The Marriage and Civil Partnership (Scotland) Bill

A Consultation
THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

Consultation paper – structure

Ministerial Foreword

Glossary of terms

Part 1. Introduction
Part 2. General changes to marriage law
Part 3. Same sex marriage
Part 4. Civil Partnership
Part 5. Transgender people

Annexes
A Protection for religious and belief bodies and celebrants
B Freedom of speech
C Education
D Transgender people
E Marriage law in Scotland – recent changes
F List of other jurisdictions which have established civil unions (or partnerships) between same sex couples and same sex marriage
G Responding to this consultation
H List of organisations sent the consultation paper
I Respondent Information Form and questionnaire
J Business and Regulatory Impact Assessment (BRIA)
K Equality Impact Assessment (EQIA)
L Draft Marriage and Civil Partnership (Scotland) Bill
M Explanatory notes to the draft Bill
N Draft modifications to the Equality Act 2010
O Explanatory Notes to the draft modifications to the Equality Act 2010
P Marked up versions of sections 8, 9 and 12 of the Marriage (Scotland) Act 1977, showing planned amendments
Ministerial Foreword

The Government has announced that we will proceed with the introduction of same sex marriage and the religious registration of civil partnerships. This followed a consultation in 2011 which received over 77,000 responses – the largest ever carried out by the Scottish Government.

Our key aim is to provide equality whilst, at the same time, promoting and protecting religious freedom and freedom of speech. We recognise that the introduction of same sex marriage is controversial. The Government considers that we are putting forward a balanced package, respecting rights generally.

This consultation seeks views on the detail of the legislation and associated guidance which will introduce same sex marriage and allow civil partnerships to be registered through religious or belief ceremonies.

We have attached a consultation draft of the Bill and outlined our views on what may be necessary to protect freedom of thought, conscience and religion. We have also attached the proposed amendment to the UK Equality Act, to provide better protection for individual religious and belief celebrants.

The draft Bill will make a number of other changes to marriage law.

Our intention is to introduce a Bill into Parliament in 2013.

We hope that the debate will be conducted in a good spirit and civilised manner, with respect on all sides.

ALEX NEIL MSP
Cabinet Secretary for Health and Wellbeing
Glossary


“ The 2010 Act”: The Equality Act 2010. This UK piece of legislation, which is generally reserved to Westminster, is the main piece of equality legislation.

“Common law” The law of Scotland which is not set down in legislation, but derives from principles and case law.

“Devolved” A matter devolved to the Scottish Parliament (eg marriage law)
“GRP”: The Gender Recognition Panel. This considers applications to be recognised legally in an acquired gender.

“GRC” Gender Recognition Certificate. The full Gender Recognition Certificate provides legal recognition in an acquired gender. Currently, an interim Gender Recognition Certificate, which provides no legal recognition, has to be granted by the Gender Recognition Panel when an applicant is married. A full certificate can be granted after the applicant has divorced.

“reserved” A matter reserved to Westminster (eg social security; private occupational pensions).
1. Introduction.

Current law and practice in Scotland

1.01 Currently, marriage is only open to opposite sex couples and civil partnership only open to same sex couples. Civil partnerships can only be registered by a civil registrar, and cannot take place in religious premises. It is possible to have a religious or belief or other blessing afterwards, although any such blessing has no legal significance or standing.

The previous consultation

1.02 The Scottish Government consulted on same sex marriage and the registration of civil partnerships from 2 September 2011 to 9 December 2011. A copy of the consultation is on the Scottish Government’s website1.

1.03 The Government received around 77,500 responses to the consultation (counting all forms of responses, including postcard, letters and signatures to petitions and including responses from outwith Scotland as well as those from within Scotland). The Government also received around 1,300 pieces of correspondence about the consultation while the consultation was open.

1.04 An analysis of the consultation responses is on the Scottish Government’s website2 as are the responses from organisations which did not request confidentiality3.

The Government’s decision

1.05 The Government has decided to introduce same sex marriage and the religious registration of civil partnership. The Government is also committed to providing protections for some in society who may have concerns about same sex marriage. In some cases, these protections are provided for in this draft legislation. In other cases, the protections are contained in existing legislation or in existing or proposed guidance. The Government considers this approach to be balanced, reflecting the rights and concerns of people across society.

The proposed protections

1.06 Details of the proposed protections are outlined in this consultation. To summarise:

- Religious and belief bodies who wish to solemnise same sex marriage or register civil partnerships will have to opt in to do so.

1 http://www.scotland.gov.uk/Publications/2011/09/05153328/0
2 http://www.scotland.gov.uk/Publications/2012/07/5671
3 http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex
• Religious and belief celebrants will only be able to solemnise same sex marriage or register civil partnership if their body has decided to opt in.
• If a religious or belief body decides to opt in, there will be no obligation on individual celebrants to solemnise same sex marriage or register civil partnerships.
• The draft Bill makes it clear that there is no obligation on religious and belief bodies and celebrants to opt in to solemnise same sex marriage and register civil partnerships.
• The Scottish Government has asked the UK Government to amend the Equality Act 2010 to provide further protection for individual religious and belief celebrants.
• The draft Bill has a provision making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression.
• The Lord Advocate has indicated that he will publish prosecutorial guidelines on allegations of breach of the peace and threatening or abusive behaviour arising out of opposition to same sex marriage.
• On education, the Government welcomes the role denominational education plays in Scotland and has no plans to change this.
• In relation to teachers, the Government is of the view that any objections teachers have to using certain educational materials should be discussed by the local authority or senior teaching staff with the teacher.
• The Scottish Government is not seeking any changes to existing UK employment legislation which protects teachers, and other employees, from unfair dismissal.
• The Education (School and Placing Information) (Scotland) Regulations 2012, in force from 8 December 2012, makes provision on how parents will be informed of any sensitive aspects of learning.
• The Scottish Government will retain the existing rights of parents to opt their children out of programmes of sex education.
• The Scottish Government intends to update Education Circular 2/2001, on the conduct of sex education in schools. This update will take account of the introduction of same sex marriage. The Government will consult key stakeholders on changes to Circular 2/2001.

1.07 These are significant protections, across a wide range of areas. The Government considers that they represent a balanced package of measures, designed to provide reassurance across society

Reasons for the Government’s decision

1.08. In reaching its decisions, the Government took account of a number of factors, including:
• The introduction of same sex marriage and the religious registration of civil partnership will further equality for LGBT people.
• LGBT people of faith would welcome the introduction of religious ceremonies at which to register their civil partnership or marry.
• A number of religious bodies would wish to carry out such ceremonies.
• 93% of those consultation respondents who replied to question 16 in the consultation agreed that individual religious celebrants should not be required to solemnise same sex marriages (89% of respondents who replied to question 7 agreed that individual religious celebrants should not be required to register civil partnerships).
• There are existing protections in Schedule 23 to the Equality Act 2010 which would apply to religious bodies and celebrants who do not wish to take part in same sex ceremonies. These exemptions from equality requirements are relevant when they are necessary to comply with the religious doctrine of the organisation or they relate to the strongly held religious convictions of a significant number of the religion’s followers.
• However, the Government considers that further protection is needed for individual celebrants opposed to same sex marriage where the religious body as a whole has decided to take part in same sex ceremonies and that, as a result, the 2010 Act needs to be amended.
• The Government considers that, where possible, we should remove the requirement on a married transgender person to divorce before obtaining full recognition in their acquired gender. The option of divorce will remain available if one or both of the couple wish to end the relationship.
• The Government has also noted that some of the consultation responses and consultation meetings have suggested that more protections may be needed in some areas, such as education and freedom of speech.
• The Government entirely accepts that it is possible to be opposed to same sex marriage without being homophobic.
• The Government further accepts that freedom of speech means that it should remain fully possible to argue against same sex marriage.

Purpose of this consultation

1.09 The aim of this consultation is to seek views on the detail of the legislation which will introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies and make other changes to marriage law. Where necessary, annexes have been provided to go through details. This consultation seeks views on how best to introduce these changes in a way that protects religious freedom and freedom of speech.

There is no obligation to answer all of the questions. You may answer as many or as few as you like.

1.10 You can respond to this consultation by completing the response form on-line at https://consult.scotland.gov.uk/family-law/marriagebill. Alternatively, you can respond by completing the Respondent Information Form and questionnaire at Annex I and sending it to:
1.11 Responses must be sent to us by **5PM on Wednesday 20 March 2013**.

1.12 Following this consultation, the Government will produce an analysis of the responses. As indicated above, this consultation is seeking views on the detail of the proposed legislation. Therefore, the questions in this consultation are open. In other words, the questions are not seeking yes or no answers but are seeking comments on the proposals. As a result, the analysis will not be based on quantitative matters (ie how many respondents said yes or no to a particular question) but, instead, will be based on qualitative matters (ie the points made by respondents).

1.13 Following this consultation, the Government intends to introduce a Bill into the Scottish Parliament in 2013.

**Impact assessments**

1.14 In accordance with usual practice, the Government has prepared a number of impact assessments in relation to the proposed legislation.

1.15 The Government considers that the changes proposed to marriage and civil partnership law have no impact on the environment. Accordingly, the Government has sent a pre-screening exemption from Strategic Environmental Assessment (SEA) requirements to the usual SEA consultation authorities.4

1.16 The changes proposed to marriage and civil partnership have some modest cost implications. The implications are modest as the responsibilities and rights of civil partners are already very similar to the responsibilities and rights of married couples. Therefore, costs which arose when civil partnerships were introduced will not be incurred again. A Business and Regulatory Impact Assessment (BRIA) is attached for comment at Annex J.

1.17 The changes proposed to marriage and civil partnership law have considerable impact in relation to equalities. An Equality Impact Assessment (EQIA) is attached for comment at Annex K.

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4 The SEA consultation authorities are the Scottish Environment Protection Agency; Scottish National Heritage and Historic Scotland.
1.18 When the Bill is introduced into Parliament, it will, in accordance with Parliamentary standing orders, be accompanied by the following documents:

- Explanatory Notes (explaining the provisions in the Bill)
- Policy Memorandum (on the overall purpose of the Bill)
- Financial Memorandum (on costs and savings)
- Delegated Powers Memorandum (on powers given to Ministers to make regulations and orders).
- Statement that the Bill is within the legislative competence of the Scottish Parliament.

The draft Bill

1.19 A draft Bill is at Annex L. Explanatory notes to the Bill are at Annex M. A marked up version of sections 8, 9 and 12 of the Marriage (Scotland) Act 1977, showing the amendments we propose, is at Annex P.

Gender recognition

1.20 The draft Bill does not include the amendments needed to remove the requirement for transgender people to divorce before obtaining the full Gender Recognition Certificate. As outlined in part 5 of this consultation paper, the Scottish Government is committed to removing the requirement to divorce before a married transgender person can obtain a full Gender Recognition Certificate. The Government also recognises that the option of divorce should remain available where one or both of the couple wishes to end the relationship. The Government also recognises that transgender people in a civil partnership may wish to stay in the relationship and obtain a full Gender Recognition Certificate.

1.21 The Government’s proposals are outlined in part 5 of this consultation paper and Annex D. They have not been included in the draft Bill at this stage as discussions are continuing with the UK Government and with key stakeholders on what detailed provisions should be put in place. Both the Gender Recognition Act 2004 and the Gender Recognition Panel operate on a UK basis.

1.22 In addition, the Scottish Government is aware that Northern Ireland is unlikely to introduce same sex marriage in the immediate future. As a result, the Northern Ireland authorities are likely to retain the requirement to end the relationship before a transgender person can obtain a full Gender Recognition Certificate.
Part 2. General changes to marriage law

Introduction

2.01. As well as the introduction of same sex marriage and the registration of civil partnership through religious ceremonies, the Government intends that the Bill will also make a number of other changes to marriage law, which have been under consideration for some time.

Where civil marriage ceremonies can take place

2.02 Under current legislation, civil marriage ceremonies can take place at a registrar’s office or at premises approved by the local authority. By contrast, civil partnership ceremonies can take place at a registrar’s office or at any place agreed by the registrar and the couple, so long as the place is not a religious premise. But, in practice, most councils have adopted a policy of offering civil partnerships at places approved for civil marriage ceremonies.

2.03 The Government considers that couples wishing a civil marriage ceremony should also be able to have the ceremony at any place agreed by the registrar and the couple. In the light of 10 years’ experience since the introduction of approved places, the Government thinks that less regulation is needed. Therefore, the draft Bill removes the references to “approved places” from the legislation.

2.04. Once these provisions come into force, it will become possible in Scotland to have a civil marriage ceremony, for both opposite sex and same sex marriage, at any place agreed by the registrar and the couple. However, it will still not be possible to have a civil ceremony in religious premises. Civil registrars in Scotland do not carry out official functions in religious premises. The Government has no plans to change that.

Question 2: Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

The establishment of belief as a third type of marriage ceremony

2.05. Currently, there are two types of marriage ceremony in Scotland: religious and civil.

2.06 However, since June 2005, celebrants belonging to the Humanist Society of Scotland, have been authorised on a temporary basis, under section 12 of the Marriage (Scotland) Act 1977, to solemnise marriage. Such marriages have been classed as “religious” under marriage law but the beliefs of such organisations are non-religious.

2.07 The draft Bill, therefore, contains provisions to establish a third category of marriage ceremony in Scotland. This category of ceremony
would be known as “belief”. The arrangements for authorising “belief” celebrants will be along the same lines as for authorising religious celebrants.

2.08 For opposite sex marriage, therefore:

- belief bodies will be prescribed by regulations made by the Scottish Ministers. Celebrants belonging to these bodies would then be automatically authorised to solemnise opposite sex marriage; or
- belief bodies will be able to nominate celebrants to the Registrar General for authorisation; or
- the Registrar General could grant a belief celebrant a temporary written authorisation to solemnise marriages, in accordance with any terms or conditions as may be specified in the authorisation.

2.09 The arrangements for authorising celebrants to solemnise same sex marriage are outlined in Annex A. The system will be opt-in and bodies and celebrants will have to choose to take part in same-sex ceremonies.

2.10 It will also be possible, in future, to have a belief ceremony to register a civil partnership: see part 4 of this consultation paper.

Question 3: Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

Church of Scotland deacons

2.11 Section 8 of the Marriage (Scotland) Act 1977 provides that marriages may be solemnised by ministers of the Church of Scotland.

2.12 This provision is amended by the Bill to make it clear that this authorisation relates to opposite sex marriage only.

2.13 The reference in section 8 of the 1977 Act is to “ministers”. It does not extend to Church of Scotland deacons. Since 1 March 2006, Church of Scotland deacons have been given temporary authorisation to solemnise marriage under section 12 of the Marriage (Scotland) Act 1977.

2.14 The Bill changes provisions in this area. In future, the authorisation under section 8 of the 1977 Act to solemnise opposite sex marriages will extend to Church of Scotland deacons, as well as to Church of Scotland ministers. This clarifies the role which Church of Scotland deacons can carry out and helps to ensure more religious celebrants are available.

Question 4: Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?
Checks to ensure the reputation of the marriage system in Scotland

2.15. The Scottish Government and the Registrar General wish to ensure the integrity of Scottish marriage ceremonies, both opposite sex and same sex, which are legally recognised by the state. One of the strengths of the Scottish system is its diversity and variety. Couples are free to have a civil or religious ceremony (and, in future, a belief ceremony) which reflects their views, faith and belief. We wish to keep and enhance these options.

2.16. To ensure the continued reputation of Scottish marriage ceremonies, we propose to introduce tests which a religious or belief body would have to meet before the body’s celebrants could be authorised to solemnise a marriage or register a civil partnership.

2.17 In considering the introduction of tests, we are bearing in mind that forced marriage (where one or both parties does not consent) and sham marriage (where the marriage is not genuine) are growing problems5.

2.18 The tests would apply to:

- All religious and belief bodies prescribed by regulations so that their celebrants can solemnise marriage or register civil partnership. As indicated at paragraph 2.26, we intend to review the current regulations prescribing religious bodies whose celebrants are authorised to solemnise opposite sex marriage. Therefore, the tests would apply to all religious and belief bodies seeking to be prescribed in the new regulations.
- All religious and belief bodies who put forward celebrants to the Registrar General to be authorised to solemnise marriage or register civil partnerships.
- All religious and belief bodies putting forward celebrants to the Registrar General to be authorised on a temporary basis to solemnise marriage or register civil partnerships.

2.19 The tests would not apply to the Church of Scotland in relation to opposite sex marriage given that Church of Scotland ministers (and, in future, deacons, given the amendments made by the draft Bill) are automatically authorised to solemnise opposite sex marriage by virtue of section 8 of the Marriage (Scotland) Act 1977.

2.20 The tests would be laid down by regulations. Therefore, the draft Bill gives the power for regulations to be made. There would be a consultation on any such regulations before they are brought into effect.

5 The number of potential sham marriages reported to the Home Office in 2009 was 31; in 2010 it was 79 and in 2011 it was 217. The number in 2012, up to 27 November 2012, was 471. Support organisations in Scotland have indicated that in 2011/12 59 people were affected by forced marriage. More information on forced marriage is at http://www.scotland.gov.uk/Topics/People/Equality/violence-women/forcedmarriage
2.21 The sort of tests which might be laid down in regulations are:

- The religious or belief body and their celebrants would not be allowed to solemnise marriages or register civil partnerships for profit or gain.
- The religious or belief body would have to show that their celebrants were trained in areas such as tackling forced marriage and sham marriage.
- The religious or belief body would have to show that their celebrants discuss the forthcoming marriage or civil partnership with the couple.
- The religious or belief body would have to show that their celebrants have a track record in carrying out relevant ceremonies (eg marriages recognised by the state; marriages or blessings not recognised by the state; funerals; and baptisms or baby namings).

Question 5. Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorised to solemnise marriage or register civil partnership?

Updating the secondary legislation about bodies whose celebrants are authorised to solemnise opposite sex marriage

2.22 Provisions on which religious celebrants can solemnise marriage are laid down in the Marriage (Scotland) Act 1977 and associated legislation. In future, a celebrant, from either a religious or belief body, may be:

- Authorised to solemnise opposite sex marriage.
- Authorised to solemnise same sex marriage.
- Authorised to register civil partnerships.

2.23 Celebrants may be authorised for one, two or all three categories.

2.24 The ways in which religious celebrants are authorised to solemnise opposite sex marriage at the moment are:

- As indicated above, Church of Scotland ministers are authorised under section 8 of the Marriage (Scotland) Act 1977. The Bill extends this authorisation to Church of Scotland deacons.
- The Scottish Ministers can make regulations, under section 8 of the 1977 Act, prescribing religious bodies whose celebrants are authorised to solemnise marriage.
- Religious bodies, other than the Church of Scotland and those prescribed by regulations, may nominate celebrants, under section 9 of the 1977 Act, to the Registrar General for approval.
- The Registrar General may grant temporary authorisations under section 12 of the 1977 Act.
2.25 The religious bodies currently prescribed by regulations are:

- Baptist Union of Scotland.
- Congregational Union of Scotland.
- Episcopal Church in Scotland and other Anglican Communion Churches.
- Free Church of Scotland
- Free Presbyterian Church of Scotland
- Hebrew Congregation
- Methodist Church in Scotland.
- Religious Society of Friends
- Roman Catholic Church
- Salvation Army
- Scottish Unitarian Association
- United Free Church of Scotland.

2.26 The Scottish Government considers these regulations, which date back to 1978, need to be revised. In particular:

- The Congregational Union of Scotland no longer exists.
- The United Reformed Church, currently authorised under section 9 of the 1977 Act, has indicated that it would like to be prescribed in any new secondary legislation.
- With the exception of the Hebrew Congregation, the bodies are all Christian. The Government considers that other non-Christian bodies may be prescribed. This would reflect the fact that many marriages in Scotland are solemnised by non-Christian celebrants.

2.27 The Government, and National Records of Scotland, will carry out a further consultation on updating these regulations.

Marriage by cohabitation with habit and repute

2.28 Scotland has a long tradition of “irregular” marriages. (“Irregular” marriages were marriages not formally solemnised by a registrar or a celebrant but which could still be registered following a court order). Before the introduction of the Marriage (Scotland) Act 1939, there were three types of irregular marriage: marriage by declaration of present consent; marriage by promise followed by sex and marriage by cohabitation with habit and repute.

2.29 The first two were abolished in 1940 but marriage by cohabitation with habit and repute remained.

2.30 Section 3 of the Family Law (Scotland) Act 2006 abolished marriage by cohabitation with habit and repute except that:

- Section 3(2) preserved such marriages which had taken place or started before 4 May 2006.
• Section 3(3) and (4) extended the concept of marriages through cohabitation with habit and repute to cases where a couple erroneously believed themselves to be married overseas but it transpires after one of them dies that the marriage was not valid.\(^6\)

2.31 The Government plans no changes to section 3(2) of the 2006 Act in relation to marriages by cohabitation with habit and repute entered into before 4 May 2006. However, the Government is proposing the repeal of sections 3(3) and 3(4) of the 2006 Act and the draft Bill makes provision accordingly. The Government considers that:

- The general concept of some state recognition of irregular marriages is old-fashioned, and repealing sections 3(3) and 3(4) would keep our law up to date.
- The 2006 Act introduced more rights for cohabitants. In particular section 29 allows applications for financial provision to be made to the court by the survivor of a cohabiting relationship where one of the cohabitants dies intestate. If it turns out that an overseas marriage was not valid and the deceased person did not leave a will, the surviving partner could make a claim under section 29.

**Question 6.** Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married overseas but it transpired after one of them died that the marriage was not valid?

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\(^6\) Section 20 of the Marriage (Scotland) Act 1977 allows a second marriage ceremony, through civil procedures, to take place in Scotland if there is doubt about the validity of an overseas ceremony. However, both parties to the marriage need to be alive for such a second marriage ceremony to take place.
Part 3. Same sex marriage

Introduction

3.01 The Government intends to introduce same sex marriage whilst, at the same time, ensuring that safeguards exist in key areas such as:

- Protecting religious and belief celebrants who do not wish to solemnise same sex marriage.
- Education.
- Freedom of speech.

3.02 This Chapter, and associated annexes, discusses these issues.

Authorising religious and belief celebrants to solemnise same sex marriage

3.03 The consultation sought views on two ways of authorising religious celebrants to carry out same sex marriage and the religious registration of civil partnership. Option 1 was to extend the authorisation of existing celebrants, who could then opt out of same sex ceremonies if they so chose. Option 2 was to set up a new procedure, under which religious bodies could, if they wished, advise the Registrar General which celebrants they would like to be authorised.7

3.04 There was little support for option 1 in the consultation and around 50% of respondents who answered question 17 supported option 2. The Government has decided that a new procedure should be set up to authorise celebrants to carry out same sex ceremonies.

3.05 In addition, the Scottish Government has concluded that an amendment to the Equality Act 2010 is required. The 2010 Act is generally reserved to the UK Government and, as a result, the amendment would need to be made at Westminster, rather than in the Scottish Parliament.

3.06 A draft of the proposed amendment to the 2010 Act is at Annex N. This is an initial draft and could be subject to further changes before legislation is taken through Westminster. The aim of the amendment is to protect celebrants who do not wish to solemnise same sex marriages, even though their religious or belief body has decided generally that they wish to take part.

3.07 The detail of the arrangements for authorising religious and belief celebrants to solemnise same sex marriage is outlined in Annex A. In summary:

7 Relevant questions in the last consultation were question 8 (on options for registering civil partnership) and question 17 (on options for solemnising same sex marriage).
- Religious and belief bodies and their celebrants will have to opt in to solemnise same sex marriage.
- Some religious and belief bodies may be prescribed by regulations. This means that all of their celebrants would be authorised to solemnise same sex marriage.
- In other cases, religious and belief bodies could nominate celebrants who wish to solemnise same sex marriage to the Registrar General.
- Bodies prescribed by regulations or which have nominated celebrants to the Registrar General could also seek the temporary authorisation of particular celebrants.
- The draft Bill provides, for the avoidance of doubt, that there is no obligation on a body or celebrant to seek authorisation to solemnise same sex marriage.
- A celebrant who wishes to solemnise same sex marriage but is in a body which has decided against opting in could not solemnise same sex marriage. This is because the authorisation would need to come from the regulations (and the body would not have asked to be prescribed) or from the celebrant’s name having been put forward by the body to the Registrar General (and the body would not have done this).
- Schedule 23 to the Equality Act 2010 already has exemptions for religious and belief bodies from some equality requirement where these are imposed because they are necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held religious or belief convictions of a significant number of the religion’s or belief’s followers.
- As indicated above, the Scottish Government has asked the UK Government for an amendment to the Equality Act to protect an individual celebrant who is opposed to same sex marriage because it conflicts with the celebrant’s religious faith or belief even though the celebrant’s religious or belief body has chosen to solemnise same sex marriage.
- The Scottish Government considers that its proposals enable LGBT people of faith to get married, while protecting religious freedom in a proportionate way. We consider that the proposals are in line with the European Convention on Human Rights.

**Question 7:** Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?

**Civil registrars**

3.08 It has been suggested by some consultees that there should be a specific opt-out for civil registrars in this legislation. The suggestion is that there should be a provision in this Bill laying down that civil registrars do not have to solemnise same sex marriage.
3.09 The Scottish Government does not agree with this suggestion, for a variety of reasons:

- Civil registrars (unlike religious and belief celebrants) are carrying out a civil function. Therefore, it is not appropriate to provide an opt-out for civil registrars based on religious or belief grounds.
- As indicated in paragraph 3.40 of the last consultation, “the registration of civil partnerships by civil registrars has worked well in Scotland. The Government expects that the solemnisation of same sex marriage by civil registrars would also work well”.
- Provision in the Bill relating to civil registrars would cut across the relationship civil registrars have with their employer – the local authority. The Government does not consider it would be helpful to intervene in this way.

3.10 Therefore, the draft Bill at Annex L has no opt-outs for civil registrars.

Question 8. Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

Freedom of speech

3.11 A major issue raised in relation to the last consultation was freedom of speech. Concerns expressed related, for example, to a teacher or other public servant being disciplined or dismissed for speaking out against same sex marriage and the potential prosecution of a minister of religion for placing on the internet a sermon against same sex marriage. More details of the Government’s approach are contained in Annex B. In brief:

- The draft Bill has a provision at section 12 making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression.
- The Lord Advocate (who has responsibility for prosecutions in Scotland) intends, in due course, to publish prosecutorial guidelines on allegations of breach of the peace and threatening or abusive behaviour arising out of opposition to same sex marriage.

Question 9. Do you have any comments on the proposed approach in relation to freedom of speech?

Education

3.12 During the last consultation, a number of points were raised in relation to education. In particular, concerns were expressed about teachers being dismissed for offering views against same sex marriage or refusing to use certain teaching materials and about parental rights to withdraw children from certain lessons. The detail of the Government’s proposed approach in this area is outlined at Annex C.
3.13 Key points in relation to education are outlined below:

- There is existing provision in section 9 of the Education (Scotland) Act 1980, allowing parents to withdraw children from religious education. These rights will remain in place.
- Education Circular 2/2001\(^8\), issued under section 56 of the Standards in Scotland’s Schools etc. Act 2000, sets out a school’s responsibilities towards pupils and parents in providing a programme of sexual health education. Parents will continue to have the right to withdraw their child from such a programme.
- However, the Government does not plan to allow parents to opt children out of any class which might happen to mention same sex marriage or civil partnerships. The Government considers that this could impact adversely on a child’s right to receive an education.
- The Education (School and Placing Information) (Scotland) Regulations 2012, in force from 8 December 2012, makes provision on how parents will be informed of any sensitive aspects of learning.\(^9\)
- The Government is committed to continuing to support denominational education. In particular, the Government has made it clear that it welcomes the valued contribution made by Roman Catholic schools to education in Scotland.
- The faith aspects of the curriculum in Roman Catholic schools will continue to be determined by the Scottish Catholic Education Service.
- The Government does not consider legislation is required in relation to education as a result of same sex marriage.
- In particular, the Government does not consider that employment law should be amended to provide specific protection for teachers (or others, such as NHS chaplains\(^10\)) who have concerns about same sex marriage. There is existing UK employment law, which covers matters such as unfair dismissal.\(^11\) We consider this provides protection for teachers (and other employees) already.
- The Scottish Government intends to update Education Circular 2/2001, on the conduct of sex education in schools. This update will take account of the introduction of same sex marriage. The Government will consult key stakeholders on changes to Circular 2/2001.

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**Question 10.** Do you have any comments on the proposals in relation to education and same sex marriage?

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\(^8\) The text of this circular can be found at www.edlaw.org.uk/guidance/sexed.pdf
\(^9\) http://www.legislation.gov.uk/ssi/2012/130/contents/made See paragraph 6(f) of Schedule 1.
\(^10\) There is existing guidance on NHS chaplains: www.scotland.gov.uk/Publications/2009/01/30110659/0 and http://www.nes.scot.nhs.uk/media/206594/010308capabilities_and_competences_for_healthcare_chaplains.pdf
\(^11\) Information on employment law can be found at https://www.gov.uk/employment-tribunals
Children

3.14 The Equality Impact Assessment at Annex K considers the impact on children of our proposals.

3.15 The Government will not ban people who are against same sex marriage from fostering children. The existing guidance on who can apply to be a foster parent states that: “As well as diverse family structures, valuing diversity also relates to welcoming applications from families from different ethnic, religious or cultural backgrounds”.

3.16 The Government will consider if amendments to the guidance are needed to make it clear that Christians and people of other faiths can apply to become foster parents and that a would-be fosterer should not be rejected just because of his or her views on same-sex marriage.

3.17 On adoption, same sex couples already have the right to adopt. This right will continue following the introduction of same sex marriage.

3.18 No changes are planned to devolved legislation in relation to parental responsibilities and rights (PRRs). However, consequential amendments will be required to (reserved) human fertilisation and embryology legislation which, currently, refers to female civil partners. In future, the legislation will need to cover female same sex spouses, given the introduction of same sex marriage in Scotland.

Other consequentials as a result of same sex marriage

General approach

3.19 The Government’s intention is that, where possible, opposite sex marriage and same sex marriage should be treated in the same way.

3.20 There have been some comments from stakeholders on potential changes to the wording of legislation as a consequence of same sex marriage. Since 1999, Acts of the Scottish Parliament have, where possible, avoided using gender-specific pronouns and nouns (eg to avoid using “he” or “she” and terms such as “chairman”). The same approach is used for subordinate legislation. In addition, there has been an increasing tendency to use the term “spouse”, rather than “husband and wife”, which reflects this move to gender-neutral drafting. The Government expects these drafting practices will continue.

3.21 The Scottish Government has considered the impact of the introduction of same sex marriage on existing legislation and on private arrangements (eg wills and contracts) affecting individuals. In considering this, the Government has borne in mind some key principles:

12 http://www.scotland.gov.uk/Publications/2010/06/01094202/10
• Our general approach is that same sex spouses should be treated in the same way as opposite sex spouses.

