POLICY NOTE

THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 4 AND SAVINGS PROVISIONS) ORDER 2015

SSI 2015/14 (C. 3)

The above instrument was made in exercise of the powers conferred by section 36(2) and (3) of the Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act"). The instrument is laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

The 2014 Act introduces same sex marriage and the religious and belief registration of civil partnerships; makes provision so that civil partnerships can be changed into marriages; allows transgender people to obtain a full Gender Recognition Certificate and stay married and in certain circumstances stay in a civil partnership; allows civil marriage ceremonies to take place anywhere agreed by the couple and the registrar; and makes other general changes to the law on marriage and civil partnership in Scotland.

This fourth Commencement Order brings into force the provisions in the 2014 Act which increase certain minimum notice periods from 14 to 28 days. This Order also makes saving provision in relation to some of these increases in the notice periods.

The 2014 Act increases the minimum period for submitting notice of intention to marry (for both opposite sex and same sex) or to enter a civil partnership from 14 clear days to 28 clear days. In addition, the 2014 Act makes provision so that:

a) a Certificate of No Impediment (CONI) to marry outside Scotland may not be issued by a registrar in Scotland earlier than 28 days after the date of receipt of the notice; and
b) a CONI for a person resident in Scotland to enter into a civil partnership in England or Wales with a person resident there may not be issued by a registrar earlier than 28 days after receipt of the notice; rather than, in each case, 14 days as at present.

These increases in minimum notice periods reflect the amount of time it takes registrars to process notices of intention to marry or enter a civil partnership. However, the increases also help to combat sham marriage and sham civil partnership by giving immigration authorities more time to investigate any suspicions.

The UK Government are introducing an immigration scheme across the UK to tackle sham marriage and civil partnerships[1]. Part of this scheme will be to extend the period for issuing a marriage or civil partnership schedule to 70 days, in certain circumstances.

[1] The draft Order laid at Westminster to extend the scheme to Scotland is at http://www.legislation.gov.uk/ukdsi/2015/9780111125533

Under the scheme, all proposed marriages and civil partnerships where either or both of the parties is not an "exempt person", will be referred to the Home Office. An "exempt person" is either a "relevant national" (namely a British Citizen, a national of an EEA State other than the United Kingdom, or a national of Switzerland), or alternatively a person who is not a relevant national but has the appropriate immigration status in the UK or holds a relevant visa in respect of the proposed marriage or civil partnership and who provides evidence to be specified in regulations made under the Immigration Act 2014.

Where the Secretary of State (Home Office) has reasonable grounds to suspect that the referred marriage or civil partnership is a sham and decides to investigate, the minimum period for issuing the relevant schedule in those cases will be increased to 70 days in order to allow the matter to be investigated and a decision taken as to whether the marriage or civil partnership may proceed.

As part of the scheme, the UK Government are increasing the minimum notice period in England and Wales from 14 days to 28 days. The same change is also being made in Northern Ireland. The scheme is due to commence on 2 March 2015 and this Commencement Order is, therefore, timed to be in line with that.

Article 3 of the Commencement Order makes savings provision in respect of the increases in minimum notice periods. The intention is that where notice of intention to marry/enter a civil partnership is lodged in respect of a marriage intended to be solemnised/ civil partnership proposed to be entered in Scotland, the 14 day notice period will continue to apply where both parties to the intended marriage/proposed civil partnership have lodged notice prior to 1 March 2015. Notices of intention to marry/enter a civil partnership received by the district registrar in respect of either:

a) a Certificate of No Impediment (CONI) to marry outside Scotland; or
b) a CONI for a person resident in Scotland to enter into a civil partnership in England or Wales with a person resident there;

before 1 March 2015 are subject to the existing 14 day notice period.

This fourth Commencement Order follows the third Commencement Order, SSI 2014/287; the second Commencement Order, SSI 2014/212, as amended by SSI 2014/218; and the first Commencement Order, SSI 2014/121.

Consultation

Paragraphs 58, 59, 60, 62 and 63 of the Policy Memorandum to the Bill http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-introd-pm.pdf discussed the changes to the notice periods.

Paragraph 63 noted that the Government consultations on the issue of same sex marriage did not cover issues in relation to marriage and civil partnership schedules. It was decided, at a late stage, to include the provisions on increasing the minimum notice periods to reflect the reality of the existing workload on registrars.

There were no adverse comments on the proposed changes to the notice periods when the Bill was going through Parliament.

The Scottish Government has worked closely with registrars in relation to the timing of bringing into force these provisions.

Impact Assessments

No impact assessments were prepared for this Commencement Order. However, the Scottish Government prepared a Business and Regulatory Impact Assessment 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 Bill's introduction 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

Increasing the minimum notice periods from 14 to 28 days for submitting notice of intention to marry/enter a civil partnership is not expected to give rise to any costs, given that the process and forms will be the same as the existing procedure. 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
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