable by reason of impotence has effect only in relation to a marriage between persons of different sexes.

(2) In section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce), after subsection (3) insert—

“(3A) For the avoidance of doubt, in relation to marriage between persons of the same sex, adultery has the same meaning as it has in relation to marriage between persons of different sexes.”.

## **6 Jurisdiction in proceedings relating to same sex marriages**

Schedule 1, which makes provision about jurisdiction in proceedings relating to same sex marriages, has effect.

## **7 Reset: abolition of defence**

(1) Any rule of law under which a wife who receives or conceals goods stolen by her husband does not commit the offence of reset ceases to apply.

(2) Subsection (1) applies only in relation to things done after the day on which this section comes into force.

# **CHAPTER 2**

## **MARRIAGE BETWEEN CIVIL PARTNERS IN QUALIFYING CIVIL PARTNERSHIPS**

## **8 Marriage between civil partners in qualifying civil partnerships**

(1) The 1977 Act is amended as follows.

(2) In section 3 (notice of intention to marry), in subsection (1), after paragraph (ba) (inserted by section 3(2)(a)(ii) of this Act), insert—

“(bb) if the person is in a qualifying civil partnership within the meaning of section 5(6) with the other party to the intended marriage, an extract from the entry in the civil partnership register relating to the civil partnership;”.

(3) In section 5 (objections to marriage)—

(a) in subsection (4)(b), after “partnership” insert “other than a qualifying civil partnership with each other”, and

(b) after subsection (5) insert—

“(6) For the purposes of subsection (4)(b) a “qualifying civil partnership” is a civil partnership which—

- (a) was registered in Scotland; and
- (b) has not been dissolved, annulled or ended by death.

(7) A civil partnership which was registered outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 of the Civil Partnership Act 2004 is to be treated for the purposes of subsection (6)

- (a) as having been registered in Scotland if—
  - (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom under the Order; and
  - (b) details of the civil partnership have been sent to the Registrar General of Births, Deaths and Marriages for Scotland.”.

## 9 Power to modify meaning of “qualifying civil partnership”

- (1) The Scottish Ministers may by order modify the meaning of “qualifying civil partnership” given by section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act) so as to include civil partnerships registered outside Scotland.
- (2) An order under subsection (1)—
  - (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) is subject to the affirmative procedure.
- (3) Before laying a draft of an order under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
  - (a) the Registrar General of Births, Deaths and Marriages for Scotland, and
  - (b) such other persons as the Scottish Ministers consider appropriate.

## 10 Change of qualifying civil partnership into marriage

- (1) The Scottish Ministers may by regulations make provision to establish a procedure for the parties to a qualifying civil partnership to change their civil partnership into a marriage.
- (2) Regulations under subsection (1) may in particular make provision—
  - (a) about the making by the parties to a qualifying civil partnership of an application to change their civil partnership into a marriage,
  - (b) about the information to be provided in support of an application,
  - (c) about the provision of evidence in support of an application,
  - (d) for persons who have made an application to appear before any person or appear at any place,
  - (e) conferring functions on persons in relation to applications,
  - (f) for fees, of such amounts as are specified in or determined in accordance with the regulations, to be payable in respect of—
    - (i) the making of an application,

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- (ii) the exercise of any function conferred by virtue of paragraph (e).
- (3) Functions conferred by virtue of subsection (2)(e) may include functions relating to—
  - (a) the recording of information relating to qualifying civil partnerships changing into marriages,
  - (b) the issuing of certified copies of any information recorded.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.
- (5) Regulations under subsection (1)—
  - (a) may make different provision for different purposes,
  - (b) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may modify any enactment (including this Act),
  - (d) are (except where subsection (6) applies) subject to the negative procedure.
- (6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (7) In this section “qualifying civil partnership” has the meaning given by section 5(6) of the 1977 Act (inserted by section 8(3)(b) of this Act).

## **11 Effect of marriage between civil partners in a qualifying civil partnership**

- (1) This section applies where civil partners in a qualifying civil partnership (within the meaning of section 5(6) of the 1977 Act)—
  - (a) marry in accordance with that Act, or
  - (b) change their civil partnership into a marriage in accordance with provision made under section 10(1).
- (2) Where this section applies—
  - (a) the qualifying civil partnership ends on the date on which—
    - (i) the marriage was solemnised, or
    - (ii) the change took effect, and
  - (b) the civil partners are to be treated as having been married to each other since the date on which the qualifying civil partnership was registered.
- (3) For the purposes of subsection (2)(b)—
  - (a) a civil partnership registered under an Order in Council made under section 210 of the 2004 Act is to be treated as having been registered when it is entered in the Register Book maintained under the Order,
  - (b) a civil partnership registered under an Order in Council made under section 211 of the 2004 Act is to be treated as having been registered when the civil partnership register is signed in accordance with the Order.
- (4) Subsection (2)(b) is subject to—
  - (a) any provision to the contrary made by or under any enactment,
  - (b) an order under subsection (5).
- (5) The Scottish Ministers may by order provide for subsection (2)(b)—
  - (a) to have effect subject to provision made by the order, or