• However, we recognise that there will be exceptions. For example, the provisions in this Bill on the solemnisation of marriage draw a clear distinction between same sex marriage and opposite sex marriage, to protect religious and belief bodies and celebrants who do not wish to solemnise same sex marriage.

• It is not appropriate for the Scottish Government to make legislation which would impact on private arrangements and documents (e.g., wills) drawn up and finalised before same sex marriage was introduced. The Government does not know what private individuals intended. If private individuals consider that their personal arrangements need to be updated to reflect the introduction of same sex marriage, then they need to take their own steps to do so.

3.22 As a consequence, the draft Bill makes provision at section 4. This ensures that references in existing enactments to "marriage" between two people or any terms which refer to people who are married to each other (e.g. terms like "husband and wife") are to be interpreted as meaning both opposite sex and same sex marriage and spouses, unless other provision is made.

3.23 This will apply to enactments (e.g., Acts of the Scottish Parliament, Acts of Parliament, Scottish Statutory Instruments, Statutory Instrument) which were passed or made before the Bill comes into force and concern devolved matters.

3.24 The Bill cannot make provisions for terms which are in reserved legislation. These could be covered in a consequential amendments order which would be laid in Westminster.

3.25 The Government will conduct a search to identify references in existing enactments which will be captured by the above interpretative provision. The purpose of this search is to identify any references in legislation to which the general provision that references to spouses and marriage should mean both opposite sex and same sex marriage and spouses is not to apply. There may also be a few cases where it will be necessary to make specific amendments to enactments.

Future enactments

3.26 Subsection (9) of section 4 in the Bill inserts a new default definition of "marriage" into Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010. This will mean that, unless the enactment or the context of the enactment otherwise requires, this definition of marriage will apply to any enactments made after the coming into force of this Bill. Again, the default definition will only apply to devolved legislation. Separate provision will be required for reserved legislation.
Common law

3.27 The draft Bill also makes provision, at section 4 so that the concept of marriage in the common law is taken as meaning both opposite sex and same sex marriage and spouses.

Private documents

3.28 The draft Bill provides, at section 4, that any private documents and arrangements (eg contracts and wills) made before the Bill comes into force are not affected by the introduction of same sex marriage. Therefore, the original intention of such documents will continue to apply.

3.29 The draft Bill makes it clear, that any private documents executed after the Bill will be assumed to take account of the introduction of same sex marriage unless those entering into the arrangements make it clear that this is not their intention. This will mean, for example, that where such a document refers to “marriage”, this term will be understood to refer to both a same sex marriage and an opposite sex marriage unless the document makes clear that this is not the case.

Question 11: Do you have any comments on the Government's proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

Question 12: Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses? If you are, please give details of the legislation and explain why it should not extend in this way.

Divorce

3.30 The Government intends that divorce should be available for same sex married couples in the same way as for opposite sex couples. There are some specific issues in relation to adultery, discussed below.

Adultery

3.31 As outlined in paragraph 5 of Annex B to the last consultation, irretrievable breakdown of a marriage, to obtain a divorce, may be established by proof that the defender committed adultery. This is now rarely used.\(^\text{13}\)

3.32 The meaning of adultery in Scots common law relates to heterosexual conduct only.

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\(^{13}\) 69 divorces out of 10,173 in 2009-10:
http://www.scotland.gov.uk/Publications/2010/12/17151409/5
3.33 The Government does not plan to change this. Therefore:

- A spouse seeking a divorce could still establish that the marriage has irretrievably broken down by providing proof that his or her spouse has committed heterosexual adultery.
- This would be true regardless of whether or not the spouses were in an opposite sex or same sex marriage.
- It will remain possible for a spouse to seek divorce if the other spouse behaves unreasonably. “Unreasonable behaviour” can include sexual conduct that falls outside the scope of adultery.
- Alternatively, divorce can be obtained after one year’s non-cohabitation (where both parties consent to the divorce) or after two year’s non-cohabitation (where one of parties objects to a divorce).

Question 13. Do you have any comments on the proposed approach to the law on adultery?

Non-consummation of a marriage

3.34 In England and Wales, non-consummation of a marriage is grounds for seeking a decree of nullity of the marriage. However, this does not form part of the law of Scotland and, therefore, no action is required.

Permanent and incurable impotency

3.35 In Scotland, a marriage is voidable if, at the time of the marriage, one of the spouses is permanently and incurably impotent in relation to the other spouse. The Scottish Government’s understanding is that court actions seeking a declarator of nullity of a marriage on the grounds of permanent and incurable impotency are very rare. The Scottish Law Commission, in its report in 1992 on family law, recommended that marriage should not be voidable on the grounds of impotency.\(^{14}\) However, this recommendation has not been implemented\(^ {15}\).

3.36 “Impotency” in this context relates to heterosexual conduct. The Government considers that there are arguments for repealing the current rule altogether. However, this would require further consideration. Therefore, the Government proposes that the existing rule should remain for the meantime and should continue to relate to heterosexual conduct only. It will,


of course, be possible for a party to a same sex marriage to seek a divorce on other grounds.

Question 14. Do you have any comments on the proposed approach to the law on permanent and incurable impotency?

Polygamy and bigamy

3.37 **The Scottish Government has no intention of allowing polygamous marriages to take place in Scotland.** The Government has noted, and respectfully agrees with, the comments made by a judge in the British Columbia Supreme Court when he outlined the harms polygamy can cause.16

3.38 In the context of the Scottish Government’s overall approach to polygamy, the Government has considered existing relevant legislation. There is some long-standing legislation in Scotland which reflects that other jurisdictions, outwith our control, may allow polygamy. For example, section 2 of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 provides that a Scottish court is not prevented from dealing with a case, or granting an order, because one of the parties is married to more than one person. This provision allows a Scottish court to consider and grant a decree of divorce, even where one or both of the parties is polygamously married.

3.39 In addition, section 7 of the Private International Law (Miscellaneous Provisions) Act 1995 provides that a person domiciled in Scotland does not lack capacity to enter into marriage under the law of another jurisdiction just because that law allows polygamous marriages. The intention of this provision is not to allow people domiciled in Scotland to enter into polygamous marriages. Instead, the intention is that someone domiciled in Scotland should not be stopped from entering into a monogamous marriage overseas if the overseas jurisdiction also allows polygamous marriages.

3.40 Technical legislation of this nature, reflecting that some other jurisdictions allow polygamous marriage, will in future reflect same sex marriage as well as opposite sex marriage. However, as indicated above, **the Government has no intention of allowing polygamous marriages to take place in Scotland.**

3.41 In this context, the Government has considered the position in relation to criminal offences, such as bigamy.

3.42 In Scotland, the offence of bigamy (marrying when you are already married) is currently a common law offence.

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16 The judgment in the Supreme Court of British Columbia can be found at http://www.courts.gov.bc.ca/jdb-txt/SC/11/15/2011BCSC1588.htm
3.43 Section 13 of the Presumption of Death (Scotland) Act 1977 introduced a defence to a charge of bigamy. Section 13 provides:

“...It shall be a defence against a charge of bigamy for the accused to prove that at no time within the period of seven years immediately preceding the date of the purported marriage forming the substance of the charge had he any reason to believe that his spouse was alive.”

3.44 Section 100 of the Civil Partnership Act 2004 makes it an offence in Scotland for a person to register as a civil partner when he or she knows that he or she, or his civil partner, is already married or in a civil partnership with somebody else. A person guilty of an offence under section 100 is liable, on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or both and on summary conviction to imprisonment not exceeding three months or to a fine not exceeding level 3 on the standard scale or both.

3.45 The Government's intention is that:

- Entering into a same sex marriage when you are already married (whether to someone of the same sex or opposite sex) should be an offence.
- It should also be an offence to enter into an opposite sex or same sex marriage when you are already in a civil partnership with someone else.
- The defence in section 13 of the 1977 Act should extend to persons who have entered into a same sex marriage and to persons who have entered into a civil partnership.
- It should continue to be an offence to enter into a civil partnership when you are already married or in a civil partnership.

3.46 As indicated above, bigamy is a common law offence in Scotland. Common laws offences attract a maximum penalty of life imprisonment. By contrast, as also indicated above, entering into a civil partnership when a person is already married or in a civil partnership attracts a maximum penalty of 2 years.

3.47 The Government considers it would be preferable to introduce standard penalties across these offences generally. To achieve this, we intend to make bigamy a statutory offence. The penalties will be, on conviction on indictment, imprisonment for a term not exceeding 2 years or to a fine or both and, on summary conviction, imprisonment not exceeding three months or to a fine not exceeding level 3 on the standard scale or both. Section 5 of the Bill makes relevant provision.

Question 15. Do you have any comments on the proposed approach to the law on bigamy?

Reset

3.48 It appears that under Scots law there may still be limited defences for wives from the charge of reset (handling stolen goods). The Scottish Government considers any such defence to be based on an antiquated view...
of the roles of spouses, does not intend to make this defence available to same sex spouses and will consider if the defence could be abolished altogether.

Compellability of spouses as witnesses

3.49 The law in this area changed recently. The Criminal Justice and Licensing (Scotland) Act 2010 amended section 264 of the Criminal Procedure (Scotland) Act 1995 to provide that a spouse or a civil partner is a competent and compellable witness. The Government intends that this provision should extend to same sex spouses.

Recognition of same sex marriages from elsewhere

3.50 The Scottish Government would intend to recognise any same sex marriages which have been registered elsewhere in the UK just as Scots law recognises opposite sex marriages registered in England and Wales and Northern Ireland. The Scottish Government will discuss further with the UK Government and the Northern Ireland administration the recognition across the UK of same sex marriages registered in Scotland.

3.51 Whether Scots law considers opposite sex marriages to be formally valid is currently set out in section 38 of the Family Law (Scotland) Act 2006.

3.52 Section 38 says that whether an overseas marriage has formal validity in Scots law depends upon the law of the place where the marriage took place. A person’s capacity to marry and whether or not the person consented are determined by the law of that place, but that is not the case where a decision on capacity would be contrary to Scottish public policy. Section 4 of the Bill ensures that section 38 will, in the future, apply to overseas same sex marriages as well as opposite sex marriages.

3.55 This means that the current provisions in the Civil Partnership Act 2004 about recognition of overseas same sex relationships as civil partnerships need to be amended, to omit from the provisions overseas marriages which will be dealt with by section 38 of the 2006 Act. The relevant provisions of the 2004 Act are section 212 to 218 and Schedule 20. To be recognised as a civil partnership in the UK, an “overseas relationship” must be registered and must either meet general conditions (laid down in section 214) or must be one of the specific overseas relationships specified in Schedule 20 to the 2004 Act.

3.56 UK Ministers, with the consent of the Scottish Ministers and the Northern Ireland Department of Finance and Personnel, may make an order to amend the list of relationships in Schedule 20. An order updating Schedule 20 has just been prepared.

3.57 As outlined above, in future, the Scottish Ministers intend that overseas same sex marriages will be recognised in Scotland in the same way as overseas opposite sex marriages. Therefore, the draft Bill amends the Civil
Partnership Act 2004 so that the provisions of that Act about recognition of overseas same sex relationships will only cover, in relation to Scotland, overseas civil partnerships and civil unions.

3.58 This means that overseas same sex marriages will be recognised in Scotland as marriages and overseas registered civil partnerships will be recognised in Scotland as civil partnerships.

Recognition of same sex marriage outwith the United Kingdom

3.59 Recognition overseas of same sex marriages entered into in Scotland is a matter for the overseas jurisdictions concerned. This is not something that the Scottish Parliament has power to legislate about. However, the Scottish Government will work with the UK Government to promote recognition overseas.

Survivor benefits in pensions

3.60 Paragraph 18 of Schedule 9 to the Equality Act 2010 contains an exemption for equality requirements in relation to a right to a benefit, facility or service which accrued before 5 December 2005 or which is payable in respect of periods of service before 5 December 2005.

3.61 This means that survivor benefits for civil partners can be based on service from 5 December 2005 (when the Civil Partnership Act 2004 came into force). However, civil partners of members of contracted out schemes (i.e. contracted out of the State Second Pension) are eligible for survivor benefits based on their partner’s service from 6 April 1988.

3.62 Under the Scotland Act 1998, occupational pensions are a reserved matter and so decisions in this area are for the UK Government. The Scottish Government will discuss further with the UK Government.

3.63 The Scottish Ministers do have executively devolved powers in relation to the main public sector pension schemes in Scotland (i.e those for local government, fire, teachers, police and the NHS). We will consider further the implications of same sex marriage for these schemes and whether any legislation is necessary in this area.
Part 4. Civil Partnership

Registration of civil partnerships

4.01. The Scottish Government intends to proceed to allow civil partnerships to be registered through religious ceremonies. As indicated elsewhere in this consultation, we intend to establish belief ceremonies as a third way of registering a marriage. Similarly, we intend to establish belief ceremonies as a third way of registering a civil partnership.

4.02. For the avoidance of doubt, the intention in Scotland is different to what has happened in England and Wales. In England and Wales, it is now possible to have a civil partnership in religious premises, provided that the religious body is content for its premises to be used in this way. However, the civil partnership ceremony itself remains wholly civil in nature.

4.03 The Scottish approach is different. In Scotland, civil registrars do not carry out official functions on religious premises. We are planning no changes to that. Instead, religious and belief ceremonies to register civil partnerships in Scotland will reflect the doctrines and beliefs of the body carrying them out.

4.04 The Government's intention is that the arrangements for authorising religious and belief bodies and their celebrants to register civil partnerships will be on the same lines as the arrangements for the authorisations of bodies and celebrants to solemnise same sex marriage. Therefore:

- Some religious and belief bodies may wish to opt in and seek to be prescribed by regulations, so that all of their celebrants are authorised to register civil partnerships.
- Other religious and belief bodies may wish to nominate specific celebrants so that they can be authorised by the Registrar General to register civil partnerships.
- Religious and belief bodies who have opted in may wish to nominate temporary celebrants so that they can be authorised by the Registrar General.
- There is no obligation to opt in.
- The protections generally are along the same lines as for religious and belief bodies and celebrants in relation to the solemnisation of same sex marriage.

Question 16 Do you have any comments on the proposed approach to ensuring that religious and belief bodies and celebrants do not have to register civil partnerships?
Changing civil partnerships to a marriage

4.05 The previous consultation noted, in paragraph 3.43, that some existing civil partners may wish to change their partnership into a marriage. The Government has now considered this further, and proposes the following:

- There will be no requirement to change. The status of civil partnerships remains the same and existing civil partners will remain as civil partners unless they choose to change status.
- Only civil partnerships registered in Scotland can be changed into a same sex marriage in Scotland. (Although it will be possible to change civil partnerships registered under UK consular and armed forces legislation).
- A couple seeking to change their civil partnership to a marriage would have to attend a marriage ceremony in Scotland. Practical concerns about identity fraud (a growing issue in relation to sham marriage) mean that marriage preliminaries and associated checks will, so far as possible, reduce the risk that the couple are not who they say they are.
- The notice of intention to marry, completed by those applying to marry, will be amended so that each member of a couple changing their civil partnership to a marriage can describe their status as "extant civil partnership".

4.06 At present the minimum statutory fee for a civil marriage ceremony is £125. A higher fee is payable where a couple want an enhanced service, such as the use of a larger marriage room to accommodate a larger number of guests.  

4.07 A civil marriage ceremony where the £125 fee applies will be available to couples seeking to change their civil partnership to a marriage. However, couples would be able to opt for an enhanced service at a higher fee, if they so wished.

4.08 Alternatively, the couple could change their civil partnership to a marriage through a religious or belief ceremony by an authorised celebrant for same sex marriage, following the legal preliminaries with the registrar.

Changing consular CPs and armed forces CPs

4.09 Under section 210 of the 2004 Act and the Civil Partnership (Registration Abroad and Certificates) Order 2005 the civil partners can be registered by ceremonies conducted by British Diplomatic posts overseas. Under the Order, the ceremony is civil only in nature. The actual registration is carried out by the British Consular officer. The registration is sent by the officer to the Registrar General for England and Wales who forwards a copy to the Registrar General in Scotland, if the couple have chosen Scotland as the relevant part of the UK.

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18 S.I. 2005/2761.
4.10 Under section 211 of the 2004 Act and the Civil Partnership (Armed Forces) Order 2005\(^{19}\) members of the British armed forces and certain people connected to the British armed forces can register civil partnership in certain overseas territories. Article 2 of the Order prescribes the territories to which these provisions apply. They include the Falkland Islands, Australia, New Zealand, Germany and Nepal. A registering officer, who has been appointed under the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957, conducts the actual registration which must be a civil ceremony.

4.11 The intention is that it should be possible to change civil partnerships to marriages in Scotland, which have been registered in accordance with the consular and armed forces Orders, so long as certain conditions are met:

- When registering the civil partnership, the couple must have chosen Scotland as the relevant part of the UK.
- The civil partnership registration document must be held by the Registrar General for Scotland.
- The couple will need to have a marriage ceremony in Scotland, in the same way as other couples changing status.

### Question 17

Do you have any comments on the proposals for changing civil partnerships to a marriage?

### Legal implications of changing a civil partnership to a marriage

4.12 The Scottish Government wishes to avoid any suggestion that a couple changing from being civil partners to being married have two civil statuses at the same time (civil partners and married).

4.13 Therefore, section 7 of the Bill provides that the civil partnership is dissolved when the marriage is created.

4.14 However, the Scottish Government’s intention is that when a couple change from civil partnership to marriage, the responsibilities and rights that they may have accrued during their civil partnership should continue into their marriage. Therefore:

- Section 7 of the Bill makes some technical changes in relation to aliment.
- Section 7 of the Bill also makes some technical changes in relation to occupancy rights to matrimonial homes.
- The Schedule to the Bill makes some technical changes in respect of the Family Law (Scotland) Act 1985 (eg in relation to financial provision on divorce).

4.15 The change from civil partnership to marriage could also have an effect on the length of service counted for pension purposes in respect of benefits paid to a spouse or a civil partner. This is largely a reserved matter for the

\(^{19}\) S.I. 2005/3188.
UK Government. The Scottish Government will consider further with the UK Government.

**Dissolution of civil partnerships**

4.16 Dissolution of civil partnerships will be available in future in the same way as now.

4.17 Earlier this year, the Scottish Government made The Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012\(^{20}\).

4.18 This removed the requirement for a sheriff or the Court of Session to see evidence from a third party before granting a dissolution of a civil partnership under the simplified procedure. (Some couples can apply for a divorce or dissolution under a simplified procedure. The criteria for the simplified procedure include that the couple have no children under 16 years old and are not seeking a court order relating to financial provision).\(^{21}\)

4.19 The Government indicated at the time that we would amend the law so that decrees of dissolution granted before the Order took effect could not be challenged on the grounds that no third party evidence was provided. Section 22 of the Bill makes appropriate provision.

**Opposite sex civil partnerships**

4.20 As indicated above, the Government intends to keep civil partnerships for same sex couples. 67% of respondents who answered the relevant question in the last consultation (question 19) considered that civil partnerships should remain available. The Government considers that as civil partnerships for same sex couples have been established, they should remain available.

4.21 A number of consultation responses have suggested that opposite sex civil partnerships should be introduced into Scotland. We do not intend to do this, for a variety of reasons:

- We consider that this Bill should concentrate on key issues – same sex marriage; religious and belief registration of civil partnerships and changes to marriage law which have been planned for some time.
- There has been no detailed consideration by the Scottish Government – or, so far as the Government is aware, by anybody else – of the implications of introducing opposite sex civil partnership. Such further consideration would be needed.
- It is highly uncertain what recognition – if any – Scottish opposite sex civil partnerships would be given by the UK Government and by overseas jurisdictions.

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• Opposite sex civil partnership could lead to substantial financial costs to the public purse, if it is entered into by people who are currently just living together, as cohabitants do not have the same rights as civil partners and married couples.\(^{22}\)

• Opposite sex couples have now, and will continue to have, the option of getting married.

\(^{22}\) Information on rights for cohabitants is available on the Scottish Government website at http://www.scotland.gov.uk/Topics/Justice/law/17867/fm-couples-root/fm-couples-cohabitation
Part 5. Transgender people

5.01 As the Government indicated in paragraph 3.42 of the 2011 consultation, if Scotland should move to introduce same sex marriage, then in future there would be no need for transgender people to divorce before obtaining the full gender recognition certificate.

5.02 The Government recognises the concerns about the current position. In essence, a married person seeking to be recognised in a new gender is required to divorce before obtaining the full Gender Recognition Certificate, as same sex marriage is not recognised by the state. This means that a transgender person may face a choice between staying in his or her marriage or obtaining full legal recognition in their acquired gender.

5.03 The Government recognises that couples in a civil partnership may also wish to stay together after one of the partners obtains the full gender recognition certificate.

5.04 At the moment, a person who is granted a gender recognition certificate following divorce can enter into a civil partnership with his or her former spouse. Similarly, a person who is granted a gender recognition certificate following dissolution of his or her civil partnership can marry his or her civil partner. The law on divorce and on dissolution of civil partnerships recognises the issue of an interim certificate under the Gender Recognition Act 2004 as being grounds for divorce or dissolution of a civil partnership.

5.05 Having to divorce or dissolve a civil partnership can lead to the loss of some accrued rights. It can also affect rights to “matrimonial property”, as defined in the Family Law (Scotland) Act 1985, in the event that the couple divorce or dissolve their civil partnership.

5.06 The Government is putting forward detailed proposals so that a transgender person can stay in his or her relationship, if that is what both parties want. The details are at Annex D.

Question 18. Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

5.07 Paragraph 25 of Schedule 3 to the Equality Act 2010 provides that an approved celebrant does not contravene gender reassignment discrimination only by refusing to solemnise a marriage if the celebrant reasonably believes that one (or both) of the persons seeking to marry has acquired a new gender under the Gender Recognition Act 2004. The proposed amendment to the Equality Act 2010 extends this protection to cover a refusal by a celebrant to register a civil partnership.

Scottish Government
December 2012
ANNEX A  PROTECTION FOR RELIGIOUS AND BELIEF BODIES AND CELEBRANTS

The Government’s commitment

1. The Scottish Government has made it clear throughout that no religious body and no religious celebrant should be required to solemnise same sex marriage or register a civil partnership.

2. This approach was heavily supported by consultees responding to the last consultation.

- 94% of respondents agreed that religious bodies should not be required to register civil partnerships.
- 87% of respondents agreed that religious celebrants should not be allowed to register civil partnerships if their religious body has decided against registering civil partnerships.
- 89% of respondents considered that individual religious celebrants should not be required to register civil partnerships.
- 95% of respondents agreed that religious bodies and celebrants should not be required to solemnise same sex marriage. [Some respondents completed a form which asked if they agreed that religious bodies and celebrants should not be required to conduct same sex marriage or civil partnerships if it is against their wishes – 59% agreed]
- 93% of respondents agreed that religious bodies should not be required to solemnise same sex marriage.
- 86% of respondents agreed that religious celebrants should not be allowed to solemnise same sex marriages if their religious body has decided against solemnising same sex marriage.
- 93% of respondents agreed that individual religious celebrants should not be required to solemnise same sex marriage.

The practicalities

Existing procedures for opposite sex marriage

3. The Government intends that authorisation of religious and belief celebrants to solemnise same sex marriage and to register civil partnerships will be on similar lines to the procedures for authorising celebrants to solemnise opposite sex marriage.

4. The current procedures were outlined in paragraphs 3.04 to 3.10 of the last consultation. In brief:

- Church of Scotland ministers are authorised under section 8 of the Marriage (Scotland) Act 1977. [As outlined elsewhere, the Government intends to amend this so that Church of Scotland deacons are also authorised to solemnise opposite sex marriage].

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• Under section 8 of the 1977 Act, the Scottish Ministers can make regulations to prescribe religious bodies whose celebrants are authorised to solemnise marriage.
• Under section 9 of the 1977 Act, a religious body, other than the Church of Scotland or those prescribed by regulations under section 8, may nominate celebrants for authorisation to the Registrar General for Scotland.
• Under section 12 of the 1977 Act, the Registrar General may grant any person a temporary written authorisation to solemnise marriage. This may cover authorisation for specific marriages or for marriages carried out during a specified period.

The consultation results on proposed procedures for same sex marriage and the religious and belief registration of civil partnership.

5. The last consultation outlined two suggested methods of authorising religious and belief celebrants to solemnise same sex marriage and register civil partnerships.

6. Option 1 (opt-out) was to extend the existing authorisation of religious and belief celebrants so that the same celebrants would automatically have the ability to solemnise same sex marriage and register civil partnerships. Religious bodies and celebrants would then be able to opt out.

7. Option 2 (opt-in) was to set up a new procedure under which religious and belief bodies who wished to solemnise same sex marriage and register civil partnerships would apply to the Registrar General and advise which celebrants they would like to be authorised. In addition, provision would be made to make it clear that it would not be discriminatory to decide against seeking authorisation.

8. The consultation largely supported the opt-in option.

9. In relation to the registration of civil partnership:
   • 10% of consultees supported Option 1
   • 54% of consultees supported Option 2
   • 36% favoured neither option

10. In relation to the solemnisation of same sex marriage:
   • 9% of consultees supported Option 1
   • 50% of consultees supported Option 2
   • 31% of consultees favoured neither option
   • 10% of consultees didn’t know.
Proposed procedures

11. Following the consultation, the Government proposes procedures along the lines of Option 2.

12. Church of Scotland ministers will not be automatically authorised to solemnise same sex marriage and to register civil partnership. Therefore, Church of Scotland ministers and deacons are not named in the draft Bill on the authorisation of religious and belief celebrants to solemnise same sex marriage and register civil partnership.

13. The draft Bill gives the Scottish Ministers power to make regulations prescribing the religious and belief bodies who wish to solemnise same sex marriage and register civil partnerships. When bodies are so designated, this will have the effect of authorising all of their celebrants to solemnise same sex marriage and register civil partnerships.

14. As a result, the Government considers that bodies will wish to be certain that all of their celebrants are content to carry out these ceremonies. Therefore, bodies who wish to be prescribed in the regulations will have to assure the Registrar General, in writing, that all of their celebrants are content to carry out these ceremonies. Without this written assurance, the body will not be designated by the Scottish Ministers under the SSI.

15. An individual celebrant in a prescribed body may change his or her mind about marrying same sex couples or registering a civil partnership. When prescribing bodies in regulations, the Government will require the bodies to notify the Registrar General as soon as they become aware that they have a celebrant or celebrants who do not wish to marry same sex couples or register a civil partnership. The Government would then take steps to remove the body from the prescribed list in the regulations.

16. As an alternative to being prescribed in regulations, religious and belief bodies would be able to send the Registrar General a list of celebrants who they wished to be authorised to solemnise same sex marriage or register civil partnerships. (This would be the broad equivalent of the current section 9 authorisations in respect of opposite sex marriage). The Registrar General would only authorise celebrants where the religious or belief body to which they belong has decided that some or all of their celebrants may, if they wish, solemnise same sex marriage or register civil partnership. If there is any doubt about this, the Registrar General would not authorise the celebrants and would revoke any authorisations that may have been granted before then.

17. Finally, it would be possible for religious and belief bodies to apply to the Registrar General for temporary authorisation of their celebrants for a specific ceremony or a specific period. Again, the Registrar General would only authorise celebrants where the religious or belief body to which they belong has decided that some or all of their celebrants may, if they wish, solemnise same sex marriage or register civil partnership. If there is any
doubt about this, the Registrar General would not authorise the celebrants and would revoke any authorisations that may have been granted before then.

18. For the avoidance of any doubt, the draft Bill contains provisions making it clear that there is no obligation on religious or belief bodies or any person to apply to be authorised to solemnise same sex marriage or register civil partnership.

Equality Act 2010

General

19. The Equality Act 2010 is generally a reserved matter for Westminster. As indicated in the last consultation, the Scottish Government has considered the impact of the 2010 Act on the arrangements for solemnising marriage and registering civil partnership. As indicated below, we consider that there is already considerable protection for religious and belief bodies and celebrants under the 2010 Act. However, we also consider, again as indicated below, that some amendments are required.

20. As the 2010 Act is generally reserved to Westminster, such amendments would need to be made at Westminster. There are a variety of ways in which this could be done. However, the most likely route is by making a section 104 Order under the Scotland Act 1998. Section 104 allows UK Ministers to make provision following an Act of the Scottish Parliament. Section 104 orders have been made frequently since devolution.23

21. As the Scottish Government has previously indicated, the provisions in the Marriage and Civil Partnership (Scotland) Bill introducing same sex marriage and the religious and belief registration of civil partnerships will not be commenced until the amendment to the 2010 Act is in place.

The existing protections under Schedule 23 of the 2010 Act

22. The Government considers that the opt-in system for religious and belief bodies and celebrants, as outlined above, already provides significant protection for bodies and celebrants who do not wish to take part in same sex ceremonies. If a person has no authorisation, he or she has no legal power to solemnise a marriage or register a civil partnership which would be recognised in law. In fact, to do so without authorisation is a criminal offence under the Marriage (Scotland) Act 1977.

23. However, as the Government indicated in the last consultation, and in our announcement, there is a need to consider the implications of the 2010 Act. In addition, we need to take account of the possibility of a celebrant who

23 More information on section 104 orders can be found at http://www.scotlandoffice.gov.uk/scotlandoffice/37.html
changes his or her mind about marrying same sex couples or registering a
civil partnership.

24. The 2010 Act generally makes it unlawful to discriminate. Discrimination can take the form of direct discrimination (defined in section 13 of the 2010 Act) where person A treats person B less favourably than person would treat others because of a protected characteristic. Indirect discrimination (defined in section 19 of the 2010 Act) occurs where person A applies to person B “a provision, criterion or practice” which is discriminatory in relation to a protected characteristic of B. Protected characteristics under the Act include a person’s age, race, sexual orientation and religion/belief. Not all protected characteristics apply to each of the provisions of the Act.

25. Section 29 of the 2010 Act applies in the context of provision of services. It defines a “service-provider” as someone “concerned with the provision of a service to the public or a section of the public (for payment or not)” and says that the service-provider “must not discriminate against a person requiring the service by not providing the person with the service”. The provisions about service provision apply to the protected characteristic of sexual orientation.

26. The concern, therefore, is that a minister of religion or a belief celebrant who refuses to marry a same sex couple or register a civil partnership could be challenged on the grounds that he or she would be prepared to marry an opposite sex couple. The motivation of such a refusal would be that carrying out such a ceremony would conflict with the religion or beliefs of the minister or the celebrant. The result of the refusal is that a same sex couple would, on the grounds of their sexual orientation, be treated differently to an opposite sex couple.24

27. However, there is already protection for religious organisations under the 2010 Act. Schedule 23 has a number of general exceptions from equality requirements.

