



Marriage and civil partnership guide



A short history of marriage and civil partnership in Scotland

Marriage

Marriage is an ancient institution. Its nature and what it means to society and couples who marry has developed over hundreds, if not thousands, of years.

Marriage has been available to mixed sex couples in Scotland for centuries. It became available to same sex couples on 16 December 2014.

Civil partnership

Civil partnership became available to same sex couples in Scotland and across the UK in 2005.

At that time marriage was not available to same sex couples. Civil partnership provided a way for same sex couples to access the same rights, benefits and responsibilities which come from entering a marriage.

Mixed sex civil partnership was introduced in Scotland in June 2021.

Living together in Scotland

Couples in Scotland who live together (cohabit) have some legal rights, including:

- Rights to certain items in their shared household
- Rights to certain money and property
- The right to apply to court for financial provision for the couple decide to end the relationship. These applications have to be submitted to the court within one year of the couple ceasing to live together.
- The right to apply to court for an order relating to money or property if one person in the relationship dies without leaving a will. These applications have to be submitted to the court within six months of the death.



What about common law marriage?

Sometimes “common law marriage” is used to describe two people who are not married or in a civil partnership, but live together as if they are. In Scottish law, there is no such thing as a “common law marriage”.

It used to be possible for mixed sex couples to form a “marriage by cohabitation with habit and repute”. This type of marriage could be established through an application to court which showed that the relationship met certain conditions.

The law which enabled “marriage by cohabitation with habit and repute” was abolished in 2006.

It is still possible to apply to court to establish a “marriage by cohabitation with habit and repute”, but only if the relationship met the conditions before the law was changed in 2006. It is very rare for this type of marriage to be established now.

Getting married or entering a civil partnership in Scotland

This section of the guide will explain

- eligibility
- the process for getting married or entering a civil partnership
- different types of marriage solemnisation and civil partnership registration
- what it can cost to marry or enter a civil partnership

Eligibility

A couple can only get married or enter a civil partnership if they both meet eligibility criteria.

These criteria are the same for marriage and for civil partnership:

- The couple must both be aged 16 or over
- The relationship can be mixed sex or same sex

- Both people must not already be married or in a civil partnership with someone else
- The couple cannot be closely related to each other. Mygov.scot has a full list of the relations a person cannot marry or have a civil partnership with.
- The couple must both be capable of understanding what marriage or civil partnership means
- The couple must both be capable of consenting to marry or enter a civil partnership

The process for getting married or registering a civil partnership

The legal process for entering either type of relationship is very similar.

- The couple must each submit a notice of intention to marry or notice of intention to enter a civil partnership to the registrar in the area where they plan to marry.

National Records of Scotland has published examples of a notice of intention to marry and a notice of intention to enter a civil partnership.

- The couple must submit their notices at least 28 full days in advance of the date they intend to marry or enter your civil partnership.

For example, if a couple both submit their notices on 1 June, the earliest they could have their marriage or civil partnership would be 30 June. In this example, the 28 full days are 2 June to 29 June (inclusive).

This notice period allows the registrar to check the information provided by the couple. This enables the registrar to make sure everything is in order so the marriage or civil partnership can go ahead.



Marriage and civil partnership at a glance

To provide an overview of what marriage and civil partnership might mean in reality for a couple, meet Mr Green and Ms Yellow.

Mr Green and Ms Yellow have decided they want to make a lasting, legal commitment to each other.

What will marriage or civil partnership mean for them?



This example uses a mixed sex couple. If the example was of a same sex couple, there can be some differences in how they might obtain **parental responsibilities and rights**.

If they get married...

If Ms Yellow has a baby while married to Mr Green, Mr Green will be presumed to be the father.

Mr Green and Ms Yellow will both have parental responsibilities and rights.

If either Mr Green and Ms Yellow die, the surviving spouse will have certain rights in relation to their estate.

If they decide to end their relationship:

- they will need to think about what might be best for any children they have
- they might be able to agree some matters through alternative dispute resolution
- they might be entitled to seek a court order relating to money and other assets.

If they go to another country for a holiday or to live, it is very likely that their marriage will be recognised.

If they enter a civil partnership...

If Ms Yellow has a baby while in the civil partnership, Mr Green will be presumed to be the father.

Mr Green and Ms Yellow will both have parental responsibilities and rights.

If either Mr Green and Ms Yellow die, the surviving civil partner will have certain rights in relation to their estate.

If they decide to end their relationship:

- they will need to think about what might be best for any children they have
- they might be able to agree some matters through alternative dispute resolution
- they might be entitled to seek a court order relating to money and other assets.

If they go to another country for a holiday or to live, their civil partnership might not be recognised.



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