

Justice Directorate  
Civil Law and Legal System Division

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**To: All local authority chief executives in Scotland**

**Copy: Convention of Scottish Local Authorities**

10 April 2014

Dear Chief Executive

## **IMPLEMENTATION OF THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014**

### Introduction

1. This letter seeks your views by **Friday 9 May 2014** on the implementation of section 21 of the 2014 Act, on civil ceremonies taking place anywhere agreed by the registrar and the couple.
2. This letter follows a meeting organised by National Records of Scotland on 1 April 2014, attended by registrars from across Scotland.

### Implementation of the 2014 Act generally

3. The first same sex marriages in Scotland are expected towards the end of 2014. It is not yet clear whether changes from civil partnerships to marriages and the provisions of the Act on transgender people will be implemented to the same timetable.

### Section 21 of the 2014 Act

4. Section 21 amends the Marriage (Scotland) Act 1977 so that civil marriage ceremonies can take place anywhere, other than in religious premises, agreed by the couple and the registrar, rather than at "approved places"<sup>1</sup>.
5. Once commenced, the amendments will mean that a civil marriage ceremony can take place in:
  - The registration office of the authorised registrar; or
  - At an appropriate place in the registration district of the authorised registrar; or

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<sup>1</sup> Information by National Records of Scotland on the current provisions is at: <http://www.gro-scotland.gov.uk/regscot/getting-married-in-scotland/civil-marriages-in-approved-places.html>

- With the approval of the Registrar General, at the registration office of another authorised registrar; or
- With the approval of the Registrar General, at an appropriate place in the registration district of another authorised registrar; or
- With the approval of the Registrar General, at an appropriate place in Scottish waters.

6. This will apply to both opposite sex and same sex marriages, although, as indicated above, we do not expect same sex marriages to start until the end of this year.

7. Civil partnerships may already be registered at any place agreed between the couple and the registrar (section 93 of the Civil Partnership Act 2004 refers).

8. We discussed the commencement of section 21 of the 2014 Act with registrars at the meeting on 1 April. The majority view was that some lead-in time was required. **Therefore, the Government proposes to commence section 21 so that it comes into force on 1 September 2014. I would be grateful for views on this proposal.**

### Other provisions of the 2014 Act

9. It may also be possible to commence other provisions of the 2014 Act before the end of the year. Areas of particular interest to local authorities are:

9.1 Sections 17 and 25 on the power of district registrars to require evidence of nationality from those entering marriage or civil partnerships. The meeting on 1 April agreed these provisions should be commenced as soon as the Registrar General's guidance in this area is available.

9.2 Sections 18 and 24(12) on extending the notice period for marriage and civil partnership (respectively) from 14 days to 28 days. The meeting on 1 April agreed that these provisions should be commenced at the same time. As section 24(12) covers other matters as well, this is likely to mean that commencement of both provisions would be around the end of this year.

9.3 Section 19. The effect of this is that where a person wants to marry outwith Scotland and seeks a certificate about his or her legal capacity from the district registrar, the person must provide a copy of the decree of dissolution or annulment of any previous civil partnership. The Government intends to commence section 19 in May 2014.

9.4 Section 22. This is a minor amendment to section 20 of the Marriage (Scotland) Act 1977. This allows a couple to have a second marriage ceremony in Scotland if they have already married outwith the United Kingdom but there is some doubt about the validity of the overseas ceremony. Section 20 of the 1977 Act prescribes an endorsement to the Marriage Schedule in these circumstances and contains references to the figures "19", reflecting the twentieth century. Section 22 of the 2014 Act repeals the figures "19". The Government intends to commence section 22 in May 2014.

9.5 Section 32. This corrects an erroneous cross-reference in the Registration of Births, Deaths and Marriages (Scotland) Act 1965. The Government intends to commence section 32 in May 2014.

## Conclusion

10. Please send your reply to this letter to Simon Stockwell, Civil Law and Legal System Division, The Scottish Government, St Andrew's House, Edinburgh, EH1 3DG. E-mail: [simon.stockwell@scotland.gsi.gov.uk](mailto:simon.stockwell@scotland.gsi.gov.uk)

Yours sincerely

SIMON STOCKWELL  
Family and Property Law

To: the attached list of organisations

In 2014 Scotland Welcomes the World



Our ref: A9280561  
19 September 2014

Dear Colleague

## THE DRAFT MARRIAGE AND CIVIL PARTNERSHIP (PRESCRIPTION OF FORMS) (SCOTLAND) REGULATIONS 2014

### Introduction

1. This letter seeks your comments **by close Friday 3 October 2014** on the attached draft regulations. The attached draft regulations add new forms and make some changes to existing forms following the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”). A number of these forms have guidance notes prepared by National Records of Scotland (“NRS”). These guidance notes are not laid down through regulations and will be prepared by NRS when the forms are finalised.