28. Paragraph 2 of Schedule 23 applies to religious or belief organisations. Under paragraph 2(3)(c), religious or belief organisations do not contravene Part 3 of the Act about services25, so far as relating to religion or belief or sexual orientation, by restricting “the provision of services in the course of activities undertaken by the organisation or on its behalf or under its auspices”.

29. Paragraph 2 of Schedule 23 also contains protection for ministers of religion. Under paragraph 2(5)(b), a minister does not contravene Part 3 so far as relating to religion or belief or sexual orientation, by restricting “the provision of services in the course of activities carried on in the performance of the minister’s functions in connection with or in respect of the organisation”.24

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24 “Sexual orientation” is one of the protected characteristics under the 2010 Act.
25 Part 3 relates to services and public functions; Part 4 relates to premises and Part 7 to associations.
30. Under paragraph 2(8), a minister is defined as meaning a “minister of religion, or other person who performs functions in connection to which the organisation relates and holds an office or appointment in, or is accredited or recognised for the purposes of the organisation.” Therefore, persons in religious bodies who are not designated “ministers” and persons in belief bodies carrying out marriage and civil partnership ceremonies would be covered as well.

31. Under paragraph 2(7), as read with paragraph 2(9), a refusal to provide a service is only permitted where relating to sexual orientation where “it is necessary to comply with the doctrine of the organisation” or to avoid conflict with “in the case of religion, the strongly held religious convictions of a significant number of the religion’s followers” or “in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief’s followers”.

32. Therefore, the Government considers that where a religious or belief body has doctrinal views against same sex marriage, it will not seek authorisation for its celebrants to solemnise same sex marriage or register civil partnerships. As a result, a celebrant who refuses to solemnise a marriage or a civil partnership on the grounds of the sexual orientation of the couple would be able to indicate that:

- He or she is not authorised under the marriage and civil partnership legislation to carry out such ceremonies.
- Under the Bill, he or she is under no obligation to seek such authorisation.
- Not providing a marriage or civil partnership service to couples on grounds of their sexual orientation is entirely consistent with the exemptions from equality requirements contained in schedule 23.

33. The Scottish Government is aware that some religious marriage ceremonies not legally recognised by the state, as the celebrant has not been authorised under the Marriage (Scotland) Act 1977, may take place in Scotland.

34. There is no objection to such ceremonies, provided that the couple both consent to the ceremony; they both have capacity to consent to the ceremony and the couple are fully aware that the ceremony will not marry them insofar as Scots law is concerned.26

35. Marriage ceremonies of this nature are not covered by the proposed amendment to the 2010 Act. This is because the Government is of the view that acts of worship (such as, for example, marriages not recognised by the state or blessings or baptisms) are not covered by the 2010 Act. Therefore,

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26 Under section 24(1)(d) of the Marriage (Scotland) Act 1977, it is an offence for a person who is not an approved celebrant or an authorised registrar to conduct a marriage ceremony in such a way as to lead the parties to the marriage to believe that he or she is solemnising a valid marriage.
no amendments to the 2010 Act are required in respect of marriage ceremonies not recognised by the state.

36. Religious marriage ceremonies recognised by the state could be covered by the 2010 Act, given that a public service is being provided. Therefore, the proposed amendment to the 2010 Act does cover these ceremonies.

The planned amendment

37. As outlined above, the exemptions from equality requirements contained in Schedule 23 only apply when there are necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held religious or belief convictions of a significant number of the followers of the religion or belief.

38. Some religious or belief bodies may be generally in favour of solemnising same sex marriage and registering civil partnership but may have individual celebrants who have religious or belief objections to carrying out such ceremonies.

39. It is unlikely that such celebrants would be authorised in the first place. However, as outlined in paragraph 15 above, it is possible that celebrants could be authorised by virtue of their religious or belief body being prescribed in regulations. The amendment puts beyond doubt that the 2010 Act will protect individual celebrants with religious or belief objections to same sex marriage and the registration of civil partnerships, even if the body to which they belong does not share these objections.

40. In addition, there could be celebrants who are not authorised to carry out same sex ceremonies but come under pressure to do so. Whilst the draft Bill makes it clear that there is no obligation to apply for authorisation, the amendment to the 2010 Act outlined below would provide additional reassurance.

41. Therefore, the draft amendment to the 2010 Act at Annex N to this consultation provides that a celebrant does not contravene section 29, so far as relating to sexual orientation discrimination, only by refusing to solemnise a same sex marriage or to register a civil partnership where this would conflict with the celebrant’s religious or philosophical beliefs.

European Convention on Human Rights (ECHR)

42. One of the concerns expressed by many respondents to the last consultation was that opt-outs for religious bodies and celebrants could be subject to a successful legal challenge under the ECHR. As indicated in the last consultation, the Government has had regard to the ECHR in developing the policies outlined in this paper.
43. The leading ECHR case on same sex marriage is Schalk and Kopf v Austria. Paragraph 61 of the judgment notes that “the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State”. Paragraph 62 goes on to say: “In that connection the Court observes that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another. The Court reiterates that it must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society”.

44. Articles 9 and 10 of the Convention make provision on freedom of thought, conscience and religion and on freedom of speech. They provide:

ARTICLE 9
Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10
Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

45. In designing its proposals, the Scottish Government has aimed to protect religious freedom by allowing same sex religious and belief ceremonies when the couple, the body and the celebrant wish to be involved, and by protecting the rights of those religious bodies and celebrants who do not wish to take part in such ceremonies.

27 The judgment in this case can be found at http://www.bailii.org/eu/cases/ECHR/2010/995.html
46. The Government considers that this is proportionate and in line with the Convention.

47. The Government notes that other countries with same sex marriage and religious ceremonies which are subject to the Convention have also taken steps to protect religious celebrants. For example, section 13 of the Norwegian Marriage Act provides:

“A clerical solemnizer may also refuse to solemnise a marriage if one of the parties is divorced and the previous spouse is still living or if the parties to the marriage are of the same sex.”

Religious premises

48. In the last consultation, the Government asked whether consultees agreed that no legislative provision was required to protect religious premises. Most consultees disagreed.

49. In relation to civil partnership:
   • 29% agreed that no legislative provision was required.
   • 58% disagreed and considered that legislative provision was required.
   • 13% did not know.

50. In relation to same sex marriage:
   • 22% agreed that no legislative provision was required.
   • 71% disagreed and considered that legislative provision was required.
   • 7% did not know.

51. The particular concern is that religious premises could be used for a civil partnership or same sex marriage ceremony without the consent of the congregation using the building. However, the Government remains of the view that no legislative provision is required to protect religious premises in relation to proposed civil partnership or same sex marriage ceremonies. The following paragraphs outline our reasons for this view.

52. First of all, the Scottish tradition in relation to state recognition of marriage ceremonies has always concerned the authorisation of celebrants rather than premises. The tradition is different in England and Wales and focuses on premises rather than celebrants. In England and Wales, there is detailed guidance on the approval of premises for civil marriages and civil partnerships (including civil partnerships taking place in religious premises).

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29 The guidance can be found at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/ips/general-ips-publications/civil-reg/guidance-approving-premises?view=Binary
53. The Scottish Government does not consider this necessary for Scotland, given our different tradition (as indicated elsewhere in this consultation, we are planning to amend the provisions on civil ceremonies to enter into marriage, so they can take place anywhere agreed between the couple and the registrar).

54. Secondly, there is already provision in the Equality Act 2010 about the use of premises. Paragraph 2(3)(d) of Schedule 23 to the 2010 Act provide that a religious or belief organisation does not contravene Parts 3, 4 or 7 of the Act (about services, premises and associations) so far as relating to religion or belief or sexual orientation, by restricting the use or disposal or premises owned or controlled by the organisation.

55. Again, such restrictions must be to comply with the doctrine of the organisation or to avoid conflict with strongly held convictions of a significant number of followers. (The restrictions are also not allowed if the organisation is disposing of its entire interest in the premises).

56. Therefore, the Government considers that a religious or belief organisation which owns premises or controls them would be able to refuse the use of the premises for a same sex marriage or civil partnership and would be able to refer to schedule 23 of the 2010 Act in support of its stance.

57. Clearly, not all religious or belief bodies will own or control the premises that they use. Religious or belief bodies may share premises and may have different views on same sex marriage and civil partnership.

58. In England and Wales, there is some legislative provision in the Sharing of Church Buildings Act 1969, which relates to the sharing of religious premises. This Act is referred to, for example, when approval is being sought south of the border to use religious premises for a civil partnership ceremony and a formal sharing agreement about religious premises is in place. There is also provision south of the border for other cases, where religious premises are being shared and approval is being sought to use the religious premises for a civil partnership ceremony. In summary, the provisions require that the consent of all of the religious bodies using the premises is needed.

59. The Government considers that, in Scotland, it would be preferable to leave it up to the religious bodies amongst themselves to decide whether or not premises should be used for civil partnership and same sex marriage. That is more in line with our tradition of approving celebrants rather than buildings and removes any potential interference by the state in discussions between religious bodies.

60. In other cases, religious bodies may be renting or leasing their premises or making use free of charge of premises owned by somebody else. The landlord in these cases may be another religious body (with different views on same sex marriage and civil partnership) or may be a secular body.
61. Either way, the Government does not consider it appropriate to provide in legislation that a tenant could stop same sex marriage or civil partnership ceremonies from taking place in the landlord’s premises. This would constitute interference by Government in private property relationships and contracts. The Government considers it preferable for landlords and tenants to come to their own private arrangements about the use of premises.

**Use of other premises by religious bodies**

62. Finally, the Scottish Government is aware of concerns that a religious body could be banned from using community halls (eg halls owned by local authorities) if the body only marries opposite sex couples.

63. As indicated above, Schedule 23 to the Equality Act 2010 already has exemptions from equality requirements where these are necessary to comply with the religious doctrine of the organisation or to avoid conflict with the strongly held religious convictions of a significant number of the religion’s followers.

64. A local authority is obliged by the Equality Act 2010 to avoid discriminating, and is required by the public sector equality duty (at section 149 of the Act) to have regard to various matters including fostering good relations between people who share a protected characteristics and those who do not.

65. Given these requirements on local authorities and other public bodies and the exceptions from equality requirements which already exist for religious and belief organisations, it is hard to see how a local authority in this situation could refuse the use of a hall to a religious body. The Government considers that a local authority who refuses to let premises to a body of the basis of the religious beliefs of the body risks a successful claim of discrimination. The public sector equality duty does not mean public bodies can discriminate where the 2010 Act says that it is unlawful.

**Scottish Government**

**December 2012**
ANNEX B. FREEDOM OF SPEECH

1. The Scottish Government has considered the implications of the introduction of same sex marriage for freedom of speech.

2. In considering this issue, the Government is clear that there is and will be a vigorous debate on same sex marriage. The Government welcomes this debate and considers it to be a healthy sign of democracy. As the Deputy First Minister said in her foreword to the last consultation:

“There are a variety of views on religious ceremonies for civil partnerships and on same sex marriage. We hope that everyone will use this consultation to express their views and opinions. However, as the debate unfolds, we also hope that everyone will treat those with different or opposing views with courtesy and respect, in accordance with the very highest standards of democratic discourse”.

3. However, the Government is aware that concerns have been expressed about the possibility of prosecutions for speaking out against same sex marriage. The Marriage and Civil Partnership (Scotland) Bill does not, of course, create any criminal offences in relation to speaking out against same sex marriage.

4. However, concerns could relate in particular to the offence of breach of the peace (which involves conduct which causes alarm or distress to ordinary people) or a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (which involves threatening or abusive behaviour.

5. A person cannot be convicted of breach of the peace or threatening or abusive behaviour just for expressing views. Instead, other factors must be present. In particular, for a prosecution to succeed, the manner and circumstances in which the views were offered would have to trigger current criminal laws.

6. In Scotland, decisions on prosecutions are a matter for the Lord Advocate as the head of the system of prosecution in Scotland. The Lord Advocate will, in due course, publish prosecutorial guidelines on allegations of breach of the peace and threatening or abusive behaviour arising out of opposition to same sex marriage.

7. In addition, the Marriage and Civil Partnership (Scotland) Bill makes provision on freedom of speech. Section 12 of the Bill provides that:

“(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 (c.42)."

8. This freedom of expression provision may also be relevant in respect of civil (ie matters that are not criminal) matters as well.

9. The Scottish Government is aware that suggestions have been made that employment legislation should be amended to, for example, protect NHS chaplains and teachers who are against same sex marriage from dismissal. However, the Government does not consider that such amendments should be made to employment legislation, for a variety of reasons:

- There are already detailed provisions in employment legislation on dismissal which will not be affected by the introduction of same sex marriage.30.
- Introducing specific statutory protections for chaplains and teachers could set unwelcome precedent: for example, about the level of employment protection which should be available to someone (eg a local authority planning officer) who actively campaigns in his or her spare time against the role of religious bodies in society but may have to deal with religious bodies as part of his or her work.
- Any protection might cut both ways. If there were specific statutory protections for chaplains and teachers against same sex marriage, there might also be a need for specific statutory protections for a teacher in a denominational school who wants to express views contrary to the teachings of the denomination.
- There is already good guidance on the employment of NHS chaplains31.

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Scottish Government
December 2012

30 Guidance can be found at https://www.gov.uk/browse/employing-people
31 www.scotland.gov.uk/Publications/2009/01/30110659/0 and
http://www.nes.scot.nhs.uk/media/206594/010308capabilities_and_competences_for_healthcare_chaplains.pdf
ANNEX C. EDUCATION

Introduction

1. This annex outlines the Scottish Government’s response to concerns raised in relation to education.

2. Key concerns raised by stakeholders have been:

   - The possibility of teachers being disciplined or dismissed for speaking out against same sex marriage.
   - Parental rights when parents have concerns about some of the materials being used in school.
   - The need to ensure that all pupils are treated in a fair and non-discriminatory way, and receive as good and as broad an education as possible.
   - The potential impact of same sex marriage on denominational education.

3. The Government does not consider it necessary to introduce legislation relating specifically to education as a consequence of the introduction of same sex marriage. The Government considers that this would be unhelpful and that in many cases, as outlined below, existing legislation and guidance provides a good framework to ensure pupils are taught in an appropriate way.

4. The draft Bill contains provision at section 12 making it clear that existing rights to freedom of expression are unaffected by the introduction of same sex marriage.

Curriculum for Excellence and the provision of religious education

5. The Education (Scotland) Act 1980 provides that local authorities are expected to provide religious instruction and religious observance in Scottish schools. The Government is committed to this and has no intention of making any changes.

6. Scottish Ministers believe that Religious and Moral Education in non-denominational schools and Religious Education in Roman Catholic schools make an important contribution to the development of our children and young people as successful learners, confident individuals, effective contributors and responsible citizens.

7. Education about faith and belief in non-denominational schools and education in faith in denominational schools contributes to the development of

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32 Advice Note February 2011, 1
http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE/Religion

33 Advice Note February 2011, 4
http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE/Religion
the whole person, allowing children and young people to consider, reflect
upon, and respond to important questions about the meaning and purpose of
existence, the range and depth of human experience and what is ultimately
worthwhile and valuable in life.\textsuperscript{34}

8. To meet these requirements and the principles and practices of
Curriculum for Excellence, schools are expected to plan and deliver religious
and moral education as both a specific subject discipline and one which
contributes to high quality interdisciplinary learning, as they do with each of
the eight curriculum areas. \textsuperscript{35}

9. Section 9 of the Education (Scotland) Act 1980, sometimes known as
the ‘Conscience clause’, allows parents to withdraw any pupil from any
instruction in religious subjects. The Government considers this provides
appropriate protection and has no plans to amend section 9.

\textbf{Curriculum for Excellence and educational materials}

10. One of the concerns raised has been about educational materials.

11. There is no national curriculum in Scotland or approved reading lists.
The curricula at all state schools in Scotland are set by local authorities. The
faith content of the curriculum at Roman Catholic state schools is decided by
the Scottish Catholic Education Service on behalf of the Bishops’ Conference
of Scotland. The Government is committed to maintaining this.

12. There is a specific exclusion in the Equality Act 2010 in respect of the
contents of the curriculum. Section 89(2) of the 2010 Act provides that
“Nothing in this Chapter applies to anything done in connection with the
content of the curriculum”. Therefore, the provisions of the 2010 Act about
discrimination and protected characteristics do not have a direct effect on the
content of the curriculum in schools.

13. However, any school may have access to reading materials and may
participate in initiatives (possibly led by equality bodies) which discuss or raise
issues about same sex relationships. The Government outlines below the
approach we would expect schools and education authorities to take if a
teacher had concerns about using certain materials.

\textbf{Teachers who object to using certain teaching materials}

and Conduct\textsuperscript{36} outlines the standards of conduct and competence expected of

\textsuperscript{34} Advice Note February 2011, 4
http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE/Religion

\textsuperscript{35} Advice Note February 2011, 11
http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE/Religion

\textsuperscript{36} http://www.gtcs.org.uk/nmsruntime/saveasdialog.aspx?IID=168&sID=6315
registered teachers. Part 5 of the Code is specific about the expectations both of the Council and of the public about equality and diversity.

15. For example, section 5.1 requires that a teacher should “engage and work positively with pupils, colleagues parents and carers in an open, inclusive and respectful way, in line with the law and with a non-judgemental approach whatever their background, personal circumstances, cultural differences, values and beliefs”.

16. All employers are required by the public sector equality duty to give consideration to religious beliefs of their employees.

17. All local authorities have procedures in place to handle any moral objections by teachers. The Government would not expect a local authority to take immediate disciplinary action against a teacher who expresses concerns about the use of certain educational materials. Instead, the Government would expect the local authority to discuss the matter with the teacher. This is good employment practice. There is, of course, existing UK employment legislation which protects teachers against unfair dismissal.

**Denominational education**

18. Points have been raised about the possible impact of same sex marriage on denominational schools. Denominational schools are run in the same way as other education authority schools. The majority of denominational state schools in Scotland are Roman Catholic. Denominational schools play an important part in education in Scotland and the Government is committed to maintaining this.

19. The Scottish Government has no plans to change the provisions of section 21 of the Education (Scotland) Act 1980, on the management of denominational schools and on how teachers in denominational schools are appointed.

20. The Scottish Government supports the right of the Roman Catholic Church to give witness to its faith, and to uphold the traditions of Catholic education. We value the contribution made by Roman Catholic schools, and have no intention of changing the current position where faith aspects of the curriculum in Catholic schools are determined by the Scottish Catholic Education Service.

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[37] More information on resolving workplace disputes is at [https://www.gov.uk/solve-workplace-dispute](https://www.gov.uk/solve-workplace-dispute)

[38] More information on unfair and constructive dismissal is at [https://www.gov.uk/dismissal/unfair-and-constructive-dismissal](https://www.gov.uk/dismissal/unfair-and-constructive-dismissal)

[39] Scotland has 377 state-funded faith schools - 373 Catholic, one Jewish and three Episcopalian. [www.scotland.gov.uk/Topics/Education/Schools/FAQs](www.scotland.gov.uk/Topics/Education/Schools/FAQs)

21. Furthermore, the Scottish Government has no intention of requiring any denominational school to act contrary to the guidelines/policy established by the Scottish Catholic Education Service or other religious authorities with a role in denominational education.

22. In February 2011, the Scottish Government issued advice to local authorities and head-teachers reiterating that the experiences and outcomes for Religious Education in Roman Catholic schools should be delivered in conjunction with guidance provided by the Scottish Catholic Education Service. We have no plans to change this guidance.

Rights of parents and carers to be consulted

23. Points have been raised about parents, and carers, having concerns about the use of certain educational materials in schools.

24. As paragraph 11 of Education Circular 2/2001 says, “parents and carers play a key role in all aspects of their children's education. It is good practice for all schools to inform and consult parents and carers as closely as possible about key aspects of the curriculum”. This is particularly important in relation to teaching about relationships, sexual health education and parenthood education and religious and moral education.41

25. Legislative provision on providing information to parents in relation to their child’s education is contained in the Education (School and Placing Information) (Scotland) Regulations 2012, in force from 8 December 2012.42 Paragraph 6(f) of Schedule 1 to the Regulations provides that school handbooks will include how parents will be informed of any sensitive aspects of learning. Paragraph 6(g) of Schedule 1 provides that the school handbooks will inform parents of the provision for religious instruction and observance for pupils and arrangements for a pupil's parent who wishes to exercise the parent's right to withdraw that pupil.

26. As paragraph 12 of Education Circular 2/2001 says, when schools prepare sex education programmes, “and in consulting with parents and carers and responding to their views, schools should be sensitive to their parental concerns and to cultural and religious views which they may hold and which may conflict with particular aspects of the planned programme”43.

27. Paragraph 13 of Education Circular 2/2001 allows parents to withdraw children from specific programmes of sexual health education, although it does also encourage participation, whilst, as indicated above, section 9 of the Education (Scotland) Act 198044 provides that parents can withdraw their children from religious instruction and religious observance.

42 http://www.legislation.gov.uk/ssi/2012/130/contents/made

29. The Government does not consider that it would be appropriate to allow parents to withdraw children from any lesson where same sex marriage, civil partnerships or homosexuality might be mentioned. The Government has a number of reasons for taking this view:

- Such a right could cut across a child’s right to an education. The United Nations Convention on the Rights of the Child, which the United Kingdom has ratified, outlines, in Article 28, the right of the child to education.\(^{45}\)
- Same sex marriage, marriage and relationships generally can arise in lessons in a variety of situations. It would not be feasible to provide for parents to withdraw their children from all lessons where these issues might arise, sometimes very briefly.
- It is natural for children to ask questions in class and for teachers to respond in an appropriate way.

30. Similarly, the Scottish Government does not consider it appropriate to say that issues relating to same sex marriage, same sex relationships and homosexuality should never be raised in primary schools. However, as indicated above, circular 2/2001 lays down procedures on parents withdrawing children from sexual health education programmes, if the parents so wish.

**Balance and respect for pupils**

31. Some concerns have been expressed about children being treated badly at school as a result of expressing views on marriage or on sexuality.

32. Any disrespect shown to a child by a teacher would be contrary to the General Teaching Council for Scotland’s Code of Professionalism and Conduct\(^{46}\). The Code states that teachers should:

> engage and work positively with pupils, colleagues, parents and carers in an open, inclusive and respectful way, in line with the law and with a non-judgemental approach whatever their background, personal circumstances, cultural differences, values and beliefs (Section 5.1).

\(^{45}\) The text of the UN Convention on the Rights of the Child is at [http://www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm)

33. It further states that teachers should:

help pupils to understand different views, perspectives, and experiences and develop positive relationships both within the educational establishment and in the local authority (Section 5.2).

34. A teacher should intervene in if a child mocks another child, in accordance with Section 5.1 of the Code.

35. In addition, paragraph 7 of Education Circular 2/2001, paragraph 7, says that no child should be subject to degrading treatment because of the views the child holds. Such behaviour would be unacceptable. Schools and teachers would have a responsibility under the Equality Act 2010 and the Code of Professionalism and Conduct to protect a child in such a situation.

Scottish Government
December 2012
ANNEX D. TRANSGENDER PEOPLE

Introduction

1. The Scottish Government is committed, where possible, to removing the requirement on transgender people to divorce before obtaining the full Gender Recognition Certificate which provides legal recognition in the acquired gender. The Scottish Government also recognises that procedures need to be established in relation to a civil partner who is acquiring a new gender and the civil partners wish to stay in a legally recognised relationship.

2. In considering these issues, the Scottish Government needs to bear in mind that the Gender Recognition Act 2004 extends across the UK and the Gender Recognition Panel operates across the UK. In addition, the Scottish Government understands that the Northern Ireland administration is unlikely to establish same sex marriage and is to likely to retain the current requirement that a marriage has to be ended before the full Gender Recognition Certificate can be issued.

3. As a result, the Scottish Government will consider its proposals further with the UK Government, the Northern Ireland administration, the Gender Recognition Panel and with stakeholders in Scotland. Therefore, the proposals in this Annex should be regarded as an initial approach to establishing detailed procedures in this area. Further consideration will take place on the detailed procedures.

General position

4. In considering its approach to this area, the Scottish Government proposes to adopt a number of key principles in relation to a transgender person seeking legal recognition in an acquired gender, who wishes to stay together with their spouse or civil partner.

- The Gender Recognition Panel (GRP), which operates across the UK, will continue to deal with applications from Scotland to be recognised in an acquired gender.47
- Our initial view is that the Scottish Bill will cover applications to the GRP from Scotland. However, as the 2004 Act and the GRP both currently operate on a UK basis, we will consider that further with the UK Government.
- The requirement to divorce before obtaining a full gender recognition certificate (GRC) even where the married couple wish to stay together will be removed.
- However, obtaining an interim GRC will remain grounds for divorce in Scotland, so that it is available if one or both of the couple should wish.
- The rights of the spouse who is not transitioning must be respected. He or she also has a right to decide whether or not he or she wishes to

47 More information on the Gender Recognition Panel is at http://www.justice.gov.uk/tribunals/gender-recognition-panel
stay married. The Government considers this to be a fundamental point and that there should be no risk of someone staying in a marriage who does not wish to do so.

- Couples in a civil partnership registered in Scotland could, so long as the civil partnership was entered into in Scotland, change that civil partnership to a marriage.\(^\text{48}\)

- Couples in a civil partnership registered outwith Scotland would need to approach their home jurisdiction to ask the home jurisdiction to change the civil partnership to a marriage.

- In general, it makes sense to provide as fully as possible for procedures when the marriage or the civil partnership took place in Scotland in the first place. The powers of the Scottish Parliament are more limited when the marriage or civil partnership is registered elsewhere.

**Current law**

5. The Gender Recognition Act 2004 establishes the GRP to consider applications to be recognised in an acquired gender. The GRP operates across the UK. The Scottish Government intends to keep these arrangements.

6. Under the current law, an applicant to the panel who is married or in a civil partnership cannot stay in that marriage or civil partnership if he or she wishes to receive a full GRC (which provides legal recognition in the new gender). This is because the law at present does not recognise same sex marriage and opposite sex civil partnership.

7. Therefore, once an interim GRC has been granted, the applicant to the GRP has to divorce or dissolve their civil partnership before a full GRC can be obtained. Where a decree of divorce or dissolution is granted by the court on the basis that an interim GRC has been granted, the court issues the full GRC to the applicant when it grants the decree.

8. Alternatively, an applicant may, within 6 months of the issue of the interim GRC, divorce or dissolve on other grounds. In these cases, an application for a full GRC may be made to the GRP. Similarly, an application to the GRP for a full certificate may be made if the applicant’s spouse or civil partner should die within 6 months of the issue of an interim GRC.

9. This Annex outlines proposals by the Scottish Government to enable couples to stay together, if they wish, when one person in the couple is transitioning to an acquired gender. The Scottish Government’s provisional intention is that the Scottish Bill will apply to applicants to the GRP from Scotland. Some more minor provisions will also be made in the Bill about applicants who are not resident in Scotland but whose marriage certificate is

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\(^\text{48}\) Civil partnerships registered overseas through British consuls and British armed forces may be treated as having been registered in Scotland, provided certain conditions are met.
registered in Scotland, in circumstances where they have acquired a new gender and want their marriage certificates amended.

10. Paragraph 3.53 of the Scottish Government’s previous consultation noted our general concerns about sham marriage. The consultation indicated that National Records of Scotland work closely with the Home Office, and others, to combat sham marriage.

11. Therefore, our proposals on same sex marriage generally are designed to ensure that we continue to combat sham marriage. That is why, for example, we have indicated that couples seeking to change a civil partnership registered in Scotland to a marriage would need to have a ceremony in Scotland. This helps to combat identity fraud, such as someone assuming the identity of a dead person.

12. Our proposals in respect of allowing couples to stay together where one of them is acquiring a new gender also reflect our general aim of combating sham marriage.

Proposals

13. The Government’s preferred approach is outlined below.

Transgender people who were married outwith Scotland

14. Where a married transgender person applies to the GRP from Scotland but the marriage was not registered in Scotland, the Government’s proposal is:

- Applicant applies to the GRP in the normal way.
- Applicant receives interim GRC.
- Applicant and spouse supply affidavit to the GRP that they wish to stay married.
- GRP issue full GRC.
- It is then up to the couple to go back to their home jurisdiction to seek changes to their marriage certificate.

Transgender people who were married in Scotland

15. Where a transgender couple in a marriage registered in Scotland wish to stay married, the Government proposes:

- Applicant applies to the GRP in the normal way and, if successful, obtains interim GRC.
- An interim GRC should allow the applicant to seek a second marriage ceremony. The applicant would use the gender they are seeking to acquire in a marriage notice.
- An interim GRC would still have limited effect (notwithstanding its use in the marriage notice) and it would continue to be the full GRC which provides recognition generally of the applicant’s acquired gender. If
necessary, the Scottish Bill could include provision to emphasise that it is the full GRC which provides legal recognition of the acquired gender.

- The couple can get married, using the new gender.
- Registrar General (or other appropriate authority) issues full GRC as soon as couple get married.

16. On the marriage ceremony, there would be a variety of options. These would be the same as the options generally for a couple seeking to change a civil partnership registered in Scotland into a marriage:

- A civil ceremony attracting the minimum fee, or a more enhanced service in relation to a civil ceremony, which would attract higher costs
- A religious ceremony
- A belief ceremony.

17. The Scottish Government will treat couples who have entered into a civil partnership at a British consulate or through a ceremony carried out by the British armed forces as if the civil partnership had been registered in Scotland, so long as the couple elected Scotland as the relevant part of the UK at the time and the civil partnership certificate is now held in Scotland.

Transgender people who entered into a civil partnership outwith Scotland.

18. Where a transgender person applies to the GRP from Scotland but entered into a civil partnership outwith Scotland and the couple wish to stay together, the Government’s proposal is:

- Couple need to change their civil partnership to a marriage in their home jurisdiction.
- Applicant applies to the GRP in the normal way.
- Applicant, if successful, receives interim GRC.
- Applicant and spouse supply statutory declaration to the GRP that they wish to stay married.
- GRP issue full GRC.
- It is then up to the couple to go back to their home jurisdiction to seek changes to their marriage certificate.

Transgender people who entered into a civil partnership within Scotland.

19. On transgender people in a CP registered in Scotland who wish to stay together:

- Applies to the GRP in the normal way and, if successful, receive interim GRC.
- The interim GRC would allow the applicant to use the new gender in a marriage notice (of course, the applicant would have to marry the same

49 More information on costs is at http://www.gro-scotland.gov.uk/files2/registration/rm1b-new-fees.pdf
person he or she is in a civil partnership with). If necessary, the Scottish Bill could include provision to emphasise that it is the full GRC which provides legal recognition of the acquired gender.