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- (b) not to apply in cases specified in the order.
- (6) An order under subsection (5)—
  - (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (b) is subject to the negative procedure.
- (7) If a decree of aliment under section 3 of the Family Law (Scotland) Act 1985 (powers of court in action for aliment) requiring one of the civil partners to make payments to the other is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section, the decree continues to have effect despite the ending of the civil partnership.
- (8) If an order under section 103(3) or (4) of the 2004 Act (regulation by court of rights of occupancy of family home) is in force at the time the qualifying civil partnership ends by virtue of subsection (2)(a) of this section the order has effect from that time as if made under section 3(3) or, as the case may be, 3(4) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (regulation by court of rights of occupancy of matrimonial home).
- (9) In section 1 of the 2004 Act (provision for civil partnership), after subsection (3) insert—
  - “(3A) Subsection (3) is subject to section 11(2)(a) of the Marriage and Civil Partnership (Scotland) Act 2014 (ending of certain civil partnerships on marriage under Scots law).”.

## CHAPTER 3

### SOLEMNISATION OF MARRIAGE

#### 12 Persons who may solemnise marriage

- (1) The 1977 Act is amended as follows.
- (2) In section 8 (persons who may solemnise marriage)—
  - (a) in subsection (1)—
    - (i) after “marriage” in the first place where it appears insert “between persons of different sexes”,
    - (ii) in paragraph (a)(ii)—
      - (A) for “or priest of a religious body” substitute “priest or other celebrant of a religious or belief body”,
      - (B) for “religious body” in the second place it appears substitute “religious or belief body”, and
      - (C) for “marriages” substitute “marriage between persons of different sexes”,
    - (iii) in paragraph (a)(iii), after “Act” insert “to solemnise marriage between persons of different sexes”, and
    - (iv) in paragraph (a)(iv), after “Act” insert “to solemnise marriage between persons of different sexes”,
  - (b) after subsection (1) insert—



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- “(1A) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(ii) only if—
- (a) the body requests them to do so; and
  - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.
- (1B) Subject to section 23A, a marriage between persons of the same sex may be solemnised by and only by—
- (a) a person who is—
    - (i) a minister, clergyman, pastor, priest or other celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;
    - (ii) registered under section 9 to solemnise marriage between persons of the same sex; or
    - (iii) temporarily authorised under section 12 to solemnise marriage between persons of the same sex; or
  - (b) a person who is a district registrar or assistant registrar appointed under section 17.
- (1C) The Scottish Ministers may prescribe a religious or belief body under subsection (1B)(a)(i) only if—
- (a) the body requests them to do so; and
  - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.
- (1D) For the avoidance of doubt, nothing in subsection (1B)(a) or (1C)(a) —
- (a) imposes a duty on any religious or belief body to make a request referred to in subsection (1C)(a);
  - (b) imposes a duty on any such body to nominate under section 9 any of its members to be registered as empowered to solemnise marriages between persons of the same sex;
  - (c) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise marriages between persons of the same sex;
  - (d) imposes a duty on any person who is an approved celebrant in relation to marriages between persons of the same sex to solemnise such marriages.
- (1E) In subsections (1A)(b) and (1C)(b), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
- (1F) Regulations under subsection (1E)—
- (a) may make different provision for different cases or circumstances;
  - (b) may include transitional and saving provision.

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- (1G) Regulations under subsection (1)(a)(ii), (1B)(a)(i) or (1E) are subject to the negative procedure.”, and
- (c) in subsection (2)—
- (i) in paragraph (a)—
- (A) after “(1)(a)” insert “or (1B)(a)”, and
- (B) for ““religious marriage”” substitute ““religious or belief marriage””, and
- (ii) in paragraph (b), after “(1)(b)” insert “or (1B)(b)”.
- (3) In section 14 (form of ceremony to be used by approved celebrant)—
- (a) in paragraph (a), after “or (ii)” insert “or (1B)(a)(i)”, and
- (b) in paragraph (b), after “or (iv)” insert “or (1B)(a)(ii) or (iii)”.
- (4) In section 26(2) (interpretation)—
- (a) for the definition of “religious body” substitute—
- ““religious or belief body” means an organised group of people—
- (a) which meets regularly for religious worship; or
- (b) the principal object (or one of the principal objects) of which is to uphold or promote philosophical beliefs and which meets regularly for that purpose;”, and
- (b) after that definition insert—
- ““religious or belief marriage” has the meaning given by section 8(2)(a);”.