2. I apologise for the short period for comments on these draft regulations. The Government wishes to make good progress in relation to implementing the 2014 Act. Information on implementation so far is available on the Government’s website<sup>1</sup>.

3. The Government’s intention is that the 2014 Act should be brought into force generally by the end of 2014.

### Draft regulations

#### Civil partnerships

4. The draft regulations add some new civil partnership forms and make changes to the civil partnership notice form.

5. Under the 2014 Act civil partnerships will remain available to same sex couples. In addition, the 2014 Act introduces provision allowing religious and belief bodies which wish to

<sup>1</sup> Information on implementation is at <http://www.scotland.gov.uk/Topics/Justice/law/17867/samesex>

do so to register civil partnerships: at the moment, civil partnership ceremonies are civil only. The Government intends to issue a full consultation later this year seeking views on the future of civil partnerships<sup>2</sup>. The Government has already made it clear that existing civil partners can stay in their civil partnership if they wish: there will be no obligation on existing civil partners to change their relationship to marriage if they do not wish to do so.

### *Civil partnership notice form*

6. Schedule 1 to these regulations prescribes a slightly changed version of the civil partnership notice form (form CP10)<sup>3</sup>. Changes from the existing form are:

6.1 Under box 7, a status of “extant civil partnership” has been added. This reflects that after gender recognition some civil partners may have a renewed civil partnership: section 30 of the 2014 Act refers. Regulations under section 30 are being made separately.

6.2 A new Section F has been added<sup>4</sup>, 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.

7. The 2014 Act increases the minimum notice period for civil partnership (and for marriage) from 14 days to 28 days. The Government intends to commence this towards the end of 2014. The Registrar General will retain the power to waive the minimum notice period, in exceptional circumstances.

### *Failure to deliver civil partnership schedule*

8. 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. Powers to prescribe these new notices are contained in section 24(15) of the 2014 Act, which adds relevant provision to the Civil Partnership Act 2004 (“the 2004 Act”).

9. 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. 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 under section 100(3A)(d) of the 2004 Act, as added by section 24(19) of the 2014 Act.

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<sup>2</sup> Options for the review of civil partnership include no change; making provision so that no more new civil partnerships could be formed in Scotland after a specified date in the future; and opening up civil partnerships to opposite sex couples.

<sup>3</sup> The existing civil partnership notice form (CP10), along with the non-statutory guidance notes, can be found on NRS’ website at <http://www.gro-scotland.gov.uk/files2/registration/Form-CP10.pdf>

<sup>4</sup> With consequential amendments to the lettering of the following sections.

### *Other civil partnership forms*

10. The Government and the Registrar General are planning no changes to other civil partnership forms following the 2014 Act. Therefore, no changes are planned to:

10.1 the civil partnership schedule;

10.2 the civil partnership register page (the extract of which forms the civil partnership certificate); or

10.3 the Certificate of No Impediment (CONI) which may be issued by registrars when a person resident in Scotland wishes to enter a civil partnership with a person resident in England or Wales.

### Book of Scottish connections

11. Information on the Book of Scottish Connections (“the BSC”) is available on the NRS website<sup>5</sup>. 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 in the BSC held 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 entry of marriage in the BSC*

12. The current entry of marriage in the BSC has designations of “bridegroom” and “bride”. The Government considers it more appropriate for the designations (if any) to be taken from the original registration of the marriage in the other country. Schedule 3 amends the entry of marriage form in the BSC accordingly.

### *Other BSC forms*

13. The Government and the Registrar General are planning no changes to other BSC forms as a consequence of the 2014 Act. Therefore, no changes are planned to:

13.1 the application form for the marriage entry;

13.2 the application form for the civil partnership entry; or

13.3 the civil partnership entry.

### Marriage

14. The 2014 Act allows same sex couples to get married. It also allows persons in a civil partnership to change their relationship to a marriage, if they wish, through having a marriage ceremony or through an administrative route. The Government has sought views separately on proposed regulations to establish the administrative route.

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<sup>5</sup> Please see <http://www.gro-scotland.gov.uk/regscot/book-of-scottish-connections.html>

15. The Government intends that the same types of marriage forms should be used for both opposite sex and same sex marriage and for cases where a couple are changing their civil partnership to a marriage<sup>6</sup>.

16. As outlined below, the Government intends that it will remain open to couples to be designated in marriage forms as “Bridegroom” and “Bride”, if they wish.

*Marriage notice form (form M10).*

17. Schedule 4 to the draft regulations prescribes a revised marriage notice form<sup>7</sup>. The proposed changes are:

17.1 In box 7, “Extant 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.

17.2 In box 7. “Extant 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 Marriage (Scotland) Act 1977 (“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.

