

## Members' Library Service Request Form

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| Date of Document          | 26/10/15   |
| Originator                | Diane Robertson, Team Manager - Face To Face Services  |
| Originator's Ref (if any) |  |
| Document Title            | Marriage and Civil Partnership (Scotland) Act 2014 –<br>THE QUALIFYING CIVIL PARTNERSHIP MODIFICATION<br>(SCOTLAND) ORDER 2015 |

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Additional information:

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| Authorised By | Tom Shearer                 |
| Designation   | Head of Comm & Partnerships |
| Date          | 26/10/15                    |

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**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Head of Communities and Partnerships

**SUBJECT:** Marriage and Civil Partnership (Scotland) Act 2014 –  
THE QUALIFYING CIVIL PARTNERSHIP MODIFICATION  
(SCOTLAND) ORDER 2015

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## **1 PURPOSE**

- 1.1 The purpose of the report is to highlight that the Scottish Government has made a qualifying order and the purpose of which is to allow persons in a same sex civil partnership registered outwith Scotland to change that civil partnership into a marriage through having a marriage ceremony in Scotland.
- 1.2 To note that the order will come into effect from 31<sup>st</sup> October 2015.
- 1.3 To note that the administrative route for conversion will not be available to persons outwith Scotland to change their same sex civil partnership within Scotland
- 1.4 Changing Civil Partnerships out with Scotland into Marriages – guidance notes for Registrars (Appendix 1) has been attached to provide further clarity of changes.

## **2 RECOMMENDATIONS**

- 2.1 To note the contents of this report and its background papers

## **3 BACKGROUND**

- 3.1 The first same sex marriage in Scotland was available to couples from 31<sup>st</sup> December 2014.
- 3.2 Changes to the Marriage and Civil Partnership (Scotland) Act 2014 permitted couples to either convert an existing Civil Partnership through an administrative process or through a Marriage Ceremony.

- 3.3 Such changes were only afforded to Civil Partnerships that were registered in Scotland.
- 3.4 Further changes to the Marriage and Civil Partnership (Scotland) Act 2014 – through the Qualifying Civil Partnerships Modification (Scotland) Order 2015 will now permit persons in a same sex civil partnership registered outwith Scotland to change that civil partnership into a marriage by having a marriage ceremony in Scotland.

#### **4 POLICY IMPLICATIONS**

- 4.1 None

#### **5 EQUALITY IMPACT ASSESSMENT**

- 5.1 The report is not applicable to the wellbeing of equalities groups and an Equality Impact Assessment is not required

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – Same sex civil partnerships registered outwith Scotland who wish to change that civil partnership into a marriage in Scotland will require to pay the same marriage fees applicable to opposite sex couples

Current fees for lodging notice is set at £30.00 for each notice (plus £10.00 for extract) total £70.00 for religious ceremony and a Civil Ceremony would be a minimum of £125 dependant on day and time of the ceremony and whether it was held within or outwith Council premises.

- 6.2 Personnel - none

- 6.3 Other – None

#### **7 BACKGROUND PAPERS**

- 7.1 Changing Civil Partnerships Registered out with Scotland into Marriages – guidance for Registrars (Appendix 1)

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| <b>DATE</b>          | 26 <sup>th</sup> October 2015                                 |

# CHANGING CIVIL PARTNERSHIPS REGISTERED OUTSIDE SCOTLAND INTO MARRIAGES

## Introduction

Couples in a same sex civil partnership registered outside of Scotland may wish to change their relationship into a marriage in Scotland. There is no obligation on couples to change their civil partnership into a marriage. It is entirely a decision for couples themselves.

For convenience, this guidance note refers to “civil partnership”, which is the term used in Scotland and in the rest of the United Kingdom. However, a number of same sex relationships registered outwith the UK are treated as civil partnerships in Scotland even though they may be called something else (eg “registered partnership” or “civil union”) where they were originally registered.

The country which originally registered your civil partnership may have established procedures to enable this to change to marriage in that country. You may wish to consider this option as it may provide greater certainty generally about your legal status. The effect outside Scotland of changing your civil partnership into a marriage recognised by Scots law may not be clear.

