POLICY NOTE

THE MARRIAGE AND CIVIL PARTNERSHIP (PRESCRIBED FORMS) (SCOTLAND) REGULATIONS 2014

SSI 2014/306

The above instrument was made by the Registrar General in exercise of the powers conferred by sections 88(1) and (5) and 95ZA of the Civil Partnership Act 2004; section 55(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006; sections 3(1), 6(1) and 7(2) of the Marriage (Scotland) Act 1977 ("the 1977 Act") and sections 32(1) and 54(1)(b) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 and all other powers enabling him to do so.

The Scottish Ministers have consented, as required, to this instrument being made.

The instrument is subject to the negative procedure.

Policy Objectives

The Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act") made a number of changes to the law on marriage, civil partnership and gender recognition.

In particular, the 2014 Act allows same sex couples to get married; puts belief bodies on the same footing as religious bodies; introduces the religious and belief registration of civil partnerships and allows married people to obtain a full Gender Recognition Certificate without being required to divorce. These changes require a number of changes to marriage and civil partnership forms.

The general approach taken by the Scottish Government and the Registrar General has been to make as few changes as possible to the forms and for the same forms to be used in relation to both opposite sex and same sex marriage.

Schedule 1 to these regulations introduces a new civil partnership notice form. The main changes from the existing form are:

- A status of "existing civil partnership" has been added reflecting that after gender recognition some civil partners may choose to register a renewed civil partnership: section 30 of the 2014 Act refers. Regulations under section 30 are being prepared separately.
- The form no longer asks about the "maiden" surname of the mother/parent, as it is not clear exactly what is meant by this term (i.e. whether it is surname at birth or surname immediately before marriage). Instead, the form now asks about surname at birth for both parents.
- A new Section F has been added, so the person seeking to enter into a civil partnership can provide information about the proposed celebrant, where the civil partnership is going to be registered through a religious or belief ceremony. This reflects the introduction of religious and belief civil partnerships.

- A box has been added to Section H on persons in an existing civil partnership providing the relevant extract from the civil partnership register (the civil partnership certificate).

Schedule 2 to these regulations lays down two new notices in relation to failure to deliver the civil partnership schedule to the registrar following registration of the civil partnership through a religious or belief ceremony. These new notices reflect the introduction of religious and belief ceremonies to register civil partnerships.

The procedure proposed follows existing procedures where marriages are solemnised through a religious or belief ceremony. Where the schedule is not delivered to the district registrar within 21 days of the ceremony, the registrar may serve a notice on either of the parties to the civil partnership, requiring that party to deliver the schedule to the registrar, or send it by post, within 8 days of the notice being served. If this first notice is not complied with, the registrar may serve a second notice, requiring the party to the civil partnership on whom the initial notice was served to attend personally within 8 days at the registrar's office to deliver the civil partnership schedule. A failure to comply with this second notice is a criminal offence.

Schedule 3 to these regulations introduces a new entry of marriage in the Book of Scottish Connections ("the BSC"). The BSC is a public record which allows people with a Scottish connection to apply for a birth, death, marriage or civil partnership registered outwith Scotland to be recorded by the Registrar General, provided that the event has already been registered with the civil registration authorities of the country in question. A commemorative certificate of the event, and the Scottish connection, will then be available.

The current entry of marriage in the BSC has designations of "bridegroom" and "bride". The new entry of marriage removes those terms so that the designations (if any) can be taken from the original registration of the marriage in the other country. In addition, a reference to the "maiden name" of the mother has been deleted given that, as indicated above, it is not clear exactly what is meant by this term.

Schedule 4 to the regulations prescribes a revised marriage notice form. The main changes are:

- "Existing Civil Partnership" has been added as one of the descriptions of marital or civil partnership status. This reflects that a couple may choose to change their civil partnership to a marriage through a marriage ceremony.

- "Existing Marriage" has been added as one of the descriptions of marital or civil partnership status. This reflects that the couple may be having a second marriage ceremony under section 20 of the 1977 Act (following a marriage of doubtful validity overseas) or may be having a renewed marriage ceremony under section 30 of the 2014 Act (following gender recognition). Regulations under section 30 are being prepared separately.

- The person completing the form is asked whether he or she wishes to be described in the Marriage Schedule and other documentation relating to the marriage as "Bridegroom" or "Bride" or have no designation. This will, for example, allow a couple to choose the terms "Bridegroom" and "Bride", if they wish. Some religious

bodies have indicated that it is particularly important to retain the terms "Bridegroom" and "Bride".