### **13 Registration of nominated persons as celebrants**

- (1) The 1977 Act is amended as follows.
- (2) In section 9 (registration of nominated persons as celebrants)—
- (a) in subsection (1)—
- (i) for “religious body” substitute “religious or belief body”, and
- (ii) after “marriages” insert “between persons of different sexes”,
- (b) after subsection (1) insert—
- “(1A) A religious or belief body, not being prescribed by virtue of section 8(1B)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to solemnise marriages between persons of the same sex.”,
- (c) in subsection (2)—
- (i) after “(1)” insert “or (1A)”,
- (ii) in paragraph (a), for “religious body” substitute “religious or belief body”, and
- (iii) in paragraph (d)—
- (A) the word “religious” is repealed, and
- (B) after “that body” insert “in relation to solemnising marriages between persons of different sexes or, as the case may be, marriages between persons of the same sex”,
- (d) after paragraph (d) insert “; or

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- (e) the nominating body does not meet the qualifying requirements.”,
- (e) after subsection (2) insert—
  - “(2A) In subsection (2)(e), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
  - (2B) Regulations under subsection (2A)—
    - (a) may make different provision for different cases or circumstances;
    - (b) may include transitional and saving provision.
  - (2C) Regulations under subsection (2A) are subject to the negative procedure.”,
- (f) in subsection (3)—
  - (i) after “ceremony” insert “for marriage between persons of different sexes”,
  - (ii) in paragraph (a), for the words from “witnesses,” to “wife;” substitute “witnesses—
    - (i) that they accept each other as husband and wife;
    - (ii) that they accept each other in marriage; or
    - (iii) either or both of sub-paragraphs (i) and (ii);”,
  - (iii) in paragraph (b), for the words from “subsection,” to “wife,” substitute “subsection—
    - (i) that the parties are then husband and wife;
    - (ii) that the parties are then married; or
    - (iii) either or both of sub-paragraphs (i) and (ii);”,and
  - (iv) after “ceremonies” insert “for marriage between persons of different sexes”,
- (g) after subsection (3) insert—
  - “(3A) For the purposes of subsection (2)(b) above, a marriage ceremony for marriage between persons of the same sex is of an appropriate form if it includes, and is in no way inconsistent with—
    - (a) a declaration by the parties, in the presence of each other, the celebrant and two witnesses, that they accept each other in marriage;
    - (b) a declaration by the celebrant, after the declaration mentioned in paragraph (a), that the parties are then married,and the Registrar General may, before deciding whether to accept or reject a nomination, require the nominating body to produce in writing the form of words used at its marriage ceremonies for marriage between persons of the same sex.”,
- (h) in subsection (4)—
  - (i) after “(1)” insert “or (1A)”, and
  - (ii) in paragraph (b), after “area” insert “or place”,
- (i) in subsection (5)(a), after “(1)” insert “or (1A)”,

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- (j) after subsection (5) insert—
  - “(5ZA) The register mentioned in subsection (5)(a)(ii) is to be in two parts—
    - (a) the first part containing the details mentioned in subsection (5)(a)(ii) in relation to persons nominated by religious or belief bodies to solemnise marriages between persons of different sexes; and
    - (b) the second part containing those details in relation to persons nominated by religious or belief bodies to solemnise marriages between persons of the same sex.”,
  - (k) in subsection (6), in the proviso, for “religious body” in each place where it appears substitute “religious or belief body”, and
  - (l) the italic cross-heading preceding section 9 becomes “*Religious or belief marriages*”.
- (3) In section 10 (removal of celebrant’s name from register)—
  - (a) in subsection (1)—
    - (i) in paragraph (b), after “9(1)” insert “or (1A)”, and
    - (ii) in paragraph (c), after “9(3)” insert “or (3A)”,
  - (b) after that subsection insert—
    - “(1A) In relation to any ground mentioned in subsection (1)(a) to (c), references in this section to removal from and restoration to the register include removal from and restoration to the appropriate part of the register.”, and
  - (c) in subsection (4), after “9(1)” insert “or (1A)”.
- (4) In section 14(b) (form of ceremony to be used by approved celebrant), after “9(3)” insert “or (3A)”.
- (5) In section 24(2)(a) (offences), after “area” insert “or place”.