- The applicant could then marry (in the ways outlined above) and obtain the full GRC from the Registrar General (or another appropriate authority).

Transgender people applying to the GRP from outwith Scotland but who married in Scotland

20. There may be applicants to the GRP from outwith Scotland who married in Scotland. In these cases, procedures for the application to the GRP would be governed by the jurisdiction which they are residing in.

21. Where an applicant is successful in obtaining a full GRC, the applicant could obtain an updated marriage certificate in Scotland by undergoing a second marriage ceremony in Scotland, as outlined above.

Transgender people applying to the GRP from outwith Scotland but who entered into a civil partnership in Scotland

22. A transgender couple in a civil partnership registered in Scotland could change that civil partnership to a marriage in Scotland, following the procedures outlined above.

Alternatives

23. The Government recognises that there are potential alternatives which could be considered further to simplify and streamline the procedures. Some potential alternatives are outlined below.

Married couples – alternative

24. Under this alternative:

- An applicant who is married, and his or her spouse, would supply a statutory declaration, or an affidavit, saying that that they wished to stay married to the GRP when applying under the Gender Recognition Act.
- This would enable the GRP, if the applicant is successful, to issue a full GRC.

25. One potential disadvantage of this option is that one or both of the couple may change their mind about staying married after the application to the GRP has been submitted.

26. However, it would be possible to deal with this by asking the couple to submit the affidavit to the GRP after the interim GRC has been issued. On receipt of the affidavit, the GRP could then issue the full GRC.
27. Another way of dealing with changes of mind might be to make provision so that an applicant or his or her spouse could withdraw the affidavit which has been supplied when the application was made. The GRP would then issue an interim certificate. The applicant would then need to divorce to obtain a full GRC.

28. There is a further disadvantage. Under these proposals, the original marriage certificate would remain the same. There are two problems with this:

- The marriage certificate might “out” the couple as transgender, if it was clear that the marriage has been solemnised by a celebrant who (or whose body) was opposed to same sex marriage.
- A religious body or celebrant opposed to same sex marriage might have concerns at appearing in a public register to have solemnised the marriage of a couple who are now regarded in law as being of the same sex.

29. One way of dealing with this would be to alter the marriage certificate to change the couple’s names or remove reference to the celebrant. However, altering public registers in this way might undermine their perceived authority. As indicated above, the Government considers that asking couples to undergo a fresh ceremony in Scotland reduces the capacity for fraud. This also ensures that a fresh marriage certificate can then be provided without the need to alter the existing marriage certificate. One potential option might be to undergo this fresh marriage ceremony after the full GRC has been issued.

Civil partnerships- alternative

30. A potential alternative is as follows:

- Civil partnership is changed into a (same sex) marriage (in Scotland if the civil partnership was registered in Scotland, following the procedures outlined above, or in the couple’s home jurisdiction if the civil partnership was registered outwith Scotland).
- Applicant applies to the GRP.
- If successful, the applicant can receive a full GRC, on the basis that changing the civil partnership to a marriage showed that the couple wished to stay together.

31. One potential issue is that one or both of the couple may change their minds about staying together after they have changed their civil partnership to a marriage but before the full GRC is issued.

32. This could be dealt with by requiring the GRP to issue an interim GRC first and an affidavit is then sent to the GRP by the couple declaring that they wish to stay together. The GRP could then issue the full GRC.
33. Another way of dealing with changes of mind might be to make provision so that an applicant or his or her spouse could withdraw the affidavit which had been supplied when the application was made. The GRP would then issue an interim certificate.

Scottish Government
December 2012
Annex E

MARRIAGE LAW IN SCOTLAND: RECENT CHANGES

Detail

1929: The Age of Marriage Act 1929 raised the minimum age for marriage to 16 for both sexes from the common law ages of 12 for girls and 14 for boys.

1938: The Divorce (Scotland) Act 1938 added four new grounds for divorce (cruelty, sodomy, bestiality, incurable insanity) to the then existing grounds of adultery and desertion.

1939: The Marriage (Scotland) Act 1939 ended two forms of irregular marriage. (marriage by declaration of present consent and marriage by promise followed by sexual intercourse). The 1939 Act also introduced civil ceremonies for marriage, with such ceremonies carried out by authorised registrars.

1976: The Divorce (Scotland) Act 1976 reformed divorce law. It introduced the irretrievable breakdown of the marriage as the sole grounds for divorce but allowed a number of ways to show this: adultery; intolerable behaviour; desertion; non-cohabitation.

1977: The Marriage (Scotland) Act 1977 consolidated marriage law in Scotland and made minor changes, such as ending the need for banns to be proclaimed in the Church of Scotland.

1986: The Marriage (Prohibited Degrees of Relationship) Act 1986 allowed marriages with a former spouse's grandparent and, subject to restrictions, with a former spouse's child, grandchild or parent.

1986: The Law Reform (Parent and Child) (Scotland Act 1986 abolished the practical effect of illegitimacy, making it irrelevant for a person whether his/her parents were married. (The Family Law (Scotland) Act 2006 then formally removed the status of illegitimacy from Scots law, other than in relation to the reserved area of hereditary titles and arms).

2002: The Marriage (Scotland) Act 2002 enabled marriages through civil ceremonies to be solemnised in approved places.


2004: The Civil Partnership Act 2004 allowed same sex couples to form legally recognised partnerships.

2006: The Local Electoral Administration and Registration (Services) Act 2006 enabled marriages to be solemnised, and Civil Partnerships to be registered, in Scottish waters.
2006. The Family Law (Scotland) Act 2006 ended the recognition of new marriages by cohabitation with habit and repute, the last form of irregular marriage in Scotland.

2006 The Family Law (Scotland) Act 2006 also made some amendments to divorce law. In particular, it reduced the periods of non-cohabitation required to show the irretrievable breakdown of a marriage. The periods are now 1 year (with consent of both parties to the divorce) and 2 years (without consent of both parties to the divorce).

2006: The Family Law (Scotland) Act 2006 removed the bar against a person marrying his former mother or father in law.

2010: Paragraph 25 of Schedule 3 to the Equality Act 2010 provides that an approved (religious) celebrant does not contravene equality legislation if he or she refuses to solemnise a marriage because he or she reasonable believes that one of the parties to the marriage has acquired a gender under the Gender Recognition Act 2004 (ie has changed sex).

Summary

In the last 100 years, Parliament (both Westminster and Holyrood) has:

- Introduced statutory minimum ages for getting married.
- Ended legal recognition of irregular Scots marriages.
- Introduced civil ceremonies for marriage.
- Amended the prohibited degrees of relationship (about which family relationships are too close for marriage to take place).
- Introduced civil partnership.

Scottish Government

December 2012
Annex F:

The Scottish Government’s understanding of which jurisdictions have established civil unions (or partnerships) and which jurisdictions have established same sex marriage

List of jurisdictions which have established same sex unions

Andorra
Argentina (some parts of the country only)
Australia (precise laws vary from state to state)
Austria
Belgium
Brazil
Canada
Colombia (cohabitation rights)
Czech Republic
Denmark
Ecuador
England and Wales
Finland
France
Germany
Greenland
Hungary
Iceland
Isle of Man
Jersey
Liechtenstein
Luxembourg
Mexico (some parts of the country only)
The Netherlands
New Zealand
Northern Ireland
Norway
Republic of Ireland
Scotland
Slovenia
South Africa
Sweden
Switzerland
United States (some states only).
Uruguay
List of jurisdictions which have established same sex marriage

Argentina
Belgium
Canada
Denmark
Iceland
Mexico (Mexico City only but recognised throughout Mexico)
The Netherlands
Norway
Portugal
South Africa
Spain
Sweden
United States (some states only)

Some jurisdictions recognise civil unions or same sex marriage from other countries, even if they have not established their own arrangements for civil unions and same sex marriage.

Scottish Government
December 2012
Annex G: Responding to this consultation

1. Please respond to this consultation by completing the response form on-line at [https://consult.scotland.gov.uk/family-law/marriagebill](https://consult.scotland.gov.uk/family-law/marriagebill)

2. Alternatively, you can respond by completing the Respondent Information Form and questionnaire and sending it to:

   The Family Law Team  
   Room 2W  
   Justice Directorate  
   Scottish Government  
   St Andrew’s House  
   Regent Road  
   Edinburgh  
   EH1 3DG

   Or by emailing [marriagebill@scotland.gsi.gov.uk](mailto:marriagebill@scotland.gsi.gov.uk)

3. If you have any queries or comments about this consultation, please contact:

   The Family Law Team  
   Room 2W  
   Justice Directorate  
   Scottish Government  
   St Andrew’s House  
   Regent Road  
   Edinburgh  
   EH1 3DG

   0131 244 2025

   [marriagebill@scotland.gsi.gov.uk](mailto:marriagebill@scotland.gsi.gov.uk)

Responses must be sent to us by **5PM on Wednesday 20 March 2013**.

Scottish Government  
December 2012
ANNEX H

LIST OF ORGANISATIONS WHO HAVE BEEN SENT THIS PAPER

Action of Churches Together Scotland
Affirmation Scotland
Al-Jannah
Ani Rinchen Khandro (Kagyu Samye Dzong Edinburgh)
Apostolic Church
Assemblies of God
Associated Presbyterian Churches of Scotland
Association of Pension Lawyers
Association of Registrars of Scotland
Baha’i Council for Scotland
Baptist Union of Scotland
Barnardo’s
BiScotland
British Association for Adoption and Fostering
Centre for Research on Families and Relationships
Children 1st
Children in Scotland
Church of Christ
Church of Jesus Christ of Latter-Day Saints (Mormon Church)
Church of Scotland
Church of the Nazarene
Christian Brethren
Christian Institute
Confederation of British Industry Scotland
Congregational Federation
Convention of Scottish Local Authorities (and all local authority Chief Executives)
Edinburgh Inter Faith Association
Elim Pentecostal Church
Episcopal Church in Scotland
Equality and Human Rights Commission Scotland
Equality Network
Evangelical Alliance
Faculty of Advocates
Families need Fathers
Family Law Association
Federation of Small Businesses, Scotland
Fife Buddhist Group
Forum of Private Business
Free Church of Scotland
Free Church of Scotland (Continuing)
Free Presbyterian Church of Scotland
Galva108
Gay and Lesbian Humanist Association
Glasgow Jewish Educational Forum
Hindu Temple of Scotland
Humanist Society Scotland
Imaan
Institute of Directors Scotland
Jehovah’s Witnesses
Jewish Gay and Lesbian Group
Law Society of Scotland
Lesbian and Gay Christian Movement
LGBT National Youth Council
LGBT Network
LGBT Youth Scotland
Liberal Jewish Community
Margo MacDonald MSP
Members of the European Parliament representing Scotland
Methodist Church in Scotland
Metropolitan Community Church
Muslim Council of Scotland
National Records of Scotland
NUS Scotland
OneKirk
Pagan Federation of Scotland
Pensions Advisory Service
Pensions Regulator
Plymouth Brethren No 4
Quaker Lesbian and Gay Fellowship
Reformed Judaism
Relationships Scotland
Religious Society of Friends (Quakers)
Roman Catholic Church
Salvation Army
Scotland’s Commissioner for Children and Young People
Scottish Chambers of Commerce
Scottish Christian Party
Scottish Churches Parliamentary Office
Scottish Conservative and Unionist Party
Scottish Council of Independent Schools
Scottish Council of Jewish Communities
Scottish Council for Voluntary Organisations
Scottish Court Service
Scottish Episcopal Church
Scottish Green Party
Scottish Human Rights Commission
Scottish Inter Faith Council
Scottish Labour Party
Scottish Law Commission
Scottish Legal Aid Board
Scottish Liberal Democrats
Scottish Marriage Care
Scottish National Party
Scottish Rainbow Covenant
Scottish Trade Union Congress
Scottish Transgender Alliance
Scottish Unitarian Association
Scottish Women’s Aid
Scottish Youth Parliament
Seventh-Day Adventists
Sheriffs’ Association
Sikh (Scottish Sikh Women’s Association)
Sikhs in Scotland
Spiritualists’ National Union
Stonewall Scotland
United Free Church of Scotland
United Reformed Church
The Venerable Rewatha (Scotland’s Buddhist Vihara)
Visit Scotland

Copies of the consultation will also be sent to the Scottish Parliament Information Centre and to the 6 Legal Deposit or “copyright” libraries (the British Library; the National Libraries of Scotland and Wales; and the University libraries of Oxford, Cambridge and Trinity College, Dublin).

Scottish Government
December 2012
ANNEX I: QUESTIONNAIRE
RESPONDENT INFORMATION FORM

Please note: this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if applicable)

Title: Mr □ Ms □ Mrs □ Miss □ Dr □

Surname
Forename

2. Contact details

Postcode □ Email □

3. Which country are you resident in? (please select one of the options below)

Scotland □ Rest of the UK □ Rest of the World □

4. Permissions - I am responding as…

Individual / Group/Organisation
Please tick as appropriate □

The Scottish Government generally seeks to publish responses to a consultation, in summary and, where possible, in detail. We would like your permission to publish:

Please tick ONE of the following boxes

Your name along with your response □

or

Just your response (anonymous) □

or

Please do not publish my response at all □

The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on this site).

Are you content for your response to be made available?
Please tick as appropriate □ Yes □ No

Are you content for Scottish Government to contact you again in relation to this consultation?
Please tick as appropriate □ Yes □ No
CONSULTATION QUESTIONS

These consultation questions seek views on the detail of the legislation that will: introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies; and make other changes to marriage law. Further information on the detail of the legislation is available below each question (see ‘more information’) and in the consultation paper.

There is no obligation to answer all of the questions – you may answer as many or as few as you like.

Impact assessments

Question 1  (Paragraphs 1.14 to 1.17 and Annexes J and K).

Do you have any comments on the impact assessments prepared in relation to the proposed legislation?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

General changes to marriage law

Question 2  (Paragraphs 2.02 to 2.04)

Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments
Question 3  (Paragraphs 2.05 to 2.10)

Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 4  (Paragraphs 2.11 to 2.14)

Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 5  (Paragraphs 2.15 to 2.21)

Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorised to solemnise marriage or register civil partnership?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.
Question 6  (Paragraphs 2.28 to 2.31)

Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married but it transpired after one of them died that the marriage was not valid?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Same sex marriage

Question 7  (Paragraphs 3.03 to 3.07 and Annex A)

Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.
**Question 8** (Paragraphs 3.08 to 3.10)

Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

**Your comments**

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**Question 9** (Paragraph 3.11 and Annex B)

Do you have any comments on the proposed approach in relation to freedom of speech?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

**Your comments**

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**Question 10** (Paragraphs 3.12 and 3.13 and Annex C)

Do you have any comments on the proposals in relation to education and same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

**Your comments**
Question 11  (Paragraphs 3.21 to 3.29)

Do you have any comments on the proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 12  (Paragraphs 3.21 to 3.29)

Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses?

If you are, please give details of the legislation and explain why it should not extend in this way. If not, please leave the box blank and go to the next question.

Your comments

Question 13  (Paragraph 3.31 to 3.33)

Do you have any comments on the proposed approach to the law on adultery?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.
Question 14 (Paragraphs 3.35 and 3.36)
Do you have any comments on the proposed approach to the law on permanent and incurable impotency?
If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 15 (Paragraphs 3.41 to 3.47)
Do you have any comments on the proposed approach to the law on bigamy?
If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments
Civil partnership

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<tr>
<th>Question 16 (Paragraph 4.01 to 4.04)</th>
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<tr>
<td>Do you have any comments on the proposed approach to ensuring that religious and belief bodies and celebrants do not have to register civil partnerships?</td>
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<th>Question 17 (Paragraph 4.05 to 4.11)</th>
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<td>Do you have any comments on the proposals for changing civil partnerships to a marriage?</td>
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<th>Your comments</th>
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Transgender people

Question 18 (Paragraphs 5.01 to 5.06 and Annex D).

Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Scottish Government
December 2012
Title of Proposal

The Marriage and Civil Partnership (Scotland) Bill

1. Purpose and intended effect

Objective
To introduce:
♦ Same Sex Marriage;
♦ Religious and belief registration of Civil Partnership;
♦ Provisions to allow transgender people, who are acquiring a new gender, to stay married (at the moment, as we do not recognise same sex marriage they are obliged to divorce before obtaining full recognition in their new gender, even if they wish to stay together);
♦ The formal establishment of belief ceremonies (including humanist) ceremonies as a third way of getting married; and
♦ Other changes to marriage law.

Background
1.1 Currently, the law only allows marriage in Scotland to be between a man and a woman. Same sex couples can enter into a legal union through a Civil Partnership, as introduced in 2005 following the Civil Partnership Act 2004.

Rationale for Government intervention
1.2 Same Sex Marriage cannot be introduced without primary legislation. Government intervention is required to allow access to marriage for all couples regardless of sexual orientation.

2. Consultation

Within Government
2.1 The Equality Unit
   The Scottish Public Pensions Agency
   The National Records of Scotland
   Communities Analytical Services
Public Consultation

2.2 A formal public consultation was open from September 2011 – December 2011. The consultation paper set out 20 questions: 9 relating to civil partnership, 10 relating to the same sex marriage proposals and a final question asking for further views. A total of 77,508 responses were received.

A summary of the consultation was made available on the Scottish Government’s website: http://www.scotland.gov.uk/Publications/2012/07/5671

2.3 A second consultation is running from December 2012 – March 2013 seeking views on the draft Bill and on the protections required in relation to religious bodies and individual celebrants, education and Freedom of Speech. This BRIA forms part of this consultation,

2.4 Face to face meetings have taken place with a number of faith groups and with LGBT organisations.

Business

2.5 LoveScotland
   National Employment Savings Trust (NEST) (UK Pension Scheme)
   BT
   Your Service in Scotland
   The National Association of Pension Funds

3. Options

3.1 Option 1: No action.

3.2 Option 2: Introduce legislation legalising same sex marriage.

Sectors and groups affected

3.3 Pension Providers
   Businesses with employee pension schemes
   Marriage tourism businesses
   National Records of Scotland – required to make amendments to IT systems and administrative processes to register same sex marriages.
   Local authorities – Civil Ceremonies will no longer only be available in approved places.

Benefits

3.4 Option 1 – Benefits
   • Civil Partnerships would still be available for same sex couples.

3.5 Option 1 – Costs
   • Same Sex Marriage would not be available.

3.6 Option 2 – Benefits
   • Provides access to marriage for both same sex and opposite sex couples;
   • Provides religious and belief registration for civil partnerships;
   • Same sex couples would have the option of changing civil partnerships to marriages;
Transgender people, who are acquiring a new gender, will not need to divorce before obtaining full recognition in their new gender.

3.7 Option 2 – Costs

- The overall impact of costs will be minimal. The majority of associated costs were incurred with the introduction of the Civil Partnership Act 2004¹.

- The proposals may lead to more application to the Gender Recognition Panel. This could increase costs incurred by the Panel.

- There will be some costs in relation to reforming IT systems and administrative processes to register same sex couples in certain public bodies, as outlined below.

- It is envisaged that there will be no significant familiarisation costs to council registrars because the proposed process for same sex marriage is the same as the existing process for opposite sex marriage.

- National Records of Scotland: it is thought that £75,000 would be required for the "registration administration and family history" systems. A further £45,000 would be required for the "statistical" systems. These are based on a comprehensive re-write of existing marriage functionality and the underlying data structures. Therefore, these estimates are the upper limits. The cost may well be less, if another approach appeared best following detailed analysis of the different options.

- In addition, the Scottish Government is aware that there are associated costs in relation to UK public bodies and discussions will take place with the UK Government with regards to this. The Scottish Government is also aware of the Equal Civil Marriage consultation² by the UK Government which may require adjustments to some IT systems and administrative processes run by the UK Government.

- At the moment, same sex couples in a civil partnership enjoy nearly all of the same rights and responsibilities as married couples. However, one potential difference is survivor benefits in occupational pensions. The benefit paid to a surviving civil partner can be less than the benefit paid to a widow or widower as it may not be based on the full service given by the deceased surviving partner.

- Pension policy is a reserved matter to the UK Government, although there are some devolved powers of pension policy in terms of certain schemes in Scotland.

- As it currently stands, in an occupational pension scheme, a surviving civil partner is eligible for survivors' benefits (e.g. widow’s pension) based on pensionable service from 5 December 2005 (the introduction date of the civil partnership legislation) in line with the exception in paragraph 18 of Schedule 9 to the Equality Act. This allows schemes to only take into account accruals post 2005, when civil partnerships became available.

² UK Equal Civil Marriage consultation: http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/
With regards to contracted-out occupational pension schemes, rights are currently only backdated to 1988 for Civil Partners. Whereas for opposite sex spouses, only service since 1988 would be counted for male survivors and all service counted for female survivors.

Following interviews as part of this BRIA, it seems that the majority of organisations however make no difference between the definition of ‘spouse’ and ‘civil partnership’ in relation to survivor benefits in a defined benefit scheme. This is expected to remain the same following the legislation for same sex marriage.

The exception at paragraph 18 of schedule 9 to the Equality Act 2010 is a reserved matter for the UK Government.

According to data\(^3\), around a quarter of all marriages taking place in Scotland are between couples who do not reside permanently in Scotland. With the introduction of same sex marriage and religious civil partnership, it is envisaged therefore that there would be a further increase in marriage tourism to Scotland.

Local authorities: repealing the provisions whereby civil ceremonies are only permitted to be conducted in registered places, and hence licensing fees would no longer be charged, would amount to a loss of £150k to £200k in total between the 32 councils. However some of this may be offset by an increase in demand for civil marriage ceremonies.

4 Scottish Firms Impact Test

4.1 To appreciate the impact that the proposed legislation may have on Scottish businesses, we sought to engage with some larger financial institutions; marriage and civil partnership business and a couple of small businesses not involved in the tourism sector. Five interviews were secured in October/November 2012 with the following organisations:

- National Employment Savings Trust (NEST) (UK Employment Pension Scheme)
- BT
- The National Association of Pension Funds (NAPF)
- LoveScotland (civil partnership tourism business)
- Your Service in Scotland

4.2 The interviews with NEST and NAPF were conducted by telephone, the remainder were face to face interviews.

4.3 The legislation would have a marginal impact on the five organisations interviewed. There will be a limited cost in terms of updating IT systems and back office processes. It is not expected that there will be any significant difference in terms of survivor benefits between spouses and civil partners.

## Competition Assessment

4.4 The proposal will not directly limit the number or range of suppliers.

4.5 The proposal will not indirectly limit the number or range of suppliers.

4.6 The proposal will not limit the ability of suppliers to compete.

4.7 The proposal will not reduce suppliers' incentives to compete vigorously.

### Test run of business forms

4.8 There are no new business forms proposed.

4.9 There will be changes to some marriage forms but these will not impact on business.

## 5. Legal Aid Impact Test

5.1 The only area of likely potential significance for legal aid is likely to be in divorces/dissolutions.

5.2 Divorces of marriage and dissolution of Civil Partnerships are dealt with by the courts (nearly always the sheriff). Around 60%\(^4\) are through the simplified procedure and have few legal aid implications. However, the remaining 40%\(^5\) can have legal aid implications. This is not so much because of the divorce. It is because there may be ancillary craves on contact/residence and/or on financial provision on divorce/dissolution.

5.3 The law when a marriage is ended through divorce or a Civil Partnership is dissolved is, in essence, the same. When Civil Partnerships were introduced, the provisions on divorce were used as a template for dissolutions of Civil Partnerships.

5.4 Very broadly, around 1 in 3 marriages in Scotland end in divorce\(^6\). [There are around 30,000 marriages a year; 10,000 divorces; 500 civil partnerships and a very small number of dissolutions of Civil Partnerships. The number of Civil Partnerships dissolving is still very low as the form of relationship is still relatively new].

5.5 There are two potential scenarios following the introduction of same sex marriage:

- Scenario 1: Same sex couples switch from registering Civil Partnerships to marrying. But there is no overall increase in number.
- Scenario 2: More same sex unions (either Civil Partnerships or marriages) are registered in total.

---

\(^4\) Civil Law Statistics in Scotland 2011-12: [http://www.scotland.gov.uk/Publications/2012/12/9263/5#table11](http://www.scotland.gov.uk/Publications/2012/12/9263/5#table11)

\(^5\) Civil Law Statistics in Scotland 2011-12: [http://www.scotland.gov.uk/Publications/2012/12/9263/5#table11](http://www.scotland.gov.uk/Publications/2012/12/9263/5#table11)

5.6 Under scenario 1, it is hard to see any additional legal aid implications. Instead of dissolutions of Civil Partnerships, there would be more divorces.

5.7 Scenario 2 assumes an increase in the number of same sex unions. The UK Government's consultation Impact Assessment: Equal Civil Marriage suggested that research in the USA indicates that "In states allowing marriage, 30% of existing same-sex couples got married; in states introducing civil union, 18% of same-sex couples entered a civil union". That might suggest an increase of 66% in registered same sex relationships.

5.8 Therefore, if we assume:
- 500 CPs a year at the moment.
- In future, 830 same sex registered unions (marriages and Civil Partnerships).
- 1 in 3 end in divorce/dissolution.
- That suggests in future years if we did not introduce same sex marriage, there would around be 177 dissolutions a year. [500 divided by 3]
- In future, by introducing same sex marriage, there could be 277 divorces/dissolutions a year. [830 divided by 3].

5.9 Therefore it is considered unlikely that there would be any significant impact on Legal Aid although there may be a modest impact.

6. Enforcement, sanctions and monitoring

Enforcement

6.1 The draft Bill makes some changes to some of the criminal offences in relation to the solemnisation of marriage and the registration of civil partnerships. It also proposes that bigamy should become a statutory offence in Scotland. It also proposes to give powers to Ministers to make regulations laying down tests for religious and belief bodies to meet.

Sanctions

6.2 There are penalties in relation to being found guilty of a criminal offence.

Monitoring

6.3 Marriage and civil partnership statistics will continue to be regularly collected by the National Records of Scotland.

7. Implementation and delivery plan

7.1 Work will be required by the National Records of Scotland to issue guidance to civil registrars and to update forms. NRS and the Scottish Government will also work together on regulations to designate religious and belief bodies whose celebrants wish to solemnise marriage.

7.2 It is envisaged that Same Sex Marriages will be available around a year after Royal Assent is granted to the Bill.

Post-implementation review

7.3 There will continue to be regular reviews of marriage and civil partnership statistics, as collated by the National Records of Scotland.\(^7\)

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8. Summary and recommendation

8.1 As a result of the assessment Option 2 is recommended – to introduce The Marriage and Civil Partnership (Scotland) Bill.

- Summary costs and benefits table

<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Provides access to marriage for both same sex and opposite sex couples; Provides religious and belief registration for civil partnerships; Same sex couples would have the option of changing civil partnerships to marriages; and Married transgender people, who are acquiring a new gender, will not need to divorce before obtaining full recognition in their new gender.</td>
<td>Costs are minimal as costs already incurred with introduction of Civil Partnership Act 2004; Some minimal costs in relation to reforming IT systems and administrative processes; Some cost for local councils in repealing provisions that civil partnerships can only take place in approved places. Offset by a predicted increase in demand for civil marriage ceremonies; Minimal cost in relation to survivor benefits in pension schemes.</td>
</tr>
</tbody>
</table>

- Summary organisational costs for Option 2

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Councils</td>
<td>Following repeal of provisions that civil ceremonies can only take place in approved places.</td>
<td>£150,000 - £200,000 (in total for all 32 local councils)</td>
</tr>
<tr>
<td>National Records of Scotland</td>
<td>To reform the ‘registration administration and family history’ system.</td>
<td>£75,000 (upper estimate)</td>
</tr>
<tr>
<td>National Records of Scotland</td>
<td>To reform the ‘statistical’ systems</td>
<td>£45,000 (upper estimate)</td>
</tr>
<tr>
<td>Scottish Legal Aid Board</td>
<td>Legal aid</td>
<td>Modest impact</td>
</tr>
<tr>
<td>HM Revenue and Customs</td>
<td>To reform IT Systems and update guidance.</td>
<td>In discussion with UK Government</td>
</tr>
<tr>
<td>HM Revenue and Customs</td>
<td>To reform IT Systems and update guidance.</td>
<td>In discussion with UK Government</td>
</tr>
<tr>
<td>HM Courts and Tribunal Service⁹</td>
<td>Operational changes required for Gender Recognition Panel database</td>
<td>In discussion with UK Government</td>
</tr>
</tbody>
</table>

⁹ The GRP is part of HM Courts & Tribunals.
## Declaration and publication
Include the relevant Ministerial declaration*

Signed:

Date:

Minister’s name, title etc*

Scottish Government Contact point:

THIS WILL BE COMPLETED AFTER THIS CONSULTATION AND VIEWS HAVE BEEN OBTAINED FROM CONSULTEES
ANNEX K

EQUALITY IMPACT ASSESSMENT RECORD

<table>
<thead>
<tr>
<th>Title of policy/practice/strategy/legislation etc</th>
<th>The Marriage and Civil Partnership (Scotland) Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>Cabinet Secretary for Health and Wellbeing</td>
</tr>
<tr>
<td>Lead official</td>
<td>Simon Stockwell, Family Law Team</td>
</tr>
<tr>
<td>Officials involved in the EQIA</td>
<td>name</td>
</tr>
<tr>
<td></td>
<td>team</td>
</tr>
<tr>
<td></td>
<td>Julia McCombie</td>
</tr>
<tr>
<td></td>
<td>Gender and LGBT Equality and Violence Against Women team.</td>
</tr>
<tr>
<td>Directorate: Division: team</td>
<td>The Equality Unit</td>
</tr>
<tr>
<td>Is this new or revision to an existing policy?</td>
<td>New Policy</td>
</tr>
</tbody>
</table>

Screening

Policy Aim

1. To introduce:
   - same sex marriage;
   - religious and belief registration of civil partnership;
   - to allow transgender/transsexual people who are changing gender to stay married; and
   - the formal establishment of belief ceremonies as a third way of getting married (alongside religious and civil ceremonies).

2. Same sex couples as the law stands can enter into a legal union through a Civil Partnership, as introduced in 2005 following the Civil Partnership Act 2004. The Act establishes civil partnerships in the United Kingdom with responsibilities and rights which are very similar to marriage.

3. Currently same sex marriage and the religious registration of civil partnership is not available.
4. Same Sex Marriage cannot be introduced without primary legislation. Government intervention is required to allow access to marriage for all couples regardless of sexual orientation.

5. The legislation will contribute to the Scottish Government’s National Outcomes - Wealthier and Fairer.

Who will it affect?

6. The policy will affect lesbian, gay, bisexual and transgender/transsexual people, religious and belief celebrants and perhaps civil registrars.