- The form no longer asks about the "maiden" surname of the mother/parent, as it is not always clear exactly what is meant by this term (e.g. whether it is surname at birth or surname immediately before marriage). Instead, the form now asks about surname at birth for both parents.

- In relation to couples in an existing civil partnership changing their relationship to marriage a box has been added to Section H asking for the relevant extract from the civil partnership register (the civil partnership certificate)..

- A box has been added to Section H to reflect that couples may be in an extant marriage, either because they are having a second marriage ceremony under section 20 of the 1977 Act or may be having a renewed marriage ceremony under section 30 of the 2014 Act. These couples are asked for the relevant extract from the marriage register (the marriage certificate).

Schedule 5 prescribes a revised version of the Form DSR, which relates to cases where the couple proposing to marry are not related by blood but are related by affinity. Such a couple can marry so long as:

(i) both parties are at least 21 years old at the time of the marriage; and

(ii) the younger party has not at any time before the age of 18 lived in the same household as the other party and been treated by the other party as a child of his or her family.

The 2014 Act made amendments to the table of forbidden degrees (of people too closely related to marry). The aim was to simplify the table of forbidden degrees and to make it gender neutral. No changes were made in respect of the types of relationships which mean that a couple cannot marry.

The revised Form DSR reflects the introduction of same sex marriage and amendments made by the 2014 Act to the degrees of relationship by affinity.

Schedule 6 to the regulations prescribes a new form of the Marriage Schedule.

It will no longer be automatic that couples will be described as "Bridegroom" and "Bride". Instead, box 3 has been added, to be completed by the registrar. The couple will be described in line with the choices that they have made when completing the marriage notice form. This will include "Bridegroom" and "Bride". Where the person chooses not to have any designation, a horizontal line will be added to indicate that this is not an erroneous omission.

Schedule 7 to the draft regulations provides a new form of the Certificate of No Impediment ("CONI") to marriage.

Section 7 of the 1977 Act provides for a CONI to be issued by the district registrar when a person resident in Scotland is seeking to marry outwith Scotland. The CONI shows that the

registrar is of the view that the person is not subject to any legal incapacity in terms of Scots law which would prevent him or her from marrying.

The CONI is amended to remove the terms "Bridegroom" and "Bride" to reflect that same sex couples will be able to marry in Scotland. The opportunity has also been taken to clarify the form. The CONI is about whether the applicant is able to marry. Therefore, the form now refers clearly to the "Applicant" and the "Intended Spouse".

Schedule 8 to the regulations provides a new form of the marriage register page.

It will no longer be automatic that couples will be described as "Bridegroom" and "Bride". Instead, box 3 has been added, to be completed by the registrar. The couple will be described in line with the choices that they have made when completing the marriage notice form. Where the person chooses not to have any designation, a horizontal line will be added to indicate that this is not an erroneous omission.

Box 12 has been amended to refer to "person solemnising/registering with designation". This reflects that there will be no solemnisation where the marriage is a change from a civil partnership through the administrative route.

On box 13, there will be no witnesses where the marriage is a change from a civil partnership through the administrative route. In these cases, the registrar will just draw a line next to the details relating to witnesses and addresses.

Consultation

The Scottish Government carried out a short consultation on draft regulations, from 19 September to 3 October. Following this consultation, a few changes were made:

- References to "extant" civil partnership or marriage were changed to "existing", on the basis that this is easier to understand.
- As indicated above, references to "maiden surname" were removed.
- Some typographical points were corrected and other minor changes made.

Impact Assessments

No impact assessments were prepared for these regulations. However, the Scottish Government prepared a Business and Regulatory Impact Assessment (BRIA) http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/BRIA and an Equality Impact Assessment http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex/EQIA for the introduction of the Marriage and Civil Partnership (Scotland) Bill to Parliament on 26 June 2013. Accompanying documents were also produced for the Bill in line with the Parliament's Standing Orders: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64983.aspx

Financial Effects

There are no significant financial effects arising from these Regulations. As indicated above, a BRIA was prepared for the introduction of the Marriage and Civil Partnership (Scotland) Bill to Parliament on 26 June 2013.

Scottish Government
Justice Directorate
November 2014