POLICY NOTE

THE MARRIAGE BETWEEN PERSONS OF DIFFERENT SEXES (PRESCRIBED BODIES) (SCOTLAND) REGULATIONS 2014

SSI 2014/304

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 8(1)(a)(ii) of the Marriage (Scotland) Act 1977 ("the 1977 Act") and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Policy Objectives

The 1977 Act was amended by the Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act"). In particular, the 2014 Act puts belief bodies on the same footing as religious bodies in relation to the solemnisation of marriage and allows same sex couples to get married. The 2014 Act also introduces the religious and belief registration of civil partnerships.

Under the 1977 Act, as amended by the 2014 Act, there are four ways for celebrants to be authorised to solemnise marriages between persons of different sexes. These ways are:

- Church of Scotland ministers and deacons are authorised by section 8(1)(a)(i);
- a religious or belief body may be prescribed by Scottish Statutory Instrument so that all of its celebrants may solemnise marriage;
- a religious or belief body may nominate persons to the Registrar General of Births, Deaths and Marriages for Scotland ("the Registrar General") to be registered as celebrants; and
- the Registrar General may grant temporary authorisation to a member of a religious or belief body. Such temporary authorisation may be for a specific marriage or marriages or may be for a period of time.

Under section 8(1)(a)(ii) of the 1977 Act, a "minister, clergyman, pastor, or priest or other celebrant" of a prescribed body is authorised to solemnise marriages as is a person "who, not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of different sexes on its behalf". This latter category is intended to cover, for example, persons who act as "registering officers" of the Religious Society of Friends (Quakers), who do not have ministers who are set apart from their membership.

Since 1977, a number of religious bodies have been prescribed by the Marriage (Prescription of Religious Bodies) (Scotland) Regulations 1977 (SI 1977/1670) ("the 1977 Regulations")[1] so that their celebrants are authorised to solemnise marriage. These Regulations are revoked by regulation 1(2) of this instrument.

The Marriage and Civil Partnership (Scotland) Act 2014 (Commencement No. 3, Saving, Transitional Provision and Revocation) Order 2014 (SSI 2014/287) (C.28) ("the third

[1] The 1977 Regulations are at http://www.legislation.gov.uk/uksi/1977/1670/made

Commencement Order") makes some transitional and savings provisions in article 4 in relation to the solemnisation of marriages. These transitional and savings provisions:

- ensure that the 1977 Regulations continue to have effect where a notice of intention to marry has been submitted to a district registrar before 16 December 2014;
- ensure that existing authorisations of celebrants through being nominated (e.g. celebrants of the Elim Pentecostal Church or the Free Church of Scotland (Continuing)) or having temporary authorisation (eg celebrants of the Humanist Society Scotland) remain in place but are restricted to opposite sex marriage; and
- ensure existing authorisations of celebrants through being nominated or having temporary authorisation fall if the celebrant will be authorised from 16 December 2014 through his or her religious or belief body being prescribed. For example, this means that the existing nominations under section 9 of the Synod of Scotland of the United Reformed Church cease to have effect by virtue of the body being prescribed.

Consultation

The Scottish Government contacted religious bodies which were prescribed under the 1977 Regulations, other than the Congregational Union of Scotland, which no longer exists, to check that they wished to remain prescribed to solemnise opposite sex marriage. All of these bodies confirmed that they wished to continue to be prescribed. Some changes have been made to the way in which some bodies are described to reflect changes since 1977.

The Government also contacted the United Reformed Church, who are the successors to the Congregational Union of Scotland. The United Reformed Church confirmed that they wished to be prescribed under the name "The Synod of Scotland of the United Reformed Church".

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. Prescribing religious and belief bodies to solemnise marriage produces some very modest savings in administration costs. 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