7. We undertook two consultations. The first consultation on the principle of same sex marriage was carried out between 2 September and 9 December 2011. The second consultation, focussing on the detail of the draft Bill and protections in relation to religious bodies and celebrants, freedom of speech and education, is taking place between December 2012 and March 2012. This EQIA forms part of this consultation.

8. We have also met face to face with a wide variety of interested bodies and stakeholders, both during and after the consultation period. This engagement included roadshows and key stakeholder events as well as regular individual meetings with interested bodies.

Groups of people affected positively

Sexual orientation

9. We propose to allow a person to marry another person of the same sex. Currently a same sex couple would only be able to register a Civil Partnership.

Gender reassignment

10. We propose that a couple which includes a transgender/transsexual person will no longer be required to divorce for the person to receive legal recognition in his or her acquired gender, so long as the couple both wish to stay in the marriage. We also propose that a transgender/transsexual person in a civil partnership should be able to change that civil partnership into a marriage, if the couple wish to stay in a legally recognised relationship.

Religion and belief

11. We propose to allow a religious celebrant (or a “belief” celebrant such as a humanist) to solemnise an opposite sex or same sex marriage or to register a Civil Partnership. This would mean that a couple would be able to be married by either a civil registrar or by a religious or “belief” celebrant. A same sex couple could have their Civil Partnership
registered either by a civil registrar, by a religious celebrant or by a “belief”
celebrant.

12. This proposal will also mean that a religious or “belief” celebrant is able to
marry a couple, including a same sex couple where that is in line with his
or her religion or belief. Similarly, religious celebrants or “belief”
celebrants will be able to register same sex couples who wish to enter into
a civil partnership.

Groups of people affected negatively

Religion and belief

13. There may be an effect on people who believe that marriage should not be
available to same sex couples.

14. There may be an effect on religious and “belief” celebrants who do not
wish to solemnise a same sex marriage or register a Civil Partnership.

15. However the Bill will not be introduced or enforced without appropriate
protections for such religious and “belief” celebrants who do not wish to
carry out such ceremonies.

16. A number of religious bodies have signalled that they wish to be able to
carry out same sex marriage and religious Civil Partnerships.

What might prevent the desired outcomes being achieved?

17. There is no evidence to suggest there are issues which will prevent the
desired outcomes being achieved.

Stage 1: Framing

Results of framing exercise

18. We have held a number of meetings with colleagues in equality,
education, care and justice, analytical services and the National Records
of Scotland.

Extent/Level of EQIA required

19. Following the framing exercises, we believed the extent of the EQIA
required was high, given the significant impact on the protected
characteristics of religion and belief, sexual orientation and gender
reassignment. This “high” rating is reflected in provisions in the Bill to
protect religious bodies and celebrants.
Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Note: Weblinks to sources of information are included at the end of this EQIA.

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Evidence gathered and Strength/quality of evidence</th>
<th>Source</th>
<th>Gaps identified and action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE</td>
<td>• In 2011, the majority of people who entered into a Civil Partnership were between the ages of 35 and 44.¹</td>
<td>National Records of Scotland - 2011 Marriage and Civil Partnership Statistics</td>
<td>No gaps identified.</td>
</tr>
<tr>
<td></td>
<td>• Evidence suggests that older people (35 yrs +) are more likely (although declining) to be opposed to same sex marriage than the younger generation (18 – 34 yrs)²</td>
<td>Scottish Social Attitudes Survey 2010</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Research that directly compared outcomes for children with gay and lesbian parents with outcomes for children with heterosexual parents found no reliable disparities in mental health or social adjustment.</td>
<td>Mountney K (2011). <em>Together and apart: supporting families through change.</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Good Childhood Report 2012: A review of our children’s well-</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DISABILITY</th>
<th>No Evidence</th>
<th>n/a</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEX</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>From 2005-2011, 1860 civil partnerships were between men and 2001 were between women. The data suggests that in the long term, more women than men will wish to register as civil partners - there is no evidence on why this is the case.</td>
<td>National Records of Scotland – 2011 Marriage and Civil Partnership Statistics</td>
<td>No gaps identified.</td>
</tr>
<tr>
<td></td>
<td>Gender differences exist in relation to sexual orientation and gender reassignment attitudes.</td>
<td>Scottish Social Attitudes Survey</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Evidence shows that men are a little more likely than women to be unhappy with the idea of a close relative forming a</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


relationship with someone of the same sex as themselves (52% of men compared with 45% of women), or with someone who has had a sex change operation (35% of men compared with 29% of women).³

- Men (34%) are more likely than women (21%) to believe that same sex relationships are always/mostly wrong.⁴

| GENDER REASSIGNMENT | Out of 523 full Gender Recognition Certificates (GRC) granted in the UK in financial years 2010/11 and 2011/12⁵, it is estimated around 52 were resident in Scotland. This is based on a 10% estimate for Scotland. Incidence, in 2010, was estimated to be 12,500 people aged over 15 in UK presenting for treatment of gender dysphoria, representing a growth trend from 1998 of 11%.⁶ - Of those in the UK who have presented for treatment, 7,500 had undergone transition by 2010.⁷ It is estimated, again based on 10%, that around 750 people will reside in Scotland. Gender Recognition Panel Statistics 2009 – 2012 (MoJ) Gender Identity Research and Education Society 2011. No gaps identified. |
| SEENUAL ORIENTATION | In 2011, 554 same sex couples registered a Civil Partnership. National Records of Scotland – 2011 Marriage and Civil Partnership No gaps identified. |

³ [http://www.scotland.gov.uk/Publications/2011/08/11112523/5](http://www.scotland.gov.uk/Publications/2011/08/11112523/5)
• We have heard some anecdotal evidence of discrimination experienced by couples in a Civil Partnerships e.g. staff in large institutions not understanding what a Civil Partnership is.

<table>
<thead>
<tr>
<th>RACE</th>
<th>RELIGION OR BELIEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Evidence</td>
<td>In 2011, there were the following number of marriages registered by:</td>
</tr>
<tr>
<td>n/a</td>
<td>o Civil Registrar – 15,092</td>
</tr>
<tr>
<td>n/a</td>
<td>o Religious ceremony – 14,043</td>
</tr>
<tr>
<td>n/a</td>
<td>o Humanist Society of Scotland – 2,486</td>
</tr>
<tr>
<td>n/a</td>
<td>In 2001 (from the most up-to-date census) 3,389,500 (66.96%) people were registered in Scotland as having a religion.8</td>
</tr>
<tr>
<td>n/a</td>
<td>A number of consultation responses to the last consultation suggested the introduction of same sex marriage could undermine marriage.9</td>
</tr>
</tbody>
</table>

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?


9 [http://www.scotland.gov.uk/Publications/2012/07/5671](http://www.scotland.gov.uk/Publications/2012/07/5671)
<table>
<thead>
<tr>
<th>Age</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td>√</td>
<td></td>
<td></td>
<td>√ There is currently no unlawful discrimination, harassment and victimisation. All people over the age of 16 can enter into an opposite sex marriage or a same sex Civil Partnership.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>√</td>
<td></td>
<td></td>
<td>√ Same sex marriage and religious and belief registration of a Civil Partnership will be open to someone aged 16 or over.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Some people expressed concern on the impact of children being brought up by a same sex couple.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The Scottish Government believes it is best for children to be brought up by two loving parents, where this is practicable and where it is safe to do so. Most children now in Scotland are born outside marriage but around 95% of births are jointly registered by both parents.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>We do not wish to stigmatise children brought up outwith opposite sex marriage or by single parents or by other means (eg by carers).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The key issue is that the child should have the best possible start in life and the welfare and wellbeing of the child should be paramount. What matters most, research shows, is not a set family structure. Rather, it’s responsible, committed and stable parenting by people who care about the child.</td>
</tr>
<tr>
<td>Promoting good</td>
<td>√</td>
<td></td>
<td></td>
<td>Evidence in the Scottish Social</td>
</tr>
</tbody>
</table>

relations among and between different age groups | Attitudes Survey 2010 suggests that older people are more likely to be opposed to same sex marriage than younger people.

---

### Do you think that the policy impacts disabled people?

<table>
<thead>
<tr>
<th>Disability</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td></td>
<td>√</td>
<td></td>
<td>There is currently no unlawful discrimination, harassment and victimisation. No person is currently treated less favourably because of a disability.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>√</td>
<td></td>
<td>No evidence either way</td>
</tr>
<tr>
<td>Promoting good relations among and between disabled and able bodied people</td>
<td></td>
<td>√</td>
<td></td>
<td>No evidence either way</td>
</tr>
</tbody>
</table>

### Do you think that the policy impacts on men and women in different ways?

<table>
<thead>
<tr>
<th>Gender</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td></td>
<td>√</td>
<td></td>
<td>There is currently no unlawful discrimination, harassment and victimisation. Both men and women can enter into an opposite sex marriage and same sex couples into a civil partnership.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>√</td>
<td></td>
<td>Evidence from the National Records of Scotland – 2011 Marriage and Civil Partnership Statistics suggests that over time more women are entering into Civil Partnership. It is uncertain why this is the case and what would happen once same sex marriage is introduced.</td>
</tr>
<tr>
<td>Promoting good relations between men and women</td>
<td></td>
<td>√</td>
<td></td>
<td>No evidence to suggest either way.</td>
</tr>
</tbody>
</table>
Do you think your policy impacts on transsexual (transgender) people?

<table>
<thead>
<tr>
<th>Gender reassignment</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td></td>
<td>√</td>
<td>Transgender/transsexual people are able to marry and enter into a Civil Partnership.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>√</td>
<td></td>
<td></td>
<td>The evidence suggests there will be a significant increase in equality opportunity.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Under the Gender Recognition Act 2004, a person may apply to the Gender Recognition Panel for a full gender recognition certificate that has the effect of providing legal recognition in the acquired gender.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>If the person is in a marriage or a civil partnership, he or she must currently divorce or dissolve the partnership before receiving a full gender recognition certificate.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>This is because under the current law, marriage is only open to opposite sex couples and civil partnership is only open to same sex couples.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Our proposals change the law so that a person will no longer have to choose between remaining in his or her legal relationship and being recognised in his or her acquired gender.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Where the person is married, we propose to allow the couple to remain married should they both consent.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>And where the person is in a civil partnership, we propose to allow the couple to choose to change their civil partnership into a marriage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>This would end the unfavourable treatment of a person who:</td>
</tr>
</tbody>
</table>
|                                      |          |          |      | a) wishes to be recognised in his
or her acquired gender and; b) is married or in a civil partnership.

Promoting good relations

The proposed policy has raised awareness of issues faced by transsexual (transgender) people.

Do you think that the policy impacts on people because if they are lesbian, gay or bisexual?

<table>
<thead>
<tr>
<th>Sexual orientation</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td></td>
<td>√</td>
<td>There is no legal obligation in Scotland or the UK to provide same sex marriage or religious or belief registration of Civil Partnership.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Under the current law, a same sex couple may register a Civil Partnership.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The responsibilities and rights that flow from Civil Partnership largely mirror those that flow from marriage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The whole process is civil, meaning that the registration cannot take place in religious premises. Nor can a religious celebrant register the partnership or take part in any ceremony at the time of registration.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>However, the couple may choose to have a religious blessing or a belief recognition of their partnership. Any such ceremony has no legal significance.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>√</td>
<td></td>
<td></td>
<td>We propose to open marriage and religious registration of Civil Partnership to same sex couples. This will advance equality of opportunity for lesbian, gay and bi-sexual people, putting a same sex couple in the same position as an opposite sex couple.</td>
</tr>
</tbody>
</table>
A same sex couple would be able to:

a) get married by either a civil registrar or a religious or belief celebrant;
b) register their civil partnership, again by either a civil registrar or a religious or belief celebrant.

Promoting good relations

Some lesbian, gay and bi-sexual people would wish to be able to have their marriage solemnised or their Civil Partnership registered by a religious or belief celebrant.

Some religious and belief celebrants would wish to carry out these ceremonies.

The consultation paper outlines proposed protections so that religious bodies and celebrants do not have to take part in the ceremonies.

Do you think the policy impacts on people on the grounds of their race?

<table>
<thead>
<tr>
<th>Race</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td>√</td>
<td></td>
<td>No person is currently treated less favourably in this area because of their race.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>√</td>
<td></td>
<td>No evidence either way.</td>
</tr>
<tr>
<td>Promoting good race relations</td>
<td></td>
<td>√</td>
<td></td>
<td>No evidence either way.</td>
</tr>
</tbody>
</table>

Do you think the policy impacts on people because of their religion or belief?

<table>
<thead>
<tr>
<th>Religion and Belief</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td></td>
<td>√</td>
<td>There is currently no unlawful discrimination, harassment and victimisation in relation to marriage and civil partnership.</td>
</tr>
<tr>
<td>Advancing equality of</td>
<td>√</td>
<td></td>
<td></td>
<td>Some religious and belief bodies have expressed their</td>
</tr>
<tr>
<td>opportunity</td>
<td></td>
<td>wish to be able to solemnise same sex marriages or register Civil Partnerships. Some people of faith or belief would wish to be able to have their marriage solemnised or their Civil Partnership registered by a religious or belief celebrant.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good relations</td>
<td>√</td>
<td>Some religious and belief celebrants wish to be able to solemnise same sex marriages or register Civil Partnerships and some people of faith or belief would wish to be able to have their marriage solemnised or their Civil Partnership registered by a religious or belief celebrant. A number of religious bodies, religious celebrants and lay people have raised concerns about same sex marriage. The consultation paper outlines the proposed protections so that religious bodies and celebrants do not have to take part in the ceremonies. The draft Bill also contains a provision making it clear that existing rights to freedom of speech are unaffected by the introduction of same sex marriage. The consultation outlines the Government's approach generally on freedom of speech, education and celebrants and seeks views. The Government has made it clear that it has no intention of making changes to denominational education.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

<table>
<thead>
<tr>
<th>Have positive or negative impacts been identified for any of the equality groups?</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual Orientation</td>
<td>Gender Reassignment</td>
</tr>
<tr>
<td>Religion or Belief</td>
<td></td>
</tr>
</tbody>
</table>

| Is the policy directly or indirectly discriminatory under the Equality Act 2010? | No |

| If the policy is indirectly discriminatory, how is it justified under the relevant legislation? | N/A |

| If not justified, what mitigating action will be undertaken? | N/A |

Describing how Equality Impact analysis has shaped the policy making process

20. The policy aims to mitigate identified negative impacts.

21. The policy will therefore include a number of protections:

- Religious and belief bodies who wish to solemnise same sex marriage or register Civil Partnerships will have to opt in to do so.
- There is no obligation to opt in.
- Religious and belief celebrants will only be able to solemnise same sex marriage or register Civil Partnership if their body has decided to opt in.
- If a religious or belief body decides to opt in, there will be no obligation on individual celebrants to solemnise same sex marriage or register Civil Partnerships.
- The Scottish Government has asked the UK Government to amend the Equality Act 2010 to provide further protection for such individual religious and belief celebrants.
- The draft Bill has a provision making it clear that the introduction of same sex marriage does not affect existing rights under the European Convention of Human Rights and elsewhere to freedom of thought, conscience, religion and expression.
- The Government has no plans to change denominational education.
Monitoring and Review

22. The Scottish Government will continue to regularly collect data from the National Records of Scotland in relation to marriage and Civil Partnership statistics. This will be broadened to include same sex marriage, religious Civil Partnerships and belief ceremony statistics.

23. The Scottish Government will continue to also meet with the National Records of Scotland and key external stakeholders, both during and after implementation of the legislation, to monitor its progress and, if necessary, to identify any areas requiring additional work.

Stage 5 - Authorisation of EQIA

Please confirm that:

♦ This Equality Impact Assessment has informed the development of this policy:
   Yes √ No

♦ Opportunities to promote equality in respect of age, disability, gender, gender identity/transgender, sexual orientation, race and religion and belief have been considered, i.e:
   o Eliminating unlawful discrimination, harassment, victimisation;
   o Removing or minimising any barriers and/or disadvantages;
   o Taking steps which assist with promoting equality and meeting people’s different needs;
   o Encouraging participation (e.g. in public life)
   o Fostering good relations, tackling prejudice and promoting understanding.

   Yes √ No

Declaration

I am satisfied with the equality impact assessment that has been undertaken for The Marriage and Civil Partnership (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government’s website.

Name: TO BE COMPLETED AFTER THIS CONSULTATION.
Position:
Authorisation date:
Annex L

Marriage and Civil Partnership (Scotland) Bill
[CONSULTATION DRAFT]

CONTENTS

Section

PART 1
MARRIAGE

CHAPTER 1
SAME SEX MARRIAGE

1 Marriage of related persons
2 Objections to marriage
3 Preliminaries to marriage
4 Meaning of marriage and related expressions in enactments and documents
5 Same sex marriage: further provision

CHAPTER 2
MARRIAGE BETWEEN CIVIL PARTNERS IN QUALIFYING CIVIL PARTNERSHIPS

6 Marriage between civil partners in qualifying civil partnerships
7 Effect of marriage between civil partners in a qualifying civil partnership

CHAPTER 3
SOLEMNISATION OF MARRIAGE

8 Persons who may solemnise marriage
9 Registration of nominated persons as celebrants
10 Temporary authorisation of celebrants
11 Belief marriage: further provision

CHAPTER 4
SAME SEX MARRIAGE: PROTECTION OF FREEDOM OF EXPRESSION ETC.

12 Same sex marriage: protection of freedom of expression etc.

CHAPTER 5
OTHER CHANGES TO MARRIAGE PROCEDURE

13 Power of district registrar to require evidence of nationality: marriage
14 Marriage outside Scotland: evidence of dissolution of former civil partnership
15 Religious marriages: solemnisation by Church of Scotland deacons
16 Places at which civil marriages may be solemnised
17 Second marriage ceremony: form of endorsement
18 Marriage by cohabitation with habit and repute
PART 2
CIVIL PARTNERSHIP

19 Registration of civil partnership
20 Power of district registrar to require evidence of nationality: civil partnership
21 Recognition of overseas relationships
22 Dissolution of civil partnership: evidence

PART 3
REGISTRATION SERVICES

23 Provision of certain information to district registrars

PART 4
GENERAL PROVISIONS

24 Interpretation
25 Ancillary provision
26 Commencement
27 Short title

Schedule—Marriage between civil partners in a qualifying civil partnership: modifications of the Family Law (Scotland) Act 1985
An Act of the Scottish Parliament to make provision for the marriage of persons of the same sex; to make further provision as to the persons who may solemnise marriage and as to marriage procedure and the places at which civil marriages may be solemnised; to make provision for the registration of civil partnerships by celebrants of religious and belief bodies; to make provision about the provision of certain information to district registrars; and for connected purposes.

PART 1
MARRIAGE
CHAPTER 1
SAME SEX MARRIAGE

1 Marriage of related persons

(1) The Marriage (Scotland) Act 1977 (c.15) (“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

(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
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;”, and

(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 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,

(b) a person who is married to another person, and

(c) two people who are 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 as the case may be the parties, to such a marriage.

(2) Subsection (1) applies to enactments passed or made before the commencement of this section.

(3) Subsection (1) does not apply in so far as the enactment, or any other enactment, provides otherwise.

(4) In so far as being married is relevant for the operation of any rule of law, the rule of law applies equally in relation to marriage to a person of a different sex and marriage to a person of the same sex.

(5) References (however expressed) in any document to—

(a) marriage,
(b) a person who is married to another person, and
(c) two people who are 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 as the case may be the parties, to such a marriage.

(6) Subsection (5) applies to documents executed on or after the commencement of this section.

(7) Subsection (5) does not apply in so far as the document provides otherwise.

(8) In section 26(2) of the 1977 Act (interpretation), after the definition of “belief marriage” (inserted by section 8(4)(a) of this Act) insert—

““marriage” means marriage between persons of different sexes and marriage between persons of the same sex;”.

(9) In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (definitions of words and expressions), after the definition of “local authority” insert—

““marriage” means marriage between persons of different sexes and marriage between persons of the same sex (and any reference to a person being married to another person, or to two people being married to each other, is to be read accordingly),”.

5 Same sex marriage: further provision

(1) In section 24 of the 1977 Act (offences), before subsection (1) insert—

“(A1) A person (“A”) who enters into a marriage with another person (“B”) knowing that either or both—
(a) A is already married to or in a civil partnership with a person other than B, or
(b) B is already married to or in a civil partnership with a person other than A,
is guilty of an offence and liable to the penalties set out in subsection (1)(i) and (ii).”.

(2) The common law offence of bigamy is abolished.

(3) Any rule of law under which a wife who receives or conceals goods stolen by her husband is, in certain circumstances, not guilty of reset does not apply to a party to a marriage between two women.

(4) 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.

(5) In section 1 of the Divorce (Scotland) Act 1976 (c.39) (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.”.
CHAPTER 2

MARRIAGE BETWEEN CIVIL PARTNERS IN QUALIFYING CIVIL PARTNERSHIPS

6 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), 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”, 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 (c.33) (“the 2004 Act”) 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.”.

7 Effect of marriage between civil partners in a qualifying civil partnership

(1) When civil partners in a qualifying civil partnership (within the meaning of section 5(6) of the 1977 Act) marry in accordance with that Act—

(a) the qualifying civil partnership is dissolved on the date on which the marriage was solemnised, 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.

(2) For the purposes of subsection (1)(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.
(3) If a decree of aliment under section 3 of the Family Law (Scotland) Act 1985 (c.37) (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 is dissolved by virtue of subsection (1)(a) of this section, the decree continues to have effect despite the dissolution of the civil partnership.

(4) 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 is dissolved by virtue of subsection (1)(a) of this section—

(a) section 105(2)(a) of the 2004 Act does not apply to the order, and

(b) 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 (c.59) (regulation by court of rights of occupancy of matrimonial home).

(5) The schedule, which makes consequential modifications of the Family Law (Scotland) Act 1985, has effect.

CHAPTER 3

SOLEMNISATION OF MARRIAGE

8 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), after “marriage” insert “between persons of different sexes”,

(iii) after paragraph (a)(ii) insert—

“(iia) a celebrant of a belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a belief body so prescribed as entitled to solemnise marriage between persons of different sexes on its behalf; or”,

(iv) in paragraph (a)(iii), after “Act” insert “to solemnise marriage between persons of different sexes”, and

(v) in paragraph (a)(iv), after “Act” insert “to solemnise marriage between persons of different sexes”,

(b) after subsection (1) insert—

“(1A) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(ii) or (iia) 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, or priest of a religious body prescribed by regulations made by the Scottish Ministers, or who, not being one of the foregoing, is recognised by a religious body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;

(ii) a celebrant of a belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;

(iii) registered under section 9 to solemnise marriage between persons of the same sex; or

(iv) 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) or (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.

(1D) For the avoidance of doubt, nothing in subsection (1B) 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 subsection (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.

(1G) A statutory instrument containing regulations made under subsection (1)(a)(ii) or (iia), (1B)(a)(i) or (ii) or (1E) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”; and

(c) in subsection (2)—

(i) in paragraph (a)—

(A) after “(1)(a)” insert “or (1B)(a)”, and
(B) the words from “and a” to the end are repealed,

(ii) after paragraph (a), insert—

“(aa) a marriage solemnised by an approved celebrant is referred to as a “religious marriage” where the approved celebrant—

(i) falls within paragraph (a)(i) or (ii) of subsection (1) or paragraph (a)(i) of subsection (1B);

(ii) falls within paragraph (a)(iii) of subsection (1) or paragraph (a)(iii) of subsection (1B) by virtue of a nomination under section 9(1) or (1A); or

(iii) falls within paragraph (a)(iv) of subsection (1) or paragraph (a)(iv) of subsection (1B) where the temporary authorisation under section 12 is as a member of a religious body;

(ab) a marriage solemnised by an approved celebrant is referred to as a “belief marriage” where the approved celebrant—

(i) falls within paragraph (a)(iiia) of subsection (1) or paragraph (a)(ii) of subsection (1B);

(ii) falls within paragraph (a)(iii) of subsection (1) or paragraph (a)(iii) of subsection (1B) by virtue of a nomination under section 9(1B) or (1C); or

(iii) falls within paragraph (a)(iv) of subsection (1) or paragraph (a)(iv) of subsection (1B) where the temporary authorisation under section 12 is as a member of a belief body;”, and

(iii) 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), for “or (ii)” substitute “, (ii) or (iiia) or (1B)(a)(i) or (ii)”, and

(b) in paragraph (b), after “or (iv)” insert “or (1B)(a)(iii) or (iv)”.

(4) In section 26(2) (interpretation)—

(a) after the definition of “authorised registrar” insert—

““belief body” means an organised group of people, not being a religious body, the principal object (or one of the principal objects) of which is to uphold or promote philosophical or humanitarian beliefs and which meets regularly for that purpose;

“belief marriage” has the meaning given by section 8(2)(ab);”, and

(b) after the definition of “religious body” insert—

““religious marriage” has the meaning given by section 8(2)(aa);”.

9 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), after “marriages” insert “between persons of different sexes”,

(b) after subsection (1) insert—
“(1A) A religious 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.

(1B) A belief body, not being prescribed by virtue of section 8(1)(a)(iiia), 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 different sexes.

(1C) A belief body, not being prescribed by virtue of section 8(1B)(a)(ii), 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 “, (1A), (1B) or (1C),”;

(ii) in paragraph (a), after “religious body” insert “or, as the case may be, a 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

(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) A statutory instrument containing regulations made under subsection (2A) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”,

(f) in subsection (3)—

(i) after “ceremony” insert “for marriage between persons of different sexes”, and

(ii) 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 “, (1A), (1B) or (1C)”,
   (ii) in paragraph (b), after “area” insert “or place”,

(i) in subsection (5)(a), after “(1)” insert “, (1A), (1B) or (1C)”,

(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—
   (i) persons nominated by religious bodies to solemnise marriages between persons of different sexes; and
   (ii) persons nominated by belief bodies to solemnise such marriages,

(b) the second part containing those details in relation to—
   (i) persons nominated by religious bodies to solemnise marriages between persons of the same sex; and
   (ii) persons nominated by belief bodies to solemnise such marriages.”,

(k) in subsection (6), after “religious body” in each place where it appears insert “or, as the case may be, a belief body”, and

(l) the italic cross-heading preceding section 9 becomes “Religious and 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 “, (1A), (1B) or (1C)”, 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 “, (1A), (1B) or (1C)”.

(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”.

10 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”,
   (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 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, as the case may be, (ii); or
           (b) has nominated members (whether or not including that person) under section 9(1A) or, as the case may be, (1C) 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) A statutory instrument containing regulations made under subsection (1D) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(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;”.

11 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), after “religious marriage” insert “or, as the case may be, a belief marriage”.

(3) In section 11 (alterations to register)—
   (a) at the beginning of paragraph (a) insert “where the body is a religious body,”,
(b) after that paragraph insert—

“(aa) where the body is a belief body, any change in the name or the address of the body or any amalgamation with any other belief body, giving the name and address of any approved celebrant who is a member of the body so registered;”.

(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), after “religious” insert “or belief”.

(6) In the title of section 15 (registration of religious marriages), at the end insert “and belief marriages”.

(7) In section 15(3) (entry in register of marriage on receipt of Marriage Schedule), after “religious marriage” insert “or a belief marriage”.

CHAPTER 4
SAME SEX MARRIAGE: PROTECTION OF FREEDOM OF EXPRESSION ETC.

12 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 (c.42).

CHAPTER 5
OTHER CHANGES TO MARRIAGE PROCEDURE

13 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 given may require the person giving 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 giving 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)”.
14 **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),”.

15 **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”.

16 **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) if the approval of the Registrar General is obtained, 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 which is 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; and

(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.
Section 18A (approved places) is repealed.

In section 19 (marriage ceremony and registration of marriage)—

(a) in subsection (4)(a)—

(i) for 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) paragraph (iii) is repealed, and

(iii) in paragraph (iv), for the words “in or on an approved vessel” substitute “at an appropriate place”,

(b) in subsection (4)(b), for “approved place” substitute “appropriate place (within the meaning given by section 18)”, and

(c) subsection (5) is repealed.

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”.

17 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.

18 Marriage by cohabitation with habit and repute

In section 3 of the Family Law (Scotland) Act 2006 (asp 2) (abolition of marriage by cohabitation with habit and repute), subsections (3) and (4) (saving for certain purported marriages entered into outwith the United Kingdom) are repealed.

PART 2

CIVIL PARTNERSHIP

19 Registration of civil partnership

(1) The Civil Partnership Act 2004 (c.33) (“the 2004 Act”) is amended as follows.

(2) In section 85 (formation of civil partnership by registration)—

(a) in subsection (1), for paragraph (c) and the words following it substitute—

“(c) the approved celebrant or, as the case may be, the authorised registrar.”,

and

(b) in subsection (4)(b), at the beginning insert “the approved celebrant or, as the case may be.”.

(3) In section 86 (eligibility)—

(a) for subsection (2) substitute—

“(2) Subject to subsection (3), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 10.”,
(b) in subsection (3), for the words from the beginning to “related” in the third place where it appears substitute “A person who is related to another person in a degree specified in paragraph 2 of Schedule 10 (relationships by affinity”) is not related to that person”,

(c) after subsection (3) insert—

“(3A) For the purposes of paragraph 2 of Schedule 10, “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

(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 (5)—

(i) after “in” insert “subsection (3A)(a) as it applies to”, and

(ii) the word “former” in each place where it appears is repealed, and

(e) in subsection (5A)—

(i) for “mother” substitute “parent”, and

(ii) the words “in either column” are repealed.

(4) In section 87 (appointment of authorised registrars), before “registration” in the first place where it appears insert “civil”.

(5) In section 88 (notice of proposed civil partnership), after subsection (6) insert—

“(7) In this section, “the district registrar” means—

(a) where the civil partnership is to be registered in a registration district, the district registrar for that district,

(b) where the civil partnership is to be registered in Scottish waters—

(i) in the case where the civil partnership is to be registered by an approved celebrant, the district registrar for any registration district,

(ii) in the case where the civil partnership is to be registered by an authorised registrar, the district registrar for the registration district of the proposed authorised registrar.”.

(6) In section 89 (civil partnership notice book), after subsection (2) insert—

“(3) In this section and sections 90, 91, 92 and 94, “the district registrar” means—

(a) where the civil partnership is to be registered in a registration district, the district registrar for that district,

(b) where the civil partnership is to be registered in Scottish waters—

(i) in the case where the civil partnership is to be registered by an approved celebrant, the district registrar to whom the civil partnership notices were submitted,

(ii) in the case where the civil partnership is to be registered by an authorised registrar, the district registrar for the registration district of the proposed authorised registrar.”.

(7) In section 90(3) (publicisation), for “91” substitute “91(1)”.
(8) In section 91 (early registration)—
(a) the existing text becomes subsection (1),
(b) in that subsection, for “An authorised” substitute “A district”, and
(c) after that subsection insert—
“(2) For the purposes of subsection (1), a request which is made by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.