This guidance note by the Scottish Government outlines eligibility requirements to change a civil partnership registered outside of Scotland into a marriage and the procedures to follow. It also suggests that couples considering taking this step may wish to obtain their own independent legal advice on how the marriage formed in Scotland would be treated outside Scotland. Any such advice may need to cover both how the marriage would be treated in the country that originally registered the civil partnership and how the marriage would be treated in another country.

Couples from outwith the European Economic Area and Switzerland may be subject to UK immigration controls. Further information is available from National Records of Scotland’s website and from the Gov.UK website.

**The Scottish Government, National Records of Scotland and Scottish local authority registrars cannot provide any advice to couples on how the marriage would be treated outside Scotland.**

## Eligibility

To change a civil partnership registered outside of Scotland into a marriage here, the relationship must be treated as a civil partnership in Scotland.

Civil partnerships registered in England, Wales and Northern Ireland are also civil partnerships in Scotland.

For relationships registered outside of the United Kingdom, the relationship must meet all of the following criteria:

- Either be a specified relationship or a relationship which meets general conditions:
- Registered by a responsible authority outside of the United Kingdom.
- Formed by two people of the same sex.
- Formed by two people who are neither married nor already in a civil partnership.
- The couple must have been able to enter into the civil partnership under overseas law and must have complied with all necessary requirements overseas. If one or both of the couple were domiciled in a part of the United Kingdom, they must have met UK requirements on eligibility to enter into a civil partnership.

A “specified relationship” is one where specific provision has been laid down in legislation so that it is treated as a civil partnership in the United Kingdom, including Scotland.

In practice, this means that most same sex registered partnerships, civil unions or similar relationships which have been registered outwith the UK are treated as civil partnerships in Scotland.

To change a civil partnership registered outside of Scotland into a marriage here, couples need to go through a marriage ceremony. Therefore:

- Notice of intention to marry must be given.
- A marriage notice period applies. (A minimum of 28 clear days).
- Barriers to marriage (eg too closely related) apply.
- Fees apply. These fees will be the same as for any other marriage ceremony in Scotland.
- The marriage ceremony may be civil or religious or belief (provided the relevant religious or belief body has opted into the solemnisation of same sex marriage).

You will need to provide the registrar with your civil partnership certificate or equivalent information and evidence.

The local authority registrar can provide further details of the requirements in relation to the ceremony.

### The effect of changing a civil partnership registered outside Scotland into a marriage in Scotland

Your marriage will be recognised as a marriage in Scotland. The formation of a marriage ends your civil partnership for the purposes of the law of Scotland and treats you as married from 5 December 2005 or the date your civil partnership was registered, whichever is the later. The reason for the reference to 5 December 2005 is that is when same sex relationships were first given legal recognition in Scotland.

There is no guarantee of your marriage being recognised in your home country or in any other country. Therefore, you may wish to obtain your own independent legal advice on the effect in your home country or any other country of changing a civil partnership registered outside Scotland into a marriage in Scotland. In particular, you may wish to check whether any uncertainty on your civil status might require you to go to court in another country to seek clarity on your status.

Areas where lack of clarity on civil status may have an effect on your rights and responsibilities include property law; succession (inheritance); and pensions. There could also be an effect on others (eg on any children you may have).

Other points you may wish to consider in relation to changing your civil partnership into marriage in Scotland include:

- Your home country or any other country may still regard you as being in a civil partnership.
- Your home country or any other country may not recognise you as being in a legal relationship (for example, if the country sees your civil partnership as having been ended but the country does not provide for marriage for same sex couples).
- Your home country or any other country might treat the marriage formed in Scotland as a new relationship which may be entitled to some form of recognition, but only from the date the marriage was formed.
- If you should subsequently divorce or dissolve your relationship, there may be uncertainty as to whether this divorce or dissolution would be recognised across the world. This could stop you from subsequently re-marrying, or entering a new civil partnership.
- If you should subsequently divorce or dissolve your relationship outwith Scotland, any financial provision may be affected by the fact that the relationship was changed into marriage in Scotland.
- If your home country or any other country do not recognise the marriage in Scotland, and you should subsequently divorce or dissolve your relationship, it is possible that there could be court proceedings on ending the relationship in more than one country.

**THE SCOTTISH GOVERNMENT  
OCTOBER 2015**