## 14 Temporary authorisation of celebrants

- (1) The 1977 Act is amended as follows.
- (2) In section 12 (temporary authorisation of celebrants)—
  - (a) in subsection (1), for “person” substitute “member of a religious or belief body”, and
  - (b) after subsection (1) insert—
    - “(1A) The Registrar General may grant an authorisation to a person under subsection (1) only if satisfied that the religious or belief body of which the person is a member meets the qualifying requirements.
    - (1B) An authorisation under subsection (1)(b) may be granted in relation to—
      - (a) only marriages between persons of different sexes;
      - (b) only marriages between persons of the same sex; or
      - (c) both.
    - (1C) The Registrar General may grant an authorisation to a person under subsection (1)(b) to solemnise marriages between persons of the same

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sex only if the religious or belief body of which the person is a member—

- (a) is prescribed by virtue of section 8(1B)(a)(i); or
- (b) has nominated members (whether or not including that person) under section 9(1A) to solemnise marriages between persons of the same sex.

(1D) In subsection (1A), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.

(1E) Regulations under subsection (1D)—

- (a) may make different provision for different cases or circumstances;
- (b) may include transitional and saving provision.

(1F) Regulations under subsection (1D) are subject to the negative procedure.”.

- (3) In section 24 (offences), in subsection (2)(c), for the words from “12(a)” to the end substitute “12 of this Act—
- (i) if authorised under subsection (1)(a) of that section, solemnises a marriage not specified in the authorisation;
  - (ii) if authorised under subsection (1)(b) of that section, solemnises a marriage outwith the period specified in the authorisation;
  - (iii) in either case, solemnises a marriage otherwise than in accordance with such terms and conditions as may be specified in the authorisation;”.

## 15 Religious or belief marriage: further provision

- (1) The 1977 Act is amended as follows.
- (2) In section 6(5) (solemnisation of marriage on date and at place in Marriage Schedule), for “religious marriage” substitute “religious or belief marriage”.
- (3) In section 11 (alterations to register), in paragraph (a), for “religious body” substitute “religious or belief body”.
- (4) In the title of section 13 (preliminaries to solemnisation of religious marriages), for “**religious marriages**” substitute “**marriages by approved celebrants**”.
- (5) In section 14(a) (form of ceremony to be used by approved celebrant), for “religious body” substitute “religious or belief body”.
- (6) In the title of section 15 (registration of religious marriages), for “**religious marriages**” substitute “**religious or belief marriages**”.
- (7) In section 15(3) (entry in register of marriage on receipt of Marriage Schedule), for “religious marriage” substitute “religious or belief marriage”.

## CHAPTER 4

### SAME SEX MARRIAGE: PROTECTION OF FREEDOM OF EXPRESSION ETC.

#### 16 **Same sex marriage: protection of freedom of expression etc.**

- (1) For the avoidance of doubt, nothing in this Part so far as it makes provision for the marriage of persons of the same sex and as to the persons who may solemnise such marriages affects the exercise of—
  - (a) the Convention right to freedom of thought, conscience and religion,
  - (b) the Convention right to freedom of expression, or
  - (c) any equivalent right conferred by rule of law.
- (2) “Convention right” has the same meaning as in the Human Rights Act 1998.

## CHAPTER 5

### OTHER CHANGES TO MARRIAGE PROCEDURE

#### 17 **Power of district registrar to require evidence of nationality: marriage**

- (1) The 1977 Act is amended as follows.
- (2) In section 3 (notice of intention to marry), after subsection (4) insert—
  - “(4A) A district registrar to whom a notice under subsection (1) is submitted may require the person submitting the notice to provide the district registrar with specified nationality evidence relating to each of the parties to the marriage.
  - (4B) A requirement under subsection (4A) may be imposed at any time—
    - (a) on or after the submitting of the notice under subsection (1); but
    - (b) before the district registrar completes the Marriage Schedule.
  - (4C) In subsection (4A), “specified nationality evidence” means such evidence of that person’s nationality as may be specified in guidance issued by the Registrar General.”
- (3) In section 7 (marriage outside Scotland where a party resides in Scotland), in subsection (1) for “and (3)” substitute “, (3) and (4A) to (4C)”.

#### 18 **The Marriage Schedule**

- (1) The 1977 Act is amended as follows.
- (2) In section 6 (the Marriage Schedule)—
  - (a) after subsection (1) insert—
    - “(1A) Regulations under subsection (1) prescribing the form of the Marriage Schedule may make different provision for different cases or circumstances.”, and
    - (b) in subsection (4)(a), for “14 days” in both places where those words appear substitute “28 days”.