(9) In section 92 (objections to registration)—
(a) in subsection (3), for “at which a notice of proposed civil partnership to which the objection would relate” substitute “of the district registrar”,
(b) in subsection (4)(b)—
(i) the word “and” following sub-paragraph (i) is repealed, and
(ii) after sub-paragraph (ii) insert “, and
(iii) where, in the case of a civil partnership to be registered by an approved celebrant, the civil partnership schedule has already been issued to the parties, if possible notify that celebrant of the objection and advise the celebrant not to register the civil partnership pending consideration of the objection.”, and
(c) in subsection (5)(a), for the words “not to register the intended civil partners and to notify them” substitute “to take all reasonable steps to ensure that the registration of the civil partnership does not take place and must notify, or direct the district registrar to notify, the intended civil partners”.

(10) In section 93 (place of registration)—
(a) in subsection (1)—
(i) after “registered” insert “by an authorised registrar”, and
(ii) for the words from “other” in the first place where it appears to the end substitute “other—
(a) at the registration office of the authorised registrars,
(b) at an appropriate place in the registration district of the authorised registrars, or
(c) if the approval of the Registrar General is obtained, 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.”,
(b) after that subsection, insert—
“(1A) In this section—
“appropriate place” means a place which—
(a) the parties to the intended civil partnership and the local registration authority agree is to be the place of registration, 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 which is 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, and

(b) have been so used and have not subsequently been used solely or mainly for other purposes.”,

(c) subsections (2) and (3) are repealed, and

(d) the title of section 93 becomes “Place of civil registration of civil partnerships”.

(11) After section 93 insert—

“93A Date and place of religious or belief registration of civil partnerships

(1) A religious or belief civil partnership may be registered only on the date and at the place specified in the civil partnership schedule.

(2) But if, for any reason, the civil partnership cannot be registered on that date or at that place and a new date or place is fixed for the registration, the district registrar must—

(a) issue another civil partnership schedule under section 94(2) in place of that already issued, specifying the new date or place, or

(b) substitute, or direct the approved celebrant to substitute, the new date or place in the civil partnership schedule already issued.

(3) Subsection (2) does not apply where—

(a) the new date is more than 3 months after the date for the registration specified in the civil partnership schedule already issued, or

(b) the new place is in a different registration district, is in Scottish waters instead of a registration district or is in a registration district instead of Scottish waters.

(4) In a case falling within subsection (3)(a) or (b) the Registrar General may, according to the circumstances—

(a) direct the district registrar—

(i) to issue another civil partnership schedule under section 94(2) in place of that already issued, specifying the new date or place, or

(ii) to substitute, or direct the approved celebrant to substitute, the new date or place in the civil partnership schedule already issued,

(whichever the Registrar General considers the more appropriate), or

(b) direct each party to the civil partnership to submit to the district registrar a new notice of proposed civil partnership.”.

(12) In section 94 (the civil partnership schedule)—
(a) the existing text becomes subsection (1),
(b) in paragraph (b) of that subsection, for “91” substitute “91(1)”, and
(c) after that subsection insert—

“(2) In the case of a civil partnership to be registered by an approved celebrant, the civil partnership schedule completed in accordance with subsection (1) is to be issued by the district registrar to one or both of the parties to the intended civil partnership.

(3) The district registrar may not issue the civil partnership schedule on a date earlier than 7 days before the date of the intended civil partnership unless authorised to do so by the Registrar General.”.

(13) After section 94 insert—

“94A Persons who may register civil partnerships

(1) A civil partnership may be registered by and only by—

(a) a person who is—

(i) a celebrant of a religious body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a religious body so prescribed as entitled to register civil partnerships on its behalf,

(ii) a celebrant of a belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a belief body so prescribed as entitled to register civil partnerships on its behalf,

(iii) registered under section 94B, or

(iv) temporarily authorised under section 94E, or

(b) a person who is a district registrar or assistant registrar appointed under section 87.

(2) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(i) or (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.

(3) For the avoidance of doubt, nothing in subsection (1) or (2)(a)—

(a) imposes a duty on any religious or belief body to make a request referred to in subsection (2)(a),

(b) imposes a duty on any such body to nominate under section 94B any of its members to be registered as empowered to register civil partnerships,

(c) imposes a duty on any person to apply for temporary authorisation under section 94E to register civil partnerships,

(d) imposes a duty on any person who is an approved celebrant in relation to civil partnerships to register civil partnerships.

(4) In this Part—
(a) any such person as is mentioned in subsection (1)(a) is referred to as an “approved celebrant”;

(b) a civil partnership registered by an approved celebrant is referred to as a “religious civil partnership” where the approved celebrant—

(i) falls within paragraph (a)(i) of subsection (1),

(ii) falls within paragraph (a)(iii) of subsection (1) by virtue of a nomination under section 94B(1) by a religious body,

(iii) falls within paragraph (a)(iv) of subsection (1) where the temporary authorisation under section 94E is as a member of a religious body,

c) a civil partnership registered by an approved celebrant is referred to as a “belief civil partnership” where the approved celebrant—

(i) falls within paragraph (a)(ii) of subsection (1),

(ii) falls within paragraph (a)(iii) of subsection (1) by virtue of a nomination under section 94B(1) by a belief body,

(iii) falls within paragraph (a)(iv) of subsection (1) where the temporary authorisation under section 94E is as a member of a belief body,

d) a civil partnership registered by an authorised registrar is referred to as a “civil registration”.

(5) In subsection (2)(b), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.

94B Registration of nominated persons as celebrants

(1) A religious or belief body, not being prescribed by virtue of section 94A(1)(a)(i) or (ii), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to register civil partnerships.

(2) The Registrar General must reject a nomination under subsection (1) if in the Registrar General’s opinion—

(a) the nominating body is not a religious body or, as the case may be, a belief body,

(b) the nominee is not a fit and proper person to register a civil partnership,

(c) there are already registered under this section sufficient members of the same body as the nominee to meet the needs of that body, or

(d) the nominating body does not meet the qualifying requirements.

(3) In subsection (2)(d), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.

(4) Where the Registrar General accepts a nomination made under subsection (1), the Registrar General—

(a) must determine the period during which the nominee is empowered to register civil partnerships, being a period of not more than 3 years,
(b) may determine that the nominee is empowered to register civil partnerships only in such area or place as the Registrar General may specify, and

(c) may make acceptance of the nominee’s registration subject to such other conditions as the Registrar General thinks fit.

(5) Nothing in subsection (4)(a) prevents the Registrar General from accepting a further nomination of that nominee, in accordance with this section, to take effect at any time after the end of the period determined by the Registrar General under subsection (4)(a).

(6) The Registrar General must—

(a) if accepting a nomination made under subsection (1)—

(i) so inform the nominee and the nominating body, specifying the period during which the acceptance has effect and any condition to which the acceptance is subject,

(ii) enter the name of the nominee, the nominating body and such other particulars as the Registrar General thinks fit in a register which the Registrar General must establish and maintain and which must be made available for public inspection at all reasonable times free of charge,

(b) if rejecting a nomination made under subsection (1), by notice in writing inform the nominating body of the reasons for that rejection.

(7) The register mentioned in subsection (6)(a)(ii) is to be in two parts—

(a) the first part containing the details mentioned in subsection (6)(a)(ii) in relation to persons nominated by religious bodies to register civil partnerships,

(b) the second part containing those details in relation to persons nominated by belief bodies to register civil partnerships.

(8) For the purposes of subsection (6)(b), notice which is given by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(9) If the nominating body is aggrieved by a rejection under this section it may, within 28 days of receiving notice of the rejection, appeal to the Scottish Ministers.

(10) On any such appeal the Scottish Ministers may—

(a) direct the Registrar General to accept the nomination, or

(b) confirm the rejection of the nomination,

and must inform the nominating body of their decision and the reason for it; and their decision is final.

(11) If a reason given for confirming the rejection of a nomination is that the nominating body is not a religious or, as the case may be, a belief body, the body may, within 42 days of receiving notice of the confirmation, appeal against the decision to the Court of Session and seek the determination of that court as to whether the body is a religious body or, as the case may be, a belief body.
(12) If—

(a) the court determines that the nominating body is a religious body or, as the case may be, a belief body, and
(b) the reason mentioned in subsection (11) was the only reason given for confirming the rejection of the nomination,

the Registrar General must give effect to the determination as if it were a direction under subsection (10)(a) to accept the nomination.

94C Removal of celebrant's name from register

(1) Subject to the provisions of this section, the Registrar General may remove the name of a person registered under section 94B from the register on the ground that—

(a) the person has requested that the person’s name should be so removed,
(b) the body which nominated the person under section 94B(1) no longer desires that the person should be so registered,
(c) the person—
   (i) has, while registered as an approved celebrant, been convicted of an offence under this Part,
   (ii) has, for the purpose of profit or gain, been carrying on a business of registering civil partnerships,
   (iii) is not a fit and proper person to register civil partnerships, or
   (iv) for any other reason, should not be registered as an approved celebrant.

(2) The Registrar General may not remove the name of a person from the register on any ground mentioned in subsection (1)(c) unless the Registrar General has given the person at least 21 days notice in writing of the intention to do so.

(3) For the purposes of subsection (2), notice which is given by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(4) The Registrar General must—

(a) in the notice given under subsection (2), specify the ground of removal and call upon the person to give any reasons, within the period specified in the notice, why the person’s name should not be removed from the register, and
(b) consider any representations made within that period by the person.

(5) Where a person’s name has been removed from the register on any of the grounds mentioned in paragraph (c) of subsection (1), the person or the body which nominated the person under section 94B(1) may, if aggrieved by the removal, within 28 days of receiving notice of the removal appeal to the Scottish Ministers.

(6) On an appeal under subsection (5) the Scottish Ministers may give any direction they think proper to the Registrar General as to the removal from, or restoration to, the register of the person’s name; and such direction is final.
(7) Where a person has received a notice in pursuance of subsection (2), the person must not register a civil partnership unless and until the person’s name is restored to the register or, as the case may be, the Registrar General has decided not to remove the person’s name from the register.

94D Alterations to register maintained under section 94B

(1) A body registered in pursuance of section 94B(6)(a)(ii) must notify the Registrar General of any of the following events (if practicable, within 21 days of its occurrence)—

(a) where the body is a religious body, any change in the name or the address of the body or any amalgamation with any other religious body, giving the name and address of any approved celebrant who is a member of the body so registered,

(b) where the body is a belief body, any change in the name or the address of the body or any amalgamation with any other belief body, giving the name and address of any approved celebrant who is a member of the body so registered,

(c) the death of an approved celebrant who is a member of the body so registered,

(d) any change of name, address or designation of an approved celebrant who is a member of the body so registered,

(e) the cessation of an approved celebrant who is a member of the body so registered from exercising the functions of an approved celebrant, giving the person’s name and address.

(2) The Registrar General must, on receipt of any such notification, make whatever alteration to the register maintained under section 94B the Registrar General considers necessary or desirable.

94E Temporary authorisation of celebrants

(1) The Registrar General may, in accordance with such terms and conditions as may be specified in the authorisation, grant to any member of a religious or belief body a temporary written authorisation to register—

(a) a civil partnership or partnerships specified in the authorisation, or

(b) civil partnerships during such period as is specified in the authorisation.

(2) 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.

(3) The Registrar General may grant an authorisation to a person under subsection (1)(b) only if the religious or belief body of which the person is a member—

(a) is prescribed by virtue of section 94A(1)(a)(i) or, as the case may be, (ii), or

(b) has nominated members (whether or not including that person) under section 94B(1).

(4) In subsection (2), the “qualifying requirements” are such requirements as may be set out in regulations made by the Scottish Ministers.
(5) For the purposes of subsection (1), an authorisation which is issued by electronic means is to be treated as written if it is received in a form which is legible and capable of being used for subsequent reference.”.

(14) In section 95 (further provision as to registration)—

(a) in subsection (1), after “85” insert “the approved celebrant or, as the case may be,”,

(b) after subsection (1) insert—

“(1A) In the case of a religious or belief civil partnership, the parties to the civil partnership must, within 3 days of signing the civil partnership schedule in accordance with section 85(4), deliver the civil partnership schedule, or send it by post or arrange that it is delivered, to the district registrar.”,

(c) in subsection (2), for “after the civil partnership schedule has been signed” substitute “after—

(a) in the case of a civil registration, the civil partnership schedule has been signed in accordance with section 85, or

(b) in the case of a religious or belief civil partnership, the district registrar receives the civil partnership schedule,”,

(d) after subsection (3) insert—

“(3A) The district registrar must not enter the particulars set out in the civil partnership schedule relating to a religious or belief civil partnership in the civil partnership register unless and until the registrar receives a duly signed civil partnership schedule in respect of that civil partnership.

(3B) Where the Registrar General is satisfied that—

(a) a civil partnership has been properly registered, and

(b) the civil partnership schedule in respect of the civil partnership has been duly signed but has been lost or destroyed,

the Registrar General may direct the district registrar to complete an exact copy of the original civil partnership schedule and, so far as practicable, to arrange for its signature by those persons who signed the original schedule.

(3C) As soon as possible after the copy schedule has been signed, the district registrar must cause the particulars as set out in it to be entered into the civil partnership register.”,

(e) in subsection (4), after “their” insert “civil”.

(15) After section 95 insert—

“95ZA Registrar’s power to require delivery of civil partnership schedule

(1) Where the civil partnership schedule is not delivered to the district registrar within 21 days from the date of registration as entered in the schedule, the registrar may serve a notice in the prescribed form on either of the parties to the civil partnership requiring that party within 8 days from the date of service to deliver the schedule, or send it by post, to the registrar.
(2) If a person on whom a notice has been served under subsection (1) fails to comply with the notice, the district registrar may serve on the person a second notice in the prescribed form requiring the person to attend personally at the registration office of the district registrar, within 8 days from the date of service of the second notice, for the purpose of delivering the civil partnership schedule to the district registrar to enable the registrar to enter the civil partnership in the civil partnership register.”.

(16) In section 95A (validity following entry in civil partnership register), in subsection (1), after “95(2)” insert “or (3C)”.

(17) In section 96 (civil partnership with former spouse)—
   (a) in subsection (3)(b), for “91” substitute “91(1)”, and
   (b) in subsection (3)(c), for “paragraph (b)” substitute “subsection (1)(b)”.

(18) In section 97 (certificates of no impediment for Part 2 purposes), after subsection (5) insert—
   “(5A) For the purposes of subsection (5), an objection which is submitted by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.”.

(19) In section 100 (offences)—
   (a) in subsection (2)—
      (i) in paragraphs (c), (d) and (e), after “being” insert “an approved celebrant or, as the case may be,”, and
      (ii) in paragraph (f), for the words from “a” in the second place where it appears to the end substitute “in accordance with section 93”,
   (b) after subsection (3) insert—
      “(3A) A person commits an offence if the person—
      (a) registers a civil partnership in an area or place in which by virtue of section 94B(4)(b) the person is not permitted to register a civil partnership,
      (b) registers a civil partnership in contravention of section 94C(7),
      (c) being a person temporarily authorised under section 94E—
         (i) if authorised under subsection (1)(a) of that section, registers a civil partnership not specified in the authorisation,
         (ii) if authorised under subsection (1)(b) of that section, registers a civil partnership outwith the period specified in the authorisation,
         (iii) in either case, registers a civil partnership otherwise than in accordance with such terms and conditions as may be specified in the authorisation,
      (d) being a party to a civil partnership, fails to comply with a notice served under section 95ZA(2).
      (3B) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”, and
   (c) in subsection (4), for “or (2)” substitute “, (2) or (3A)”.
(20) In section 126(4) (regulations), after “section” insert “94A(5), 94B(3), 94E(4) or”.

(21) In section 135(1) (interpretation of Part 3)—

(a) after the definition of “the 1965 Act” insert—

““approved celebrant” has the meaning given by section 94A(4)(a);”;

(b) after the definition of “authorised registrar” insert—

““belief body” means an organised group of people, not being a religious body, the principal object (or one of the principal objects) of which is to uphold or promote philosophical or humanitarian beliefs and which meets regularly for that purpose;

“belief civil partnership” has the meaning given by section 94A(4)(c);”;

(c) after the definition of “registration office” insert—

““religious civil partnership” has the meaning given by section 94A(4)(b);”.

(22) For Schedule 10 substitute—

“SCHEDULE 10
FORBIDDEN DEGREES OF RELATIONSHIP: SCOTLAND

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 86(3)

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.”.
20 **Power of district registrar to require evidence of nationality: civil partnership**

In section 88 of the 2004 Act (notice of proposed civil partnership), after subsection (7) (inserted by section 19(5) of this Act) insert—

“(8) A district registrar to whom a notice under subsection (1) is given may require the person giving the notice to provide the district registrar with specified nationality evidence relating to each of the intended civil partners.

(9) A requirement under subsection (8) may be imposed at any time—

(a) on or after the giving of the notice under subsection (1), but
(b) before the district registrar completes the civil partnership schedule.

(10) In subsection (8), “specified nationality evidence” means such evidence of that person’s nationality as may be specified in guidance issued by the Registrar General.”.

21 **Recognition of overseas relationships**

(1) The 2004 Act is amended as follows.

(2) In section 214 (general conditions in relation to recognition of overseas relationships)—

(a) after paragraph (b) insert—

“(ba) the relationship is not one of marriage,”; and

(b) in paragraph (c), for the words from the second “or” to the end substitute “but are not treated as married”.

(3) In Schedule 20 to the 2004 Act (specified relationships), the following entries are repealed—

“Argentina marriage
Belgium marriage
Brazil marriage
Canada marriage
Demark marriage
Iceland marriage
Mexico: Mexico City Federal District marriage
Netherlands marriage
Norway marriage
Portugal marriage
South Africa marriage
Spain marriage
Sweden marriage
United States of America: California marriage
United States of America: Connecticut marriage
United States of America: District of Columbia marriage
United States of America: Iowa marriage
22 Dissolution of civil partnership: evidence

(1) Article 2 of the 2012 Order (which disapplies from certain actions for dissolution of civil partnership section 8(3A) of the Civil Evidence (Scotland) Act 1988 (c.32) (requirement for evidence other than that of a party to the civil partnership)) is to be taken to have been in force since 5 December 2005 and to have had effect in relation to actions raised before 30 March 2012 as it has effect in relation to actions raised on or after that date.

(2) The “2012 Order” is the Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 (SSI 2012/111).

PART 3
REGISTRATION SERVICES

23 Provision of certain information to district registrars

In section 39C(1)(a)(i) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49) (provision of certain information to district registrars), for “section 34(3)” substitute “section 34(4)

PART 4
GENERAL PROVISIONS

24 Interpretation

In this Act—

“the 1977 Act” means the Marriage (Scotland) Act 1977 (c.15),

“the 2004 Act” means the Civil Partnership Act 2004 (c.33).

25 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

(3) Subject to subsection (4), an order under subsection (1) is subject to the negative procedure.

(4) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.
26 Commencement

(1) This section and section 27 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

27 Short title

The short title of this Act is the Marriage and Civil Partnership (Scotland) Act.
SCHEDULE
(introduced by section 7(5))

MARRIAGE BETWEEN CIVIL PARTNERS IN A QUALIFYING CIVIL PARTNERSHIP: MODIFICATIONS OF THE
FAMILY LAW (SCOTLAND) ACT 1985

Introductory

1 The following modifications of the Family Law (Scotland) Act 1985 apply in a case
where the spouses in a marriage were previously civil partners in a qualifying civil
partnership (within the meaning of section 5(6) of the 1977 Act) that was dissolved by
virtue of section 7(1)(a) of this Act.

Modifications

2 (1) For the purposes of section 4 (amount of aliment) the court, in having regard under
section 4(1)(c) generally to all the circumstances of the case, may, if it thinks fit, take
account of circumstances arising during the qualifying civil partnership.

(2) For the purposes of section 9(2) (principles to be applied), advantage gained during the
marriage includes advantage gained during the qualifying civil partnership.

(3) For the purposes of subsection (2)(b) of section 10 (sharing of matrimonial property or
partnership property), debts incurred during the marriage include debts incurred during
the qualifying civil partnership.

(4) For the purposes of subsection (4)(b) of that section, property acquired during the
marriage includes property acquired during the qualifying civil partnership.

(5) For the purposes of section 11(5)(b) and (c) (factors to be taken into account), the
duration of the marriage includes the period of the qualifying civil partnership.

(6) For the purposes of subsection (1) of section 25 (presumption of equal shares in
household goods), household goods obtained in prospect of or during the marriage
include household goods obtained in prospect of or during the qualifying civil
partnership.

(7) For the purposes of subsection (3) of that section, goods kept or used at any time during
the marriage include goods kept or used at any time during the qualifying civil
partnership.
ANNEX M

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL: EXPLANATORY NOTES

Introduction

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the draft Bill attached to the consultation paper at Annex L. They do not form part of the Bill. Where a section, or part of a section, does not seem to require any explanation or comment, none is given.

2. The draft Bill proposes a number of amendments to the Marriage (Scotland) Act 1977 and the Civil Partnership Act 2004. These Acts are referred to in these Explanatory Notes as “the 1977 Act” and “the 2004 Act”.

3. A marked-up version of key sections of the 1977 Act, showing the proposed amendments, is attached at Annex P.

4. The draft Bill does not, at this stage, include provisions to allow a transgender person to stay married and obtain a full Gender Recognition Certificate. These provisions will be added later.

5. When the Bill is introduced into Parliament, accompanying documents, including Explanatory Notes, will be prepared in the normal way and in line with what is required by the Parliament’s Standing Orders.

6. In the notes below, references to sections and subsections of the draft Marriage and Civil Partnership (Scotland) Bill are shown in *italics*. This helps to distinguish them from references to other legislation, such as existing provisions of the 1977 and 2004 Acts and provisions in these Acts being inserted by this Bill.

Summary and background

Key matters covered by the Bill are:

- The introduction of same sex marriage, so that same sex couples can marry each other.
- The introduction of belief ceremonies for both opposite sex and same sex marriage. At the moment, belief celebrants, such as humanists, can be given temporary authorisation to solemnise marriage in Scotland. This Bill establishes belief ceremonies as a formal category of marriage ceremony, alongside religious and civil ceremonies.
- The arrangements for authorising celebrants to solemnise opposite sex and same sex marriage.
- Civil partnerships changing to marriage.
- The authorisation of Church of Scotland deacons to solemnise opposite sex marriage.
- Allowing civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and the registrar.
• Allowing the religious and belief registration of civil partnerships. At the moment, ceremonies to register civil partnerships can only be civil in nature (although it is possible to have a religious or belief ceremony to mark the partnership, any such ceremony would not be recognised by the state).

**Commentary**

**PART 1**

MARRIAGE

**CHAPTER 1**

SAME SEX MARRIAGE

*Overview*

This Chapter makes a number of changes to marriage law. In particular, it amends the 1977 Act, in relation to the “forbidden degrees” (about people who are too closely related to each other to get married) to reflect the introduction of same sex marriage; it deals with existing references to marriage and related expressions in legislation and private documents, such as wills; and it makes bigamy a statutory, rather than a common law, offence in Scotland.

*Section 1: marriage of related persons*

1. This section makes a number of amendments to the 1977 Act, in relation to the “forbidden degrees”. Provision is made about the forbidden degrees in section 2 of, and Schedule 1 to, the 1977 Act. Section 2 makes various provisions about how the forbidden degrees are to operate and be interpreted. Many of these provisions refer at present to a husband and wife or make other indirect references to opposite sex marriage. Due to the introduction of same sex marriage, these provisions are amended by *section 1* so that they can apply to opposite sex and same sex marriage.

2. *Section 1* introduces a new Schedule 1 to the 1977 Act, replacing the current Schedule. The new Schedule 1 is a simplified version of the existing table of forbidden degrees in the 1977 Act. No changes are made in respect of the types of relationships which mean that a couple cannot marry. Instead, the change relates to how the relationships are described. The table below demonstrates this:

<table>
<thead>
<tr>
<th>Current table (Column 1)</th>
<th>Current table (Column 2)</th>
<th>Proposed table</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relationships by consanguinity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mother</td>
<td>Father</td>
<td>Parent</td>
</tr>
<tr>
<td>Daughter</td>
<td>Son</td>
<td>Child</td>
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<td>Father’s father</td>
<td>Grandparent</td>
</tr>
<tr>
<td>Mother’s mother</td>
<td>Mother’s father</td>
<td>Grandparent</td>
</tr>
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<td>Son’s son</td>
<td>Grandchild</td>
</tr>
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<td>Daughter’s son</td>
<td>Grandchild</td>
</tr>
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<td>Brother</td>
<td>Sibling</td>
</tr>
<tr>
<td>Father’s sister</td>
<td>Father’s brother</td>
<td>Aunt or uncle</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Mother’s sister</td>
<td>Mother’s brother</td>
<td>Aunt or uncle</td>
</tr>
<tr>
<td>Brother’s daughter</td>
<td>Brother’s son</td>
<td>Niece or nephew</td>
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<td>Sister’s daughter</td>
<td>Sister’s son</td>
<td>Niece or nephew</td>
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<td>Father’s father’s father</td>
<td>Great-grandparent</td>
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<td>Great-grandparent</td>
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<td>Mother’s father’s father</td>
<td>Great-grandparent</td>
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<td>Mother’s mother’s father</td>
<td>Great-grandparent</td>
</tr>
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<td>Daughter’s son’s son</td>
<td>Great-grandchild</td>
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<tr>
<td>Daughter's daughter’s daughter</td>
<td>Daughter’s son son</td>
<td>Great-grandchild</td>
</tr>
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</table>

*Relationships by affinity referred to in section 2(1A)*

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<tr>
<th>Daughter of former wife</th>
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<th>Child of former spouse</th>
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</thead>
<tbody>
<tr>
<td>Daughter of former civil partner</td>
<td>Son of former civil partner</td>
<td>Child of former civil partner</td>
</tr>
<tr>
<td>Former wife of father</td>
<td>Former husband of mother</td>
<td>Former spouse of parent</td>
</tr>
<tr>
<td>Former civil partner of mother</td>
<td>Former civil partner of father</td>
<td>Former civil partner of parent</td>
</tr>
<tr>
<td>Former wife of father’s father</td>
<td>Former husband of father’s mother</td>
<td>Former spouse of grandparent</td>
</tr>
<tr>
<td>Former civil partner of mother’s mother</td>
<td>Former civil partner of mother’s father</td>
<td>Former civil partner of grandparent</td>
</tr>
<tr>
<td>Former wife of mother’s father</td>
<td>Former husband of mother’s mother</td>
<td>Former spouse of grandparent</td>
</tr>
<tr>
<td>Former civil partner of father’s mother</td>
<td>Former civil partner of father’s mother</td>
<td>Former civil partner of grandparent</td>
</tr>
<tr>
<td>Daughter of son of former wife</td>
<td>Son of son of former husband</td>
<td>Grandchild of former spouse</td>
</tr>
<tr>
<td>Daughter of son of former civil partner</td>
<td>Son of son of former civil partner</td>
<td>Grandchild of former civil partner</td>
</tr>
<tr>
<td>Daughter of daughter of former wife</td>
<td>Son of daughter of former husband</td>
<td>Grandchild of former spouse</td>
</tr>
<tr>
<td>Daughter of daughter of former civil partner</td>
<td>Son of daughter of former civil partner</td>
<td>Grandchild of former civil partner</td>
</tr>
</tbody>
</table>

*Relationships by adoption*

<table>
<thead>
<tr>
<th>Adoptive mother or former adoptive mother</th>
<th>Adoptive father or former adoptive father</th>
<th>Adoptive parent or former adoptive parent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adopted daughter or former adopted daughter</td>
<td>Adopted son or former adopted son</td>
<td>Adopted child or former adopted child</td>
</tr>
</tbody>
</table>
**Section 2: Objections to marriage**

1. Section 5 of the 1977 Act currently provides situations where there is an objection to a marriage proceeding. Section 5(4) lists the legal impediments to a marriage. These include where one or both parties are already married; where both parties are of the same sex or where one or both parties are not domiciled in Scotland and marriage would be void according to the law of the party’s domicile.

2. Section 2 of the Bill repeals the legal impediment of both parties being of the same sex, so that marriages between two people of the same sex can take place in Scotland, once the Bill is commenced.

3. Section 2 also amends section 5(4) in relation to cases where one or both of the parties are not domiciled in Scotland.

4. The amendment makes it clear that even if a same sex marriage would be void according to the law of the domicile of one (or both) of the parties, that is not a barrier to the parties entering into a same sex marriage in Scotland.

**Section 3: Preliminaries to marriage**

1. This section makes some amendments to section 3 of the 1977 Act. Section 3 of the 1977 Act makes provision about the procedures a couple must go through when they want to marry. They must submit to a district registrar a notice of intention to marry, with prescribed fee, their birth certificates and certain other documents, which are specified in section 3.

2. Subsection (2) substitutes a new paragraph (b) in section 3(1) of the 1977 Act, to remove terms like “widow”, “widower” and “spouse” which are specific to opposite sex marriage. The new paragraph instead refers to “the other party” to the marriage. Despite the change in terminology, the effect of the provision remains the same. When a marriage has ended because one of the parties has died, a person who is marrying again has to provide the death certificate of the deceased party.

3. Section 3(1) of the 1977 Act is also amended so that any person who wants to get married who has a civil partner who has died is required to submit the relevant death certificate. Similarly, if a person who wants to get married is changing from a civil partnership to a marriage, that person must submit a relevant extract from the civil partnership register.

4. Section 3(2) of the 1977 Act makes provision in cases where someone intending to get married cannot supply his or her birth certificate or some of the other documents required by section 3(1). In essence, a person in this position has to supply the district registrar with a declaration on why the documents cannot be submitted.

5. The obligation in section 3(2) is extended by subsection (2) so that it also applies to the additional documents required as set out in paragraph 3 above. For more information on the process of changing from a civil partnership to a marriage, see section 6.
6. Section 3(5) of the 1977 Act makes provision where one or both of the parties to the marriage is not domiciled in Scotland. Under section 3(5), such a party is required, if practicable, to submit a certificate issued by his or her home jurisdiction which confirms that there is no legal bar to him or her marrying in terms of the law of the home jurisdiction.

7. There are some exceptions in section 3(5) to the need to supply such a certificate. Subsection (2) amends section 3(5) to provide that a certificate is not required if it would not be issued just because the parties to the marriage are of the same sex.

8. Section 7 of the 1977 Act allows a person who wants to marry outwith Scotland to apply to district registrar in Scotland for a certificate in respect of a person’s capacity to marry. When applying, the person must submit certain documents to the registrar.

9. Subsection (3) amends section 7(1) so it refers also to the death certificate when a civil partnership has ended by death and an extract from the entry in the civil partnership register relating to the civil partnership where civil partners are changing their civil partnership to a marriage.