17.3 Box 13 asks the person completing the form 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”.

17.4 Box 32 has been added as couples seeking to marry may in future be in an extant civil partnership and may be changing their relationship from civil partnership to marriage. Box 32 asks for the relevant extract from the civil partnership register (the civil partnership certificate).

17.5 Box 33 has been added 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.

*Declaration where a marriage is proposed between parties related by affinity (DSR form)*

18. Schedule 5 prescribes a revised version of the DSR form.

19. This form 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

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<sup>6</sup> However, where a couple choose the administrative route to change their civil partnership to a marriage, there will be no marriage notice form and no Marriage Schedule. The couple will have to complete and lodge an application form that will be contained in Regulations.

<sup>7</sup> The existing marriage notice form (M10), along with the non-statutory guidance notes, can be found on NRS’ website at <http://www.gro-scotland.gov.uk/files2/registration/Form-M10.pdf>

(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: sections 2(1A) and 3(1)(d) of the 1977 Act refers.

20. Section 3(1)(d) of the 1977 Act refers to the parties being related in “a degree specified in paragraph 2 of Schedule 1 to this Act”. Section 1 of the 2014 Act made amendments to the table of forbidden degrees (of people too closely related to marry) including to paragraph 2 of Schedule 1 to the 1977 Act. These amendments were explained in paragraphs 6 and 7 of the Explanatory Notes for the 2014 Act<sup>8</sup>. 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.

21. The revised DSR form reflects the introduction of same sex marriage and the amendments made to the degrees of relationship by affinity.

### *The Marriage Schedule*

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

23. 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 box 13 of 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.

### *The Certificate of No Impediment to Marry (form M1)*

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

25. 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.

26. The CONI is amended to reflect that, in future, there will be no legal bar to a couple marrying in Scotland just because they are of the same sex.

27. 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” rather than using the terms “Bridegroom” and “Bride”.

### *The marriage register page*

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

29. 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 box 13 of the

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<sup>8</sup> Paragraphs 6 and 7 of the Explanatory Notes for the 2014 Act are at <http://www.legislation.gov.uk/asp/2014/5/notes/division/3/1/1/2>



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.

30. 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.

31. 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.

32. Where a civil partnership is changing to a marriage – whether through the ceremonial or the administrative route – the intention of the Government and of the Registrar General is that all of the details on the marriage register page should reflect the position at the time the marriage, rather than the civil partnership, takes place.

33. The extract from the marriage register page forms the marriage certificate. One question arising is whether the marriage register page should refer to the date of the civil partnership when a civil partnership is being changed into a marriage. One argument for that is that couples may, in some cases, need to show the date of their original civil partnership in order to obtain full rights and responsibilities. An argument against is that it will make the entry in the marriage register (and the extract or certificate) look different from other entries.

34. The Government’s conclusion is that the date of the original civil partnership should be added at the bottom of the marriage register page, in the space at the bottom for notes.

35. To achieve this, the registrar will populate the bottom space on the register page with appropriate text. This text will be along the following lines: “This marriage was changed from a civil partnership originally entered into on [*enter date*]. The couple are treated as having been married to each other since [*enter date original civil partnership was entered into*]”.

#### *Forms on failure to return the Marriage Schedule*

36. No amendments are planned to these forms.

#### *Minimum notice period for marriage*

37. The 2014 Act increases the minimum notice period for marriage (and for civil partnership) from 14 days to 28 days. The Government intends to commence this towards the end of 2014. The Registrar General will retain the power to waive the minimum notice period, in exceptional circumstances.

### **Conclusion**

38. Comments are invited on the attached draft regulations by **close Friday 3 October 2014**.

39. Comments should be sent to:

Julia McCombie  
Family and Property Law Team  
The Scottish Government  
Room GW.15  
St Andrew's House  
EDINBURGH  
EH1 3DG

Email: [julia.mccombie@scotland.gsi.gov.uk](mailto:julia.mccombie@scotland.gsi.gov.uk) Phone: 0131 244 2417

Yours faithfully

SIMON STOCKWELL  
Family and Property Law

## **ANNEX: LIST OF ORGANISATIONS BEING SENT THIS LETTER**

Association of Registrars of Scotland (and registrars across Scotland)  
Department of Finance and Personnel in Northern Ireland  
Department for Work and Pensions  
Equality Network  
Faculty of Advocates  
Family Law Association  
General Register Office for England and Wales  
Government Equality Office  
Home Office  
Humanist Society Scotland  
Law Society of Scotland  
LGBT Youth Scotland  
Ministry of Justice (UK)  
Muslim Council of Scotland  
Scotland for Marriage  
Scottish Churches Parliamentary Office  
Scottish Council of Jewish Communities  
Scottish Transgender Alliance  
Stonewall Scotland