- (3) In section 7(2) (issuing of certificate in respect of legal capacity to marry), for “14 days” substitute “28 days”.
- (4) In section 19(1) (period between receipt of marriage notice and solemnisation of marriage), for “14 days” substitute “28 days”.

**19 Marriage outside Scotland: evidence of dissolution of former civil partnership**

In section 7(1) of the 1977 Act (marriage outside Scotland where a party resides in Scotland), after “3(1)(a),” insert “(aa),”.

**20 Religious marriages: solemnisation by Church of Scotland deacons**

In section 8(1)(a)(i) of the 1977 Act (solemnisation of marriage by ministers of the Church of Scotland), after “minister” insert “or deacon”.

**21 Places at which civil marriages may be solemnised**

- (1) The 1977 Act is amended as follows.
- (2) In section 18 (places at which civil marriages may be solemnised)—
  - (a) in subsection (1)—
    - (i) after paragraph (a) insert—
      - “(aa) at an appropriate place in the registration district of the authorised registrar; or
      - (ab) with the approval of the Registrar General, at—
        - (i) the registration office of another authorised registrar;
        - (ii) an appropriate place in the registration district of another authorised registrar; or
        - (iii) an appropriate place in Scottish waters.”,
    - (ii) paragraph (b) (and the word “or” following it) are repealed, and
    - (iii) paragraph (c) is repealed,
  - (b) after that subsection insert—
    - “(1A) In this section—
      - “appropriate place” means a place which—
        - (a) the parties to the intended marriage and the local registration authority agree is to be the place of solemnisation; and
        - (b) is not religious premises;
      - “local registration authority” means—
        - (a) the local registration authority for the registration district which includes the place; or
        - (b) where the place is in Scottish waters, the local registration authority for the authorised registrar’s registration district;
      - “religious premises” means premises which—
        - (a) are used solely or mainly for religious purposes; or

- (b) have been so used and have not subsequently been used solely or mainly for other purposes.”, and
- (c) subsections (2) to (8) are repealed.
- (3) Section 18A (approved places) is repealed.
- (4) In section 19 (marriage ceremony and registration of marriage)—
  - (a) in subsection (4)(a)—
    - (i) for sub-paragraph (ii) substitute—
      - “(ii) at an appropriate place (within the meaning given by section 18) in the registration district of the authorised registrar; or”,
      - (ii) sub-paragraph (iii) (and the word “or” following it) are repealed, and
      - (iii) in sub-paragraph (iv), for the words “in or on an approved vessel” substitute “at an appropriate place (within the meaning given by section 18)”,
    - (b) in subsection (4)(b)(ii), for “approved place” substitute “appropriate place (within the meaning given by section 18)”, and
    - (c) subsection (5) is repealed.
- (5) In section 26(2A)(b) (seaward boundary of registration district), for “within a registration district if it” substitute “a place within a registration district if the vessel”.

## 22 **Second marriage ceremony: form of endorsement**

In section 20(2)(d) of the 1977 Act (second marriage ceremony), in the form of the endorsement, the word “19” in both places where it appears is repealed.

## CHAPTER 6

### SHERIFF COURT JURISDICTION IN RELATION TO DECLARATOR OF MARRIAGE

## 23 **Sheriff court jurisdiction in relation to declarator of marriage**

- (1) Section 8 of the Domicile and Matrimonial Proceedings Act 1973 (jurisdiction of the sheriff court in relation to actions for separation, divorce etc.) is amended as follows.
- (2) In subsection (1), before paragraph (a) insert—
  - “(za) an action for declarator of marriage;”.
- (3) After subsection (2) insert—
  - “(2ZA) The court has jurisdiction to entertain an action for declarator of marriage if (and only if)—
    - (a) either party to the marriage—
      - (i) was resident in the sheriffdom for a period of 40 days ending with the date on which the action is begun, or
      - (ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date, and has no known residence in Scotland on that date, and



*Status: This is the original version (as it was originally enacted).*

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- (b) any of the following requirements is met in relation to either of the parties to the marriage—
  - (i) the party is domiciled in Scotland on the date on which the action is begun,
  - (ii) the party was habitually resident in Scotland throughout the period of one year ending with that date, or
  - (iii) the party died before that date and either—
    - (A) was at death domiciled in Scotland, or
    - (B) had been habitually resident in Scotland throughout the period of one year ending with the date of death.”.
- (4) In subsection (3)—
  - (a) after “declarator of” insert “marriage or of”, and
  - (b) after “subsection (2)” in both places where those words appear insert “, (2ZA)”.
- (5) In subsection (4), after “declarator of” insert “marriage or of”.