Section 4: Meaning of marriage and related expressions in enactments and documents

1. Section 4 makes provision on how the term “marriage” and other expressions should be interpreted in enactments (legislation) generally, the 1977 Act specifically, the common law and private documents (such as wills). The provisions of section 4 only apply to devolved legislation – legislation that is within the devolved competence of the Scottish Parliament.

2. For enactments passed or made before section 4 comes into force, subsection (1) provides that references in enactments to “marriage” and people being married should be read as referring to both opposite and same sex marriage and married couples. This would, for example, apply to terms in those enactments such as “husband”, “wife”, “man and wife” and “spouse”.

3. Subsection (1) does not apply if the enactment or any other enactment provides otherwise. For example, this Bill makes separate provision in relation to the solemnisation of, on the one hand, opposite sex marriage and, on the other hand, same sex marriage. Therefore, the general provisions at subsection (1) do not apply to the legislation on solemnising marriage.

4. Section 25 also empowers Ministers to make ancillary provision by order (a type of Statutory Instrument) in the event that Ministers consider it is necessary or expedient to amend existing enactments in order that the general rule in subsection (1) is disapproved.

5. Subsection (4) ensures that references to being married in the common law are to be read as applying equally to opposite sex and same sex marriage.
6. For private documents which are executed after section 4 comes into force, subsection (5) provides that references in them to “marriage” or people being married should be read as referring to both opposite and same sex marriage and married couples. This would, for example, apply to terms in private documents such as “husband”, “wife”, “man and wife” and “spouse”.

7. Subsection (5) does not apply to documents where the document provides otherwise. Therefore, if a document executed after section 4 comes into force refers to a person being in an opposite sex marriage, subsection (5) would not enable that reference to be read as meaning a same sex marriage as well.

8. Subsection (8) adds a definition of “marriage” to the 1977 Act, referring to both opposite sex and same sex marriage. Section 26 of the 1977 Act, which contains a number of definitions, makes it clear that the definitions are to apply in the 1977 Act “except where the context otherwise requires”. An example would be the separate provisions of the 1977 Act, as amended or inserted by this Bill, on solemnising opposite sex and same sex marriage.

9. Subsection (9) adds a definition of “marriage” to the Interpretation and Legislative Reform (Scotland) Act 2010, which refers to both opposite sex and same sex marriage and spouses. The 2010 Act makes provision on how Acts of the Scottish Parliament and Scottish Statutory Instruments should be read. Therefore, adding a definition of “marriage” to the 2010 Act means that any references to marriage and married couples in any future Scottish Parliament legislation will cover both opposite sex and same sex marriage and spouses, unless specific provision is made so that this is not the case.

Section 5: Same sex marriage: further provision

1. Subsection (1) makes bigamy a statutory offence in relation to both opposite sex and same sex marriage, with subsection (2) abolishing the current common law offence.

2. Subsection (1) amends section 24 of the 1977 Act, on offences, and makes it an offence for a person to enter into a marriage with another person knowing that one or both or them is already in a marriage or civil partnership with somebody else.

3. Subsection (1) also makes provision on the penalties when the offence of bigamy is committed. A person who commits bigamy is liable to the penalties already set out in section 24(1)(i) and (ii) of the 1977 Act. The maximum penalty is, for conviction on indictment, an unlimited fine or imprisonment for up to 2 years or both.

4. Subsection (3) makes provision in respect of the crime of reset. It is a crime to receive goods stolen by another. There is a defence to the crime where the person accused of rest is the wife, and the goods were stolen by her husband. Subsection (3) provides that any such defence does not extend to a female spouse in a same sex marriage.
5. **Subsection (4)** makes provision in respect of permanent and incurable impotency. In Scotland, a marriage is voidable (i.e., a court action may be raised to challenge and end the marriage) if one of the parties is at the time of the marriage permanently and incurably impotent in relation to the other spouse. **Subsection (4)** provides that this rule of law only applies to opposite sex marriages.

6. **Subsection (5)** amends section 1 of the Divorce (Scotland) Act 1976 (“the 1976 Act”). Under the 1976 Act, there are two grounds of divorce in Scotland:
   
   (a) irretrievable breakdown of the marriage;
   
   (b) the issue, after the date of marriage, to either party of an interim gender recognition certificate under the Gender Recognition Act 2004.

7. Section 1(2) of the 1976 Act provides a number of ways in which the irretrievable breakdown of a marriage can be established. One of those ways is adultery. Adultery means in the common law sexual intercourse between a man and a woman.

8. **Subsection (5)** provides that “adultery” has the same meaning for the purposes of the 1976 Act for same sex marriages as it does for opposite sex marriages. A spouse in a same sex marriage could, like a spouse in an opposite sex marriage, raise an action for divorce saying that the marriage has broken down irretrievably because the other spouse in the marriage has committed adultery with a person of the opposite sex.

9. However, **subsection (5)** does not extend adultery to cover sexual activity between people of the same sex. Therefore, the ways of establishing irretrievable breakdown of a marriage remain unchanged. Neither an opposite sex spouse nor a same sex spouse can raise an action for divorce saying that the marriage has broken down irretrievably because the other party in the marriage has sexual intercourse with a person of the same sex. Instead, the divorce action would have to put forward other reasons for irretrievable breakdown, such as unreasonable behaviour.

**CHAPTER 2**

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

*Overview*

This Chapter relates to changing a civil partnership to a marriage and the legal effect of doing so.

**Section 6: Marriage between civil partnerships in qualifying civil partnerships**

1. **Section 6** makes provision allowing civil partners, if they are in “a qualifying civil partnership”, to change their civil partnership to a marriage.
2. “A qualifying civil partnership” is defined by subsection (3)(b). The definition is that to be “a qualifying civil partnership”, the civil partnership must have been registered in Scotland. In addition, the civil partnership must not have been dissolved, annulled or ended by death.

3. Subsection (2) amends section 3 of the 1977 Act so that when a couple change their civil partnership to a marriage they have to provide to the district registrar an extract from the entry in the civil partnership register relating to the civil partnership.

4. Subsection (3) amends section 5(4)(b) about legal impediments to marriage. The current impediment in section 5(4)(b) is that “one of the parties is, or both are, already married or in civil partnership” Subsection (3)(a) amends this so that being in a “qualifying civil partnership” is not a legal impediment to marriage.

5. Subsection (3) also adds provisions to section 5 of the 1977 Act about civil partnerships registered at British consulates overseas and civil partnerships registered by British armed forces personnel.

6. Such civil partnerships are to be treated as having been registered in Scotland for the purposes of determining if they are a “qualifying civil partnership”, so long as:
   
   (a) the parties to the civil partnership elected Scotland as the relevant part of the United Kingdom when they entered into the civil partnership; and
   
   (b) details of the civil partnership have been sent to the Registrar General for Scotland.

Section 7: Effect of marriage between civil partners in a qualifying civil partnership

1. Subsection (1) provides that the qualifying civil partnership is dissolved when the marriage is solemnised and that 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. This provision ensures that the couple do not have two civil statuses (married and in a civil partnership) at the same time and also ensures that their time in the civil partnership is treated as if they had been married.

2. Subsection (2) defines what is meant by “registered” for the purposes of subsection (1) in relation to civil partnerships originally registered at British consulates overseas or by British armed forces personnel.

3. Subsection (3) provides that any decree of aliment requiring one civil partner to make payments to the other which is in force when a civil partnership is dissolved because it has been changed into a marriage continues to have effect.

4. Subsection (4) provides that certain orders under section 103(3) or (4) of the 2004 Act, relating to occupancy rights of the family home, which were in force during the civil partnership continue to have effect once the couple are married.
CHAPTER 3

SOLEMNISATION OF MARRIAGE

Overview

1. This Chapter makes provision on who may be authorised to solemnise marriage in Scotland.

2. Currently, for opposite sex marriage, Church of Scotland ministers are authorised by way of the Church of Scotland being named specifically in section 8 of the 1977 Act. Other religious bodies are prescribed by Statutory Instrument so that their celebrants are authorised to solemnise marriage. Other religious bodies can nominate persons to be registered by the Registrar General for Scotland as celebrants under section 9 of the 1977 Act. And the Registrar General may grant temporary authorisation to individuals to solemnise a marriage or marriages under section 12 of the 1977 Act.

3. In addition, civil registrars are authorised to solemnise marriage.

4. The Bill retains this system but makes provision for belief celebrants to be authorised as well. It also ensures that there are separate systems for, on the one hand, the authorisation of religious and belief celebrants to solemnise opposite sex marriage and, on the other hand, the authorisation of religious and belief celebrants to solemnise same sex marriage.

Section 8: Persons who may solemnise marriage

1. Section 8 makes amendments for several different purposes.

2. Firstly, section 8 of the 1977 Act makes provision on who is authorised to solemnise marriage. This is amended so its current provisions apply to authorisations for opposite sex marriage only.

3. Secondly, section 8 amends section 8 of the 1977 Act to allow celebrants and others from belief bodies to be authorised to solemnise marriages. “Belief body” is defined through the insertion by subsection (4) of a new definition into section 26 of the 1977 Act. The definition of “belief body” is “an organised group of people, not being a religious body, the principal object (or one of the principal objects) of which is to uphold or promote philosophical or humanitarian beliefs and which meets regularly for that purpose”.

4. Belief bodies can be prescribed by regulations under the new section 8(1)(a)(ii). The effect of prescribing them is that their celebrants and other persons recognised by them as entitled to solemnise opposite sex marriage can solemnise opposite sex marriages recognised by the state.

5. Thirdly, the new section 8(1A) provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise opposite sex marriage if the body requests this and if Ministers are satisfied that the
body meets the “qualifying requirements”. Qualifying requirements are those set out in regulations made by the Scottish Ministers.

6. Fourthly, section 8 adds a number of provisions to section 8 of the 1977 Act to allow celebrants (of religious and belief bodies) to be authorised to solemnise same sex marriage. The new section 8(1B) of the 1977 Act provides who may solemnise a same sex marriage. The new section 8(1C) provides that the Scottish Ministers may only prescribe a religious or belief body so that its celebrants are authorised to solemnise same sex marriage if the body requests this and if Ministers are satisfied that the body meets the “qualifying requirements”.

7. Fifthly, the new section 8(1D) provides that as a result of the provisions of section 8 about authorisation to solemnise:

(a) there is no duty on any religious or belief body to request (under section 8(1C)(a)) to be prescribed so that their celebrants can solemnise same sex marriage.

(b) there is no duty on any religious or belief body to nominate members under section 9 of the 1977 Act to be empowered to solemnise same sex marriage.

(c) there is no duty on any person to apply for temporary authorisation under section 12 to solemnise same sex marriage.

(d) there is no duty on a celebrant approved to solemnise same sex marriages to solemnise such marriages.

Section 9: Registration of nominated persons as celebrants

1. Section 9 makes a number of amendments to section 9 of the 1977 Act, which relates to the registration of nominated persons as celebrants. Section 9 of the 1977 Act permits the authorisation of celebrants of bodies who have not been prescribed by regulations or are not, in the case of opposite sex marriage, the Church of Scotland.

2. Subsection (2) amends section 9(1) of the 1977 Act so that it just relates to opposite sex marriages. This means that section 9(1) continues to provide that a religious body, other than the Church of Scotland or a body prescribed by regulations, may nominate to the Registrar General members so that they can solemnise opposite sex marriages.

3. Subsection (2) then inserts new subsections into section 9. Section 9(1A) provides that a religious body who has not been prescribed by regulations may nominate celebrants to the Registrar General so that they can be authorised to solemnise same sex marriage.

4. Section 9(1B) and 9(1C) of the 1977 Act provide that a belief body who has not been prescribed by regulations may nominate celebrants to the Registrar General so that they can be authorised to solemnise opposite sex and same sex marriage respectively.
5. **Subsection (2)** makes a number of amendments to section 9 of the 1977 Act, which provides for when the Registrar General must reject a nomination; what happens when a nomination is accepted; the register of authorised celebrants and their bodies; and for appeals. The amendments are made because of the introduction of same sex marriage and the authorisation of belief bodies and their celebrants.

6. Under section 9(2)(d), the Registrar General must reject a nomination if he or she considers the nominating body has sufficient celebrants to meet its needs. The amendment in **subsection (2)(c)** reflects the changes made to subsection (1) and the new subsections (1A) to (1C). The amendments reflect that bodies may have different needs in relation to celebrants solemnising same sex marriage when compared with opposite sex marriage.

7. A new ground of not meeting the qualifying requirements is added to section 9(2)(d) by **subsection (2)(d)** to the circumstances in which the Registrar General must reject a nomination.

8. Section 9(3) of the 1977 Act sets out the declarations which must be included in a marriage ceremony to ensure it is of an appropriate form. **Subsection (2)** amends the provision so that the current provision applies to opposite sex marriage only and inserts declarations for same sex ceremonies.

9. **Subsection (2)(h)** makes amendments to section 9(4) of the 1977 Act, which deals with cases where the Registrar General accepts the nomination. The Registrar General must currently decide how long the period of authorisation for the nominee should be, and may decide which area the nominee may solemnise marriages in. The amendments give the Registrar General the power to limit any nominee to solemnising marriages in specific places.

10. **Subsections (3), (4) and (5)** make several amendments to sections 10, 14 and 24 of the 1977 Act. Section 10 makes provision about when a celebrant’s name may be removed from the register of bodies and celebrants who are authorised to solemnise marriage. Section 14 is about the form of ceremony to be used by a celebrant. Section 24 is about offences under the 1977 Act.

11. The amendments made by **subsections (3),(4) and (5)** are consequential, as a result of changes made to other provisions of the 1977 Act about authorisation of belief bodies; maintaining separate registers for same sex and opposite sex marriages; creating separate declarations for same sex and opposite sex marriage ceremonies; and enabling the Registrar General to authorise a nominee celebrant for a particular place only.

**Section 10: Temporary authorisation of celebrants**

1. Section 12 of the 1977 Act allows the Registrar General to grant temporary authorisation to solemnise marriage to a person.

2. **Subsection (2)** amends the Registrar General’s power so that he or she may grant temporary authorisations only to members of religious or belief bodies.
3. *Subsection (2)*, by means of new subsections for section 12, also provides that the Registrar General may grant an authorisation only if the religious or belief body meets the “qualifying requirements”. The “qualifying requirements” are those set out in regulations made by the Scottish Ministers.

4. Temporary authorisation may be granted for opposite sex marriage only or same sex marriage only or both.

5. The Registrar General can only grant a temporary authorisation under subsection (1)(b) to solemnise same sex marriages if the relevant religious or belief body is prescribed by regulations so that its celebrants can solemnise same sex marriage or has put forward persons to be nominated as celebrants to solemnise same sex marriage.

6. *Subsection (3)* clarifies the existing offence of solemnising a marriage not covered by a temporary authorisation under section 24(2)(c) of the 1977 Act. The amendments in *subsection (3)* have the effect that it is an offence to solemnise a marriage:

(i) where not specified in a temporary authorisation;

(ii) where outwith the period of the temporary authorisation;

(iii) otherwise than in accordance with any terms and conditions in the temporary authorisation.

**Section 11: Belief marriage: further provision**

*Sections 8, 9 and 10* of the Bill provide for celebrants of belief bodies to solemnise marriage. *Section 11* makes a number of consequential amendments to sections 6, 11, 13, 14 and 15 of the 1977 Act to reflect the authorisation of belief bodies and their celebrants and the carrying out of belief ceremonies.

**CHAPTER 4**

SAME SEX MARRIAGE: PROTECTION OF FREEDOM OF EXPRESSION ETC

**Section 12: Same sex marriage: protection of freedom of expression etc**

This section provides that the introduction of same sex marriage does not affect:

(a) the exercise of rights of anyone to freedom of thought, conscience, religion and freedom of expression which have been conferred by the European Convention of Human Rights; and

(b) the exercise of any equivalent rights conferred on anyone by the common law.
CHAPTER 5
OTHER CHANGES TO MARRIAGE PROCEDURE

Overview

1. This Chapter makes a variety of changes to marriage law.

2. These include the introduction of powers for district registrars to require evidence of nationality from people wishing to get married; providing information to the district registrar on the ending of any civil partnership when a person is marrying outwith Scotland and is seeking a certificate about his or her legal capacity to do so; the automatic authorisation of Church of Scotland deacons to marry opposite sex couples and allowing civil marriage ceremonies to take place anywhere agreed by the couple and the registrar, other than religious premises.

Section 13: Power of district registrar to require evidence of nationality: marriage

1. This section makes amendments to sections 3 and 7 of the 1977 Act.

2. Section 3 of the 1977 Act makes provision on documents which people wishing to enter into an opposite sex or same sex marriage have to supply to the district registrar.

3. Subsection (2) adds new subsections to section 3 so that a district registrar may require “specified nationality evidence” in relation to the intended parties to a marriage. Guidance can be issued by the Registrar General about what evidence is required.

4. Subsection (3) amends section 7 of the 1977 Act. This amendment means that where a person wants to marry outwith Scotland and seeks a certificate about legal capacity from the district registrar, that person may be required to provide evidence of nationality.

Section 14: Marriage outside Scotland: evidence of dissolution of former civil partnership

This section amends section 7 of the 1977 Act. Its effect is that where a person wants to marry outwith Scotland and seeks a certificate about his or her legal capacity from the district registrar the person must provide a copy of the decree of dissolution or annulment of any civil partnership which the person has previously been in.

Section 15: Religious marriages: solemnisation by Church of Scotland deacons

This section amends the provisions of section 8(1)(a)(i) of the 1977 Act about automatic authorisation of ministers of the Church of Scotland in respect of opposite sex marriage. The effect is that Church of Scotland deacons, like Church of Scotland ministers, are authorised to solemnise opposite sex marriage.
Section 16: Places at which civil marriages may be solemnised

1. This section makes amendments, principally to section 18 of the 1977 Act, so that civil marriage ceremonies can take place anywhere, other than in religious premises, agreed by the couple and the registrar, rather than at “approved places” (places approved by the local authority). This section applies to both opposite sex and same sex marriages.

2. Specifically, these amendments mean that a civil marriage ceremony can take place in either:

- the registration office of the authorised registrar; or
- at an appropriate place in the registration district of the authorised registrar; or
- with the approval of the Registrar General, at the registration office of another authorised registrar; or
- with the approval of the Registrar General, at an appropriate place in the registration district of another authorised registrar; or
- with the approval of the Registrar General, at an appropriate place in Scottish waters.

3. As a result of the above, some amendments are necessary to sections 19 and 26 of the 1977 Act where those provisions refer to the place where a marriage has taken place. Those amendments are made in subsections (4) and (5).

Section 17: Second marriage ceremony: form of endorsement

1. This is a minor amendment to section 20 of the 1977 Act. Section 20 makes provision for a couple to go through a second marriage ceremony in Scotland if they have already married outwith the United Kingdom but there is some doubt about the validity of the overseas ceremony. The second marriage ceremony in Scotland must be civil in nature.

2. Section 20 of the 1977 Act prescribes some forms. At the moment, section 20 provides that the year in these forms should start with the figures “19”. This reflects the twentieth century and is no longer appropriate. As a result, the amendment repeals the figures “19”.

Section 18: marriage by cohabitation with habit and repute

1. This repeals sections 3(3) and (4) of the Family Law (Scotland) Act 2006 ("the 2006 Act").

2. Section 3 of the 2006 Act largely abolished marriage by cohabitation with habit and repute, the last form of irregular marriage to be given legal recognition in Scotland. However, sections 3(3) and 3(4) preserved the concept provided that certain conditions are met. These conditions are:

(a) the cohabitation with habit and repute was between two person, one of whom ("A") is domiciled in Scotland;
(b) the person with whom A was cohabiting (“B”) died domiciled in Scotland;

(c) before the cohabitation with habit and repute began, A and B purported to enter into a marriage outwith the United Kingdom;

(d) in consequence of the purported marriage, A and B believed themselves to be married to each other and continued in that belief until B’s death;

(e) the purported marriage was invalid under the law of the place where it was entered into; and

(f) A became aware of the invalidity of the purported marriage only after B’s death.

3. **Section 18** of the Bill repeals section 3(3) and (4) of the 2006 Act.

4. Section 29 of the 2006 Act contains provisions, which will remain in place, on financial claims by a cohabitant when the person he or she is cohabiting with dies intestate. Section 29 of the 2006 Act applies to both same sex and opposite sex cohabitants.

**PART 2**

**CIVIL PARTNERSHIP**

*Overview*

1. This Part of the Bill amends legislation in respect of civil partnerships. Currently, only registrars can register civil partnerships. It is possible to have a religious or belief ceremony in relation to the civil partnership but any such ceremony has no legal significance. The Bill amends legislation so that, in future, it will be possible to have a religious or belief ceremony to register the partnership. Civil ceremonies will also remain available.

2. Many of the provisions in this Bill in relation to the authorisation of religious and belief celebrants to register civil partnerships, and on ceremonies, mirror provisions in the 1977 Act, on the solemnisation of marriage.

**Section 19: Registration of civil partnership**

1. *Subsection (2)* amends section 85 of the 2004 Act, to reflect the introduction of religious and belief celebrants to register civil partnerships. Section 85 makes provision on when two people are to be regarded as having registered as civil partners of each other and provides that both must sign the civil partnership schedule (“the schedule”).

2. Currently, one of the persons who must be present when the schedule is signed is the registrar. The amendment made by *subsection 2(a)* changes this so that it may be signed in the presence of the approved celebrant or the registrar. Once the couple have signed the schedule, it must also be signed by the witnesses and the person
carrying out the ceremony. The amendment at subsection (2)(b) means that either the approved celebrant or the registrar have to sign the schedule.

3. The amendment at subsection 2(a) also removes a reference to where the civil partnership may take place.

4. Subsection (3) makes a number of changes relating to the table of forbidden degrees. This is about people who are too closely related to each other to form a civil partnership. The opportunity has been taken to simplify the table of forbidden degrees. Subsection (22), explained below, substitutes a new Schedule 10 to the 2004 Act.

5. The amendment at subsection (3)(d) amends section 86(5) of the 2004 Act. Section 86(5) provides at the moment, in respect of people who have acquired a new gender, that references in the forbidden degrees to “former wife” includes “former husband” and references to “former husband” includes “former wife”.

6. The amendment at subsection (3)(d)(i) amends section 86(5) so that it refers to the definition of “spouse” (husband and wife) as added by subsection (3)(c). The amendment at subsection 3(d)(ii) removes the word “former” from section 86(5). The word “former” is not needed in section 86(5) as the new Schedule 10 to the 2004 Act refers to “former spouse” and “spouse” is defined by the amendment at subsection (3)(c).

7. The amendment at subsection (3)(e) reflects the simplification of the table of forbidden degrees. The simplified table now refers to “parent” to cover both mothers and fathers: the amendment as subsection (3)(e)(i) reflects that drafting change. Subsection (3)(e)(ii) deletes a reference to “in either column” as the simplified table of forbidden degrees just has one column.

8. The amendment at subsection (5) provides a definition of “district registrar” for the purposes of section 88 of the 2004 Act. Section 88 makes provision on information which intended civil partners must submit to the district registrar. The definition added at subsection (5) includes provision to cover cases where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant.

9. The amendment at subsection (6) provides a definition of “district registrar” for the purposes of certain sections in the 2004 Act: section 89 itself (civil partnership notice book), section 90 (publicisation), section 91 (early registration), section 92 (objections to registration) and section 94 (the civil partnership schedule).

10. This definition is the same as the definition provided for section 88 except that where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant, the district registrar is defined as the district registrar to whom the civil partnership notices were submitted (under section 88).

11. Subsection (8)(a) turns the existing text of section 81 into a subsection to accommodate the addition of new section 81(2) by subsection (8)(c). This new provision makes it clear that a request for early registration can be made
electronically. It is on the same lines as an equivalent provision in section 6 of the 1977 Act. **Subsection (8)(c)** makes a minor change to what is now section 81(1) of the 2004 Act so that a reference at the beginning to “An authorised registrar” is changed to “A district registrar”. “District registrar” has been defined by the amendment at **subsection (6).**

12. **Subsection (9)** makes a number of amendments to section 92, on objections to the proposed registration of a civil partnership.

13. The amendment at **subsection (9)(a)** makes it clear that the office where any person claiming to have reason to object to a proposed civil partnership can inspect the relevant entry in the civil partnership book is the office of the district registrar (as defined).

14. The amendment at **subsection (9)(b)(i)** is a consequential amendment required for the substantive amendment at **subsection (9)(b)(ii)**. This amendment relates to a case where the district registrar has received an objection to a civil partnership which is more significant than just a misdescription or inaccuracy in a notice.

15. The new provision requires the district registrar, if the civil partnership schedule has already been issued and the civil partnership is to be registered by an approved religious or belief celebrant, to notify, if possible, the celebrant of the objection and advise the celebrant not to register the civil partnership pending consideration of the objection. This is on similar lines to equivalent provision in section 5 of the 1977 Act, on objections to marriage.

16. The amendment at **subsection (9)(c)** reflects that registration of civil partnerships in future may be through a religious or belief celebrant.

17. Currently, section 92(5)(a) provides that if the Registrar General is satisfied, after considering an objection, that there is a legal impediment to registering a civil partnership, the Registrar General has to direct the district registrar not to register the intended civil partners and to notify them accordingly. The amendment at **subsection (9)(c)** amends this so that the Registrar General, once satisfied that there is a legal impediment to registering a civil partnership has “to take all reasonable steps to ensure that the registration of the civil partnership does not take place and must notify, or direct the district registrar to notify, the intended civil partners”.

18. **Subsection (10)** amends section 93 of the 2004 Act so that it only covers cases where the civil partnership is being registered through a civil ceremony.

19. **Subsection (10)(a)(ii)** makes provision on where a civil ceremony may take place. It make take place at:

- the registration office of the authorised registrar;
- an appropriate place in the registration district of the authorised registrar (“appropriate place” is defined through the next set of amendments);
- with the approval of the Registrar General, the registration office of another authorised registrar;
• with the approval of the Registrar General, an appropriate place in the registration district of another authorised registrar; or
• an appropriate place in Scottish Waters.

20. **Subsection (10)(b)** provides definitions of “appropriate place”, “local registration authority” and “religious premises”. “Appropriate place” excludes “religious premises” which ensures that civil ceremonies to register civil partnerships cannot take place in religious premises.

21. **Subsection (10)(c)** repeals sections 93(2) and (3) of the 2004 Act. These are now unnecessary. Section 93(2) made provision on civil partnerships taking place outwith the authorised registrar’s district. This is now covered by the provision outlined above on where a civil ceremony may take place.

22. Section 93(3) made provision which banned civil partnerships from taking place in religious premises. The ban on civil ceremonies to register civil partnerships taking place in religious premises remains in place, as outlined above. Subsequent provision is made to establish religious and belief ceremonies to register civil partnerships. Such ceremonies may take place in religious premises.

23. **Subsection (11)** adds section 93A to the 2004 Act, on the date and place of religious or belief registration of civil partnerships. The procedures outlined in section 93A are in line with procedures contained in section 6 of the 1977 Act, in relation to the solemnisation of marriage.

24. Under section 93A the civil partnership should be registered on the date and at the place specified in the schedule. If this cannot be done and a new date or place is fixed, the district registrar must issue a new schedule or amend the existing one or direct the religious or belief celebrant to amend it.

25. However, special procedures apply if the new date for registration is more than 3 months after the date specified in the original schedule or if the new place for registration is in a different registration district or is in Scottish waters instead of a registration district or is in a registration district instead of Scottish waters.

26. In these cases, the Registrar General may:-

• Direct the district registrar to issue a new schedule;
• Direct the district registrar to amend the existing schedule or direct the religious or belief celebrant to amend it; or
• Direct the intended civil partners to send the district registrar a new notice of proposed civil partnership.

27. **Subsection (12)** amends section 94 of the 2004 Act, on the schedule. These amendments reflect the introduction of religious and belief ceremonies to register civil partnerships.

28. The amendment at (c) provides that where the civil partnership is to be registered by an approved religious or belief celebrant, the district registrar must issue the completed schedule to one or both of the intended civil partners. The district
registrar must not issue the schedule more than seven days before the intended civil partnership, unless authorised to do so by the Registrar General. This provision is on similar lines to section 6(4)(b) of the 1977 Act, in relation to the marriage schedule.

29. Subsection (13) adds sections 94A, 94B, 94C, 94D and 94E to the 2004 Act. These provisions relate to who can register a civil partnership, including religious and belief celebrants, and are based on equivalent provisions in the 1977 Act, on who can solemnise marriage.

30. Section 94A makes provision on who can register civil partnerships.

31. Under section 94A(1), a civil partnership may be registered only by a person who is:
   - A celebrant of a religious or belief body prescribed by regulations or, not being a celebrant, is recognised by the body as entitled to register civil partnerships;
   - Registered as celebrant under section 94B of the 2004 Act;
   - Temporarily authorised as a celebrant under section 94E.
   - A registrar.

32. Section 94A(2) provides that Ministers may only prescribe a religious or belief body if the body requests them to do so and Ministers are satisfied that the body meets the “qualifying requirements”. The “qualifying requirements” are set out in regulations made by the Scottish Ministers.

33. Section 94A(3) makes it clear that there is no duty:
   - On any religious or belief body to request to be prescribed.
   - On any such body to nominate members under section 94B to nominate members to register civil partnerships.
   - On any person to apply for temporary authorisation under section 94E to register civil partnerships.
   - On any approved celebrant for civil partnerships to register civil partnerships.

34. Section 94B(1) provides that a religious or belief body who has not been prescribed under the regulations may nominate members to the Registrar General so that they can register civil partnerships.

35. Section 94B(2) provides that the Registrar General must reject a nomination if the Registrar General considers that the nominating body is not a religious or belief body; or it already has sufficient members registered to meet its need; or it does not meet the “qualifying requirements” set out in regulations made by the Scottish Ministers; or the nominee is not a fit and proper person.

36. When the Registrar General accepts a nomination, the Registrar General must, under section 94B(4)(a), determine the period during which the nominee can register civil partnerships. This period must not be more than 3 years but section 94B(5) makes it clear that the nominee may be put forward for a further period.
37. Section 94B(4)(b) allows the Registrar General to restrict the nominee to registering civil partnerships in specific areas or places. Section 94B(4)(c) allows the Registrar General to impose such other conditions as the Registrar General thinks fit.

38. When a nomination has been accepted, section 94B(6)(a) provides that the Registrar General must advise the body and the nominee accordingly, specifying the period during which the nominee can register civil partnerships and any conditions which have been imposed.

39. The Registrar General also has to enter the name of the body, the nominee and any other relevant particulars into a register open for public inspection at all reasonable times free of charge. Section 94B(7) provides that this register has to be in two parts: one part for persons nominated by religious bodies and the other part for persons nominated by belief bodies.

40. When a nomination has been rejected, section 94B(6)(b) provides that the Registrar General must inform the nominating body in writing, giving reasons. Section 94B(8) makes it clear that this may be done electronically. Section 94B(9) gives the nominating body 28 days to appeal to the Scottish Ministers against a rejection.

41. Section 94(10) provides that on any such appeal the Scottish Ministers may confirm the rejection or direct the Registrar General to accept the nomination. Ministers have to inform the nominating body of their decision and give the reasons for the decision.

42. Ministers’ decision is final except that if the reason given by Ministers for confirming the rejection of a nomination is that the nominating body is not a religious or belief body, the body may appeal to the Court of Session, within 42 days of receiving the Ministers’ decision.

43. The appeal can seek the determination of the court that the body is a religious or belief body. If the court determines that the body is a religious or belief body and that the only reason given by Ministers for confirming the rejection was that the body was not a religious or belief body, the Registrar General must then accept the nomination.

44. Section 94C of the 2004 Act makes provision on the removal from the register of a celebrant registered under section 94B. As well as provisions relating to the removal of a celebrant from the register, and on the procedures for doing so, provision is also made for appeals to the Scottish Ministers against decisions made by the Registrar General.

45. Section 94C(1) provides that the Registrar General may remove a person’s name from the register when:

- The person has asked to be removed.
- The body which nominated the person no longer wants the person to be registered.
• The person, while registered as an approved celebrant, has been convicted of an offence under this Part of the Bill.
• The person has, for the purpose of profit or gain, been carrying on a business of registering civil partnerships.
• The person is not a fit and proper person to register civil partnerships.
• The person, for any other reason, should not be on the register.

46. Section 94D makes provisions on alterations to the register of approved nominated celebrants maintained under section 94B. Provision is made that the body must notify the Registrar General when any of the events listed in section 94D occur and the Registrar General must then alter the register accordingly.

47. Section 94E makes provision on the temporary authorisation of religious and belief celebrants to register civil partnerships.

48. Under section 94E(1), the Registrar General may grant any member of a religious and belief body temporary written authorisation to register a specific civil partnership or partnerships or to register civil partnerships during a specific period. This authorisation may contain terms and conditions. Section 94E(5) makes it clear that the authorisation can be issued electronically.

49. However, the Registrar General may only grant such temporary written authorisation when the following conditions are met:

• The religious or belief body of which the person is a member must meet the “qualifying requirements” [section 94E(2)]. The “qualifying requirements” are defined at section 94E(4) as “such requirements as may be set out in regulations made by the Scottish Ministers”.
• The religious or belief body of which the person is a member is prescribed by regulations, so that its celebrants are authorised to register civil partnerships, or has nominated persons under section 94B to register civil partnerships. [Section 94E(3)].

50. Subsection (14) amends section 95 of the 2004 Act, on further provision as to the registration of civil partnerships including in relation to the schedule.

51. The amendment at (a) reflects that with the introduction of religious and belief ceremonies, it may be an approved celebrant, rather than a registrar, who asks the intended civil partners to confirm that, to the best of their knowledge, the particulars set out in the schedule are correct.

52. The amendment at (b) inserts a new subsection into section 95 of the 2004 Act. This provision requires civil partners who have had a religious or belief ceremony to ensure that the signed schedule is delivered to the district registrar within 3 days. (This is in line with section 15(2) of the 1977 Act, on delivering the signed marriage schedule to the district registrar).

53. The new section 95(3A) of the 2004 Act provides that the district registrar must not enter the particulars set out in the schedule for a religious or belief civil
partnership in the register, unless and until the district registrar receives a duly signed schedule.

54. The new section 95(3B) empowers the Registrar General to take steps if a civil partnership has been properly registered and the schedule has been signed but then lost or destroyed. In these cases, the Registrar General may direct the district registrar to complete an exact copy of the schedule and, so far as practicable, arrange for it be signed again by those who signed the original schedule. The new section 95(3c) provides that once the copy schedule has been signed, the district registrar must arrange for its particulars to be entered into the register.

55. Subsection (15) adds section 95ZA to the 2004 Act, on registrar’s power to require delivery of civil partnership schedule. This new provision is in line with section 16 of the 1977 Act, on registrar’s power to require delivery of marriage schedule.

56. Under the new provision, if the district registrar does not receive the schedule within 21 days from the date of registration, the district registrar may serve a notice on either of the civil partners requiring that the schedule be delivered or sent through the post to the registrar within 8 days. If this notice is not complied with, the district registrar may serve a second notice requiring the person to attend personally at the registration office within 8 days in order to deliver the schedule. Failure to comply with this second notice is a criminal offence (the offence is added by subsection (19)).

57. Subsection (17) relates to section 96, on civil partnership with former spouse. This follows a divorce on the grounds of the issue of an interim gender recognition certificate.

58. The amendment at (a) is a consequential change, reflecting the amendments to section 91 made by subsection (8), and the amendment at (b) is also a consequential change, the amendments made to section 94 by subsection (12).

59. The amendment at subsection (18) relates to section 97 of the 2004 Act, on the issue of a certificate of no impediment where two people propose to enter into a civil partnership in England and Wales but one of them resides in Scotland. Section 97(5) of the 2004 Act makes provisions for objections in writing to the district registrar against the issue of a certificate. The amendment makes it clear that any such objection may be submitted electronically.

60. Subsection (19) makes provision in respect of criminal offences and does so by amending section 100 of the 2004 Act.

61. The amendment at (a)(i) extends three offences which currently only apply to authorised registrars (or persons pretending to be authorised registrars) to approved celebrants (or persons pretending to be approved celebrants).

62. Following the amendments, the offences now relates to a person who knowingly:
• “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other before any civil partnership schedule available to him at the time of registration has been duly completed”;
• “not being an approved celebrant or, as the case may be, an authorised registrar, conducts himself in such a way as to lead intended civil partners to believe that he is authorised to register them as civil partners of each other”;
• “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other without both of them being present”.

63. The amendment at (a)(ii) reflects changes to section 93 on place of civil registration of civil partnerships.

64. The amendments at (b) relate to new offences created as a result of the introduction of religious and belief ceremonies and to the penalty when found guilty of one of these new offences. The penalty on summary conviction is a fine not exceeding level 3 on the standard scale. Similar offences are in place in relation to marriage under section 24(2) of the 1977 Act and the penalty again is a fine not exceeding level 3 on the standard scale.

65. The offences created by (b) are:

• An approved celebrant registering a civil partnership in an area or place where the celebrant is not permitted to register a civil partnership;
• An approved celebrant registering a civil partnership after a notice has been served by the Registrar General indicating that the Registrar General intends to remove the person’s name from the register;
• A celebrant approved on a temporary basis registering a civil partnership not specified in the authorisation;
• A celebrant approved on a temporary basis registering a civil partnership outwith the period specified in the authorisation;
• A celebrant approved on a temporary basis registering a civil partnership contrary to any terms and conditions specified in the authorisation;
• A party to a civil partnership failing to comply with a second notice from the district registrar, requiring the party to appear personally at the registration office to deliver the schedule.

66. The amendment at (c) is a consequential amendment to section 100(4) of the 2004 Act, reflecting the new offences created by (b). Section 100(4) provides that summary proceedings for an offence under section 100 may be commenced within 3 months after sufficient evidence comes to the Lord Advocate’s knowledge or within 12 months after the offence is committed (whichever period last expires).

67. Subsection (20) provides that the new powers to make regulations in respect of the “qualifying requirements” (for religious and belief bodies to meet) are subject to annulment in pursuance of a resolution of the Parliament.
68. Subsection (21) adds definitions of “approved celebrant”, “belief body”, “belief civil partnership” and “religious civil partnership” to Part 3 of the 2004 Act, on civil partnerships in Scotland.

69. Subsection (22) introduces a new Schedule 10 to the 2004 Act, replacing the current Schedule. The new Schedule 10 is a simplified version of the existing table of forbidden degrees. No changes are made in respect of the types of relationships which mean that a couple cannot enter into a civil partnership. Instead, the change relates to how the relationships are described. The table below demonstrates this:

Table of forbidden degrees

<table>
<thead>
<tr>
<th>Current table (Column 1)</th>
<th>Current table (Column 2)</th>
<th>Proposed table</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relationships by consanguinity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Father</td>
<td>Mother</td>
<td>Parent</td>
</tr>
<tr>
<td>Son</td>
<td>Daughter</td>
<td>Child</td>
</tr>
<tr>
<td>Father’s father</td>
<td>Father’s mother</td>
<td>Grandparent</td>
</tr>
<tr>
<td>Mother’s father</td>
<td>Mother’s mother</td>
<td>Grandparent</td>
</tr>
<tr>
<td>Son’s son</td>
<td>Son’s daughter</td>
<td>Grandchild</td>
</tr>
<tr>
<td>Daughter’s son</td>
<td>Daughter’s daughter</td>
<td>Grandchild</td>
</tr>
<tr>
<td>Brother</td>
<td>Sister</td>
<td>Sibling</td>
</tr>
<tr>
<td>Father’s brother</td>
<td>Father’s sister</td>
<td>Aunt or uncle</td>
</tr>
<tr>
<td>Mother’s brother</td>
<td>Mother’s sister</td>
<td>Aunt or uncle</td>
</tr>
<tr>
<td>Brother’s son</td>
<td>Brother’s daughter</td>
<td>Niece or nephew</td>
</tr>
<tr>
<td>Sister’s son</td>
<td>Sister’s daughter</td>
<td>Niece or nephew</td>
</tr>
<tr>
<td>Father’s father’s father</td>
<td>Father’s father’s mother</td>
<td>Great-grandparent</td>
</tr>
<tr>
<td>Father’s mother’s father</td>
<td>Father’s mother’s mother</td>
<td>Great-grandparent</td>
</tr>
<tr>
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<tr>
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<td>Mother’s mother’s mother</td>
<td>Great-grandparent</td>
</tr>
<tr>
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<td>Son’s son’s daughter</td>
<td>Great-grandchild</td>
</tr>
<tr>
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<td>Son’s daughter’s daughter</td>
<td>Great-grandchild</td>
</tr>
<tr>
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<td>Daughter’s son’s daughter</td>
<td>Great-grandchild</td>
</tr>
<tr>
<td>Daughter’s daughter’s son</td>
<td>Daughter’s daughter’s daughter</td>
<td>Great-grandchild</td>
</tr>
</tbody>
</table>

**Relationships by affinity referred to in section 86(3)**

<table>
<thead>
<tr>
<th>Son of former wife</th>
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<tbody>
<tr>
<td>Son of former civil partner</td>
<td>Daughter of former civil partner</td>
<td>Child of former civil partner</td>
</tr>
<tr>
<td>Former husband of mother</td>
<td>Former wife of father</td>
<td>Former spouse of parent</td>
</tr>
<tr>
<td>Former civil partner of father</td>
<td>Former civil partner of mother</td>
<td>Former civil partner of parent</td>
</tr>
<tr>
<td>Former husband of father’s mother</td>
<td>Former wife of father’s father</td>
<td>Former spouse of grandparent</td>
</tr>
<tr>
<td>Former civil partner of father’s father</td>
<td>Former civil partner of father’s mother</td>
<td>Former civil partner of grandparent</td>
</tr>
<tr>
<td>Former husband of mother’s mother</td>
<td>Former wife of mother’s father</td>
<td>Former spouse of grandparent</td>
</tr>
<tr>
<td>Former civil partner of mother’s mother</td>
<td>Former civil partner of mother’s mother</td>
<td>Former civil partner</td>
</tr>
</tbody>
</table>

24
<table>
<thead>
<tr>
<th>father</th>
<th>mother’s mother</th>
<th>of grandparent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Son of son of former wife</td>
<td>Daughter of son of former husband</td>
<td>Grandchild of former spouse</td>
</tr>
<tr>
<td>Son of son of former civil partner</td>
<td>Daughter of son of former civil partner</td>
<td>Grandchild of former civil partner</td>
</tr>
<tr>
<td>Son of daughter of former wife</td>
<td>Daughter of daughter of former husband</td>
<td>Grandchild of former spouse</td>
</tr>
<tr>
<td>Son of daughter of former civil partner</td>
<td>Daughter of daughter of former civil partner</td>
<td>Grandchild of former civil partner</td>
</tr>
</tbody>
</table>

**Section 20: power of district registrar to require evidence of nationality: civil partnership**

1. This section adds provisions to section 88 of the 2004 Act.

2. Section 88 of the 2004 Act makes provision on documents which people wishing to enter into a civil partnership have to supply to the district registrar.

3. The new section 88(8) provides that a district registrar may require “specified nationality evidence” in relation to the intended civil partners. The new section 88(9) outlines when such evidence may be requested. The new section 88(10) defines “specified nationality evidence” in terms of guidance that the Registrar General may issue.

4. *Section 13* of this Bill adds similar provision to the 1977 Act, in relation to opposite sex and same sex marriage.

**Section 21: Recognition of overseas relationships**

1. Sections 212 to 218 and Schedule 20 to the 2004 Act makes provision on the recognition in the UK as civil partnerships of overseas same sex registered relationships. Such relationships can be recognised in the UK either by meeting general conditions laid down in section 214 of the 2004 Act or by being specified in Schedule 20. UK Ministers have the power to amend Schedule 20, with the consent of the Scottish Ministers and the Northern Ireland Department of Finance and Personnel.

2. Currently, both overseas same sex marriages and overseas same sex civil unions are recognised in the UK as civil partnerships, so long as they meet the provisions outlined above. *Section 21* makes amendments so that, in future, these arrangements only relate to overseas same sex civil unions.

3. Overseas same sex marriages will, in future, be recognised in Scotland as marriages. *Section 38* of the Family Law (Scotland) Act 2006 already makes provision on the formal validity of overseas marriages. *Section 4* of this Bill makes provision so that references to “marriage” in enactments commenced before this Bill means both opposite sex and same sex marriage.
Section 22: Dissolution of civil partnership: evidence

1. The Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012 (SSI 2012/111)\(^1\) removed the need for third party evidence in actions to dissolve civil partnerships using the simplified procedure.

2. Some civil partnerships were dissolved using the simplified procedure and without obtaining third party evidence before the Order came into effect. Section 22 provides that the Order is to be treated as having had effect since 5 December 2005 (when civil partnerships were introduced). The effect of the provision is that the requirement to provide third party evidence is disapplied to any actions for dissolution which were raised before the Order came into force on 30 March 2012.

PART 3

REGISTRATION SERVICES

Section 23: Provision of certain information to district registrars

This corrects an erroneous cross-reference. Section 39C(1)(a)(i) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 currently refers to “the registers of births, deaths and marriages transmitted to the Registrar General under section 34(3) of this Act”. This reference should be to section 34(4) of the 1965 Act which provides that “The district registrar for a registration district shall, at such time or times as the Registrar General may direct, transmit a relevant register to the Registrar General”. Section 23 provides the correct cross-reference.

PART 4

GENERAL PROVISIONS

Section 25: Ancillary provision

This section allows Ministers to make ancillary provision, by order. Any order containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

SCHEDULE

1. The schedule to the Bill modifies the Family Law (Scotland) Act 1985 (“the 1985 Act”) to make provision in that Act about couples who change their civil partnership to a marriage. The procedure for changing a civil partnership to a marriage is provided for in section 6 of the Bill.

2. Paragraph 2(l) modifies section 4(1)c) of the 1985 Act. Section 4(1)c) provides that in determining the amount of aliment to award, the court shall have regard generally to all the circumstances of the case. Paragraph 2(l) provides that

\(^1\) This Order can be found at [http://www.legislation.gov.uk/ssi/2012/111/contents/made](http://www.legislation.gov.uk/ssi/2012/111/contents/made)
the court may take account of circumstances arising during the qualifying civil partnership.

3. Paragraph 2(2) modifies section 9(2) of the 1985 Act. Section 9(2) of the 1985 Act deals with principles for the court to apply when deciding what order for financial provision to make in relation to a divorce. One of the principles is any economic advantage gained before or during the marriage. Paragraph 2(2) makes it clear that this includes advantage gained during the qualifying civil partnership.

4. Paragraph 2(3) modifies section 10(2)(b). Section 10 makes provision on the sharing of the value of matrimonial property on divorce. Debts are deducted from the value of the property to be shared. Paragraph 2(3) makes it clear that debts incurred during the marriage includes debts incurred during the qualifying civil partnership.

5. Paragraph 2(4) modifies section 10(4)(b) to make it clear that property acquired during the marriage includes property acquired during the qualifying civil partnership.

6. Paragraph 2(5) modifies section 11(5)(b) and (c). Section 11 makes provision on factors the court has to take into account when applying the principles set out in section 9. One of the principles of section 9, at section 9(1)(e), is that “a party who at the time of the divorce seems likely to suffer serious financial hardship as a result of the divorce should be awarded such financial provision as is reasonable to relieve him of hardship over a reasonable period”.

7. When applying this principle, section 11(5)(b) and (c) provide that the court must have regard to “the duration of the marriage” and “the standard of living of the parties during the marriage”. Paragraph 2(5) makes it clear that the duration of the marriage includes the qualifying civil partnership.

8. Paragraph 2(6) modifies section 25. Section 25 creates a general presumption of equal shares of household goods during or after a marriage, including goods obtained in prospect of the marriage and during the marriage. Paragraph 2(6) makes it clear that this includes household goods obtained in prospect of or during the qualifying civil partnership.

9. Paragraph 2(7) makes a further modification of section 25 so that goods kept or used during the marriage include goods kept or used at any time during the qualifying civil partnership.
PART 1
MODIFICATIONS OF THE EQUALITY ACT 2010

1 Modifications of the Equality Act 2010

(1) The Equality Act 2010 (c.15) is amended as follows.

(2) In section 8 (marriage and civil partnership), after subsection (2) insert—

“(3) As respects Scotland, for the purposes of the protected characteristic of marriage and civil partnership a person is married if married to a person of a different sex or to a person of the same sex.”.

(3) In Schedule 3 (services and public functions: exceptions)—

(a) the title of Part 6 becomes “MARRIAGE AND CIVIL PARTNERSHIP”,

(b) in paragraph 25, after sub-paragraph (2) insert—

“(3) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to register the civil partnership of a person (B) if A reasonably believes that B’s gender has become the acquired gender under the Gender Recognition Act 2004.

(4) In sub-paragraph (3) “approved celebrant” has the meaning given in section 94A(4)(a) of the Civil Partnership Act 2004.”.

(c) after paragraph 25 insert—

“25A Same sex marriages and civil partnerships: Scotland

(1) An approved celebrant does not contravene section 29, so far as relating to sexual orientation discrimination, only by refusing—

(a) to solemnise the marriage of a person to a person of the same sex in accordance with the Marriage (Scotland) Act 1977, or

(b) to register the civil partnership of a person in accordance with the Civil Partnership Act 2004.

(2) Sub-paragraph (1) permits a refusal relating to sexual orientation only if it is made because to solemnise the marriage or, as the case may be, register the civil partnership would conflict with the approved celebrant’s religious or philosophical beliefs.

(3) In sub-paragraph (1) “approved celebrant”—

(a) in relation to solemnising a marriage, has the meaning given in section 8(2)(a) of the Marriage (Scotland) Act 1977,

(b) in relation to registering a civil partnership, has the meaning given in section 94A(4)(a) of the Civil Partnership Act 2004.”.
ANNEX O

MODIFICATIONS OF THE EQUALITY ACT 2010: EXPLANATORY NOTES

Introduction

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the draft modifications to the Equality Act 2010 (“the 2010 Act”) at Annex N. They do not form part of the draft modifications.

2. The 2010 Act is generally a reserved matter for Westminster. Therefore, the proposed changes would need to be made at Westminster. There are a number of ways in which this could be done, such as:

- Through primary legislation (an Act of Parliament) at Westminster.
- Through a section 104 Order under the Scotland Act 1998. (Section 104 gives UK Ministers the power to make consequential changes following an Act of the Scottish Parliament).

3. As these Notes refer to both the provisions of the 2010 Act and the provisions making the proposed modifications, references to the provisions making the modifications are in italics, for ease of reference.

The modifications

Section 8

1. Subsection (2) amends section 8 of the 2010 Act. The 2010 Act has a concept of “protected characteristics”. One of these “protected characteristics” is “marriage and civil partnership”. The modification makes it clear that, in relation to Scotland, “married” means “married to a person of a different sex or to a person of the same sex”. This reflects the introduction of same sex marriage in Scotland.

Schedule 3: marriage and civil partnership: gender reassignment

2. Schedule 3 to the 2010 Act has a number of exceptions to the general requirements in the 2010 Act in relation to the provision of services and Part 6 contains exceptions in relation to marriage. Paragraph 25 in Part 6 already has an exception in respect of an approved celebrants not having to solemnise a marriage if the celebrant reasonably believes one of the parties to the proposed marriage has acquired a gender under the Gender Recognition Act 2004.

3. The current text of paragraph 25 in relation to Scotland is as follows:

“25(1) An approved celebrant (A) does not contravene section 29, so far as relating to gender reassignment discrimination, only by refusing to solemnise the marriage of a person (B) if A reasonably believes that B's gender has become the acquired gender under the Gender Recognition Act 2004.
(2) In sub-paragraph (1) “approved celebrant” has the meaning given in section 8(2)(a) of the Marriage (Scotland) Act 1977 (persons who may solemnise marriage).”

4. The definition of “approved celebrant” under section 8(2)(a) of the 1977 Act is amended by section 8 of the Marriage and Civil Partnership (Scotland) Bill. As a result, it refers to both section 8(1)(a) of the 1977 Act (as amended by the Bill) which covers religious and belief celebrants of opposite sex marriages and section 8(1B)(a) of the 1977 Act (as inserted by the Bill) which covers religious and belief celebrants of same sex marriages.

5. Therefore, in light of the Bill’s amendments to the 1977 Act, paragraph 25 of Schedule 3 to the 2010 Act on celebrants not being required to marry a transgender person extends to:

- both religious and belief celebrants; and
- both opposite sex marriage and same sex marriage.

6. The amendment at subsection (3)(b) makes provision so that approved celebrants do not have to register civil partnerships where the same circumstances as are currently covered by paragraph 25 apply. The title of Part 6 is changed accordingly by subsection (3)(a).

7. The amendment at subsection 3(b) also provides a definition of “approved celebrant” by referring to the definition in section 94A(4)(a) of the Civil Partnership Act 2004. This section is inserted by section 19(13) of the Bill. The definition of “approved celebrant” in section 94A(4)(a) covers religious and belief celebrants.

Schedule 3: same sex marriages and civil partnerships: Scotland

8. Subsection (3)(c) adds a new paragraph, paragraph 25A, to Schedule 3. This makes new provision to protect religious and belief celebrants who do not wish to solemnise same sex marriage or register a civil partnership, even though their religious or belief body has opted in.

9. The modification provides that an approved celebrant does not contravene section 29 of the 2010 Act (about the provision of services) so far as relating to sexual orientation discrimination only by refusing to solemnise a same sex marriage or register a civil partnership.

10. The refusal is permitted only if solemnising the marriage or registering the civil partnership “would conflict with the approved celebrant’s religious or philosophical beliefs”.

11. The modification defines “approved celebrant”. The definitions used have been discussed above, in relation to the provisions on celebrants not being obliged to marry transgender people, or register a civil partnership of a transgender person.

Scottish Government
December 2012
Section 8 Persons who may solemnise marriage

(1) Subject to section 23A of this Act, a marriage between persons of different sexes may be solemnised by and only by—

(a) a person who is—

(i) a minister or deacon of the Church of Scotland; or

(ii) a minister, clergyman, pastor, or priest of a religious body prescribed by regulations made by the Secretary of State, or who, not being one of the foregoing, is recognised by a religious body so prescribed as entitled to solemnise marriage between persons of different sexes on its behalf; or

(iia) a celebrant of a belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a belief body so prescribed as entitled to solemnise marriage between persons of different sexes on its behalf; or

(iii) registered under section 9 of this Act to solemnise marriage between persons of different sexes; or

(iv) temporarily authorised under section 12 of this Act to solemnise marriage between persons of different sexes; or

(b) a person who is a district registrar or assistant registrar appointed under section 17 of this Act.

(1A) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(ii) or (iia) 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, or priest of a religious body prescribed by regulations made by the Scottish Ministers, or who, not being one of the foregoing, is recognised by a religious body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;

(ii) a celebrant of a belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;
(iii) registered under section 9 to solemnise marriage between persons
of the same sex; or
(iv) 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) or (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.

(1D) For the avoidance of doubt, nothing in subsection (1B) 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 subsection (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.

(1G) A statutory instrument containing regulations made under subsection (1)(a)(ii) or
(iia), (1B)(a)(i) or (ii) or (1E) is subject to annulment in pursuance of a
resolution of the Scottish Parliament.

(2) In this Act—
(a) any such person as is mentioned in subsection (1)(a) or (1B)(a) above is
referred to as an “approved celebrant”, and a marriage solemnised by an
approved celebrant is referred to as a “religious marriage”;
(aa) a marriage solemnised by an approved celebrant is referred to as a
“religious marriage” where the approved celebrant—
(i) falls within paragraph (a)(i) or (ii) of subsection (1) or paragraph
(a)(i) of subsection (1B);
(ii) falls within paragraph (a)(iii) of subsection (1) or paragraph (a)(iii)
of subsection (1B) by virtue of a nomination under section 9(1) or
(1A); or
(iii) falls within paragraph (a)(iv) of subsection (1) or paragraph (a)(iv)
of subsection (1B) where the temporary authorisation under section
12 is as a member of a religious body;
(ab) a marriage solemnised by an approved celebrant is referred to as a “belief marriage” where the approved celebrant—

(i) falls within paragraph (a)(iia) of subsection (1) or paragraph (a)(ii) of subsection (1B);

(ii) falls within paragraph (a)(iii) of subsection (1) or paragraph (a)(iii) of subsection (1B) by virtue of a nomination under section 9(1B) or (1C); or

(iii) falls within paragraph (a)(iv) of subsection (1) or paragraph (a)(iv) of subsection (1B) where the temporary authorisation under section 12 is as a member of a belief body;

(b) any such person as is mentioned in subsection (1)(b) or (1B)(b) above is referred to as an “authorised registrar”, and a marriage solemnised by an authorised registrar is referred to as a “civil marriage”.

Section 9 Registration of nominated persons as celebrants

(1) A religious body, not being—

(a) the Church of Scotland; or

(b) prescribed by virtue of section 8(1)(a)(i) of this Act,

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 different sexes.

(1A) A religious 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.

(1B) A belief body, not being prescribed by virtue of section 8(1B)(a)(iia), 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 different sexes.

(1C) A belief body, not being prescribed by virtue of section 8(1B)(a)(ii), 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.

(2) The Registrar General shall reject a nomination made under subsection (1), (1A), (1B) or (1C) above if in his opinion—

(a) the nominating body is not a religious body or, as the case may be, a belief body; or

(b) the marriage ceremony used by that body is not of an appropriate form; or

(c) the nominee is not a fit and proper person to solemnise a marriage; or

(d) there are already registered under this section sufficient numbers of the same religious body as the nominee to meet the needs of that body in relation to solemnising marriages between persons of different sexes or, as the case may be, marriages between persons of the same sex; or
(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) A statutory instrument containing regulations made under subsection (2A) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) For the purposes of subsection (2)(b) above, a marriage ceremony for marriage between persons of different sexes 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 as husband and wife; and

(b) a declaration by the celebrant, after the declaration mentioned in paragraph (a) of this subsection, that the parties are then husband and wife,

and the Registrar General may, before deciding whether to accept or reject a nomination, require the nominating body to produce to him in writing the form of words used at its marriage ceremonies for marriage between persons of different sexes.

(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.

(4) Where the Registrar General accepts a nomination made to him under subsection (1), (1A), (1B) or (1C) above, he—

(a) shall determine the period during which the nominee shall be empowered to solemnise marriages, being a period of not more than 3 years; and

(b) may determine that the nominee shall be empowered to solemnise marriages only in such area or place as the Registrar General may specify,

and may make his acceptance subject to such other conditions as he thinks fit:

Provided that nothing in paragraph (a) above shall preclude the Registrar General from accepting a further nomination of that nominee, in accordance with this section, to take effect at any time after the end of the period determined by the Registrar General under the said paragraph (a).

(5) The Registrar General shall—
(a) where he accepts a nomination made to him under subsection (1), (1A), (1B) or (1C) above—

(i) so inform the nominee and the nominating body, specifying the period during which the acceptance shall have effect and any condition to which the acceptance is subject;

(ii) enter the name of the nominee, the nominating body and such other particulars as he deems appropriate in a register which he shall establish and maintain and which shall be made available for public inspection at all reasonable times without charge;

(b) where he rejects the nomination, by notice in writing inform the nominating body of the reasons for that rejection.

(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—

(i) persons nominated by religious bodies to solemnise marriages between persons of different sexes; and

(ii) persons nominated by belief bodies to solemnise such marriages.

(b) the second part containing those details in relation to—

(i) persons nominated by religious bodies to solemnise marriages between persons of the same sex; and

(ii) persons nominated by belief bodies to solemnise such marriages.

(5A) For the purpose of subsection (5)(b) above, notice which is given by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(6) The nominating body may, if aggrieved by a rejection under this section, within 28 days of receiving notice of that rejection, appeal to the Secretary of State, and on any such appeal the Secretary of State may direct the Registrar General to accept the nomination or may confirm its rejection and shall inform the nominating body of his direction or confirmation, as the case may be, and the reason for it; and such direction or confirmation shall be final:

Provided that if a reason given for a confirmation of the rejection of a nomination is that the nominating body is not a religious body or, as the case may be, a belief body, that body may, within 42 days of receiving notice of the confirmation, appeal against the confirmation to the Court of Session and seek the determination of that court as to whether the body is a religious body or, as the case may be, a belief body; and if—

(a) the court determine that the nominating body is a religious body or, as the case may be, a belief body; and

(b) the said reason was the only reason given for the confirmation,

that determination shall be given effect to by the Registrar General as if it were a direction under this subsection to accept the nomination.
Section 12  Temporary authorisation of celebrants

(1) The Registrar General may, in accordance with such terms and conditions as may be specified in the authorisation, grant to any person member of a religious or belief body a temporary written authorisation to solemnise—

(a) a marriage or marriages specified in the authorisation; or

(b) marriages during such period as shall be specified in the authorisation.

(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 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, as the case may be, (ii); or

(b) has nominated members (whether or not including that person) under section 9(1A) or, as the case may be, (1C) 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) A statutory instrument containing regulations made under subsection (1D) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(2) For the purposes of subsection (1) above, an authorisation which is issued by electronic means is to be treated as written if it is received in a form which is legible and capable of being used for subsequent reference.

Scottish Government

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