

Marriage and Civil Partnership (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 6	Schedule 1
Sections 7 to 27	Schedule 2
Sections 28 to 33	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 14

Alex Johnstone

47 After section 14, insert—

<Indemnification of losses arising from certain legal proceedings

- (1) This section applies where any relevant legal proceedings are brought against a person (“person A”) by or on behalf of another person (“person B”).
- (2) The Scottish Ministers must indemnify person A against any net financial losses incurred by person A as a result of the relevant legal proceedings.
- (3) For the purposes of subsection (2), person A’s net financial losses are to be calculated by—
 - (a) adding together—
 - (i) the amount paid by person A in respect of person A’s own legal costs in connection with the relevant legal proceedings,
 - (ii) any other costs incurred by person A as a direct result of the relevant legal proceedings, and
 - (iii) any sums which person A has been ordered to pay to person B as a result of the relevant legal proceedings, and
 - (b) subtracting from the total obtained under paragraph (a) any sums which person B has been ordered to pay person A as a result of the relevant legal proceedings.
- (4) In this section, “relevant legal proceedings” means any legal proceedings arising from a claim that person A has discriminated against another person by virtue of person A holding or acting on the belief that marriage may only be between one man and one woman.”.>

Section 21

Alex Neil

27 In section 21, page 16, line 8, at end insert—

<() In subsection (1), before paragraph (a) insert—

“(za) an action for declarator of marriage;”.>

After section 21

John Mason

48 After section 21, insert—

<CHAPTER

REVIEW OF SAME SEX MARRIAGE

Review of effect of same sex marriage

- (1) The Scottish Ministers must, before the end of the 5 year period, review—
 - (a) the effects of the introduction of marriage of persons of the same sex (“same sex marriage”),
 - (b) the operation of the provisions on same sex marriage in this Act,and lay before the Scottish Parliament a report of the review.
- (2) The review must, in particular, consider—
 - (a) the operation and effect of section 8(1D) of the 1977 Act (inserted by section 10(2)(b) of this Act),
 - (b) the operation and effect of section 14 of this Act,
 - (c) any court proceedings relating to the operation or effect of any provision relating to same sex marriage.
- (3) In carrying out a review under this section, the Scottish Ministers must consult such persons as they consider appropriate.
- (4) The Scottish Ministers must, as soon as practicable after the report has been laid before the Parliament, publish the report in such manner as they consider appropriate.
- (5) In this section—

“court proceedings” includes proceedings of—

 - (a) an employment tribunal within the meaning of section 1 of the Employment Tribunal Act 1996,
 - (b) an Employment Appeal Tribunal within the meaning of section 20 of the Employment Tribunal Act 1996,
 - (c) the European Court of Human Rights,
 - (d) the European Court of Justice,

“the 5 year period” means the period of 5 years beginning with the day on which any provision relating to same sex marriage comes into force.>

Schedule 2

Alex Neil

50 In schedule 2, page 37, line 38, after <with> insert <this Part of>

Alex Neil

51 In schedule 2, page 38, line 3, at end insert—

<() in the definitions of “full gender recognition certificate” and “interim gender recognition certificate”, for “5 or 5A” substitute “4C, 5, 5A or 5D”,>

Alex Neil

52 In schedule 2, page 38, line 9, leave out from beginning to <certificate,”> in line 13

Alex Neil

53 In schedule 2, page 38, line 32, at end insert—

<(5) A consular marriage in relation to which the relevant part of the United Kingdom is Scotland is to be treated for the purposes of this Act as having been solemnised in Scotland.

(6) In subsection (5)—

“consular marriage” means a marriage solemnised in accordance with Part 1 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 and any Order in Council made under it,

“relevant part of the United Kingdom”, in relation to such a marriage, means the part of the United Kingdom determined in accordance with paragraph 1(2)(b) of that Part of that Schedule for the purposes of the marriage.”>

Alex Neil

54 In schedule 2, page 38, line 40, leave out from beginning to <Scotland,> in line 43

Alex Neil

55 In schedule 2, page 39, line 2, leave out <of consent by the applicant’s spouse> and insert <by the applicant’s spouse that the spouse consents to the marriage continuing after the issue of a full gender recognition certificate (“a statutory declaration of consent”)>

Alex Neil

56 In schedule 2, page 39, line 4, leave out from second <the> to end of line 7 and insert <no such declaration by the applicant’s spouse is included.>

Alex Neil

57 In schedule 2, page 39, line 17, leave out <for subsections (2) and (3) substitute> and insert <—

() after subsection (1) insert—

“(1A) The certificate is to be a full gender recognition certificate if the applicant is neither married nor in a civil partnership.”,

() in subsection (2) (as substituted by paragraph 3 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013)—

(i) after first “is” insert “also”,

- (ii) paragraph (a) is repealed,
- () in subsection (3) (as so substituted)—
 - (i) in paragraph (b), at the beginning insert “subject to subsection (3C)(b),”,
 - (ii) in paragraph (e), at the beginning insert “subject to subsection (3C)(c),”
- () after subsection (3B) (as so substituted) insert—>

Alex Neil

- 58 In schedule 2, page 39, line 18, leave out <(2)> and insert <(3C)>

Alex Neil

- 59 In schedule 2, page 39, line 18, after <is> insert <also>

Alex Neil

- 60 In schedule 2, page 39, leave out line 19

Alex Neil

- 61 In schedule 2, page 39, line 26, leave out <(3)> and insert <(3D)>

Alex Neil

- 62 In schedule 2, page 39, line 30, at beginning insert <subject to subsection (2)(b),>

Alex Neil

- 63 In schedule 2, page 39, line 38, at beginning insert <subject to subsection (2)(c),>

Alex Neil

- 64 In schedule 2, page 39, line 40, leave out <(3A)> and insert <(3E)>

Alex Neil

- 65 In schedule 2, page 39, line 43, leave out <(3B)> and insert <(3F)>

Alex Neil

- 66 In schedule 2, page 39, line 43, leave out <(2)(c)> and insert <(3C)(c)>

Alex Neil

- 67 In schedule 2, page 40, line 36, after <consent> insert <(within the meaning of section 3(6D)(c)(i))>

Linda Fabiani

- 68 In schedule 2, page 41, line 20, at end insert—

<4E Married person with interim certificate: issue of full certificate on application to the sheriff (Scotland)

- (1) A person may make a summary application to the sheriff for the issue of a full gender recognition certificate where—
 - (a) an interim gender recognition certificate has been issued to the person, and
 - (b) the person is a party to a protected Scottish marriage.
- (2) The sheriff must grant an application made under subsection (1) if the sheriff is satisfied that—
 - (a) the applicant was a party to a protected Scottish marriage at the time when the interim gender recognition certificate was issued,
 - (b) the applicant is still a party to that protected Scottish marriage, and
 - (c) the application was made within the period of six months beginning with the day on which the interim gender recognition certificate was issued.
- (3) If an application is made under this section, the sheriff must give the applicant's spouse—
 - (a) notice of the application, and
 - (b) if the sheriff grants the application, notice of the issue of the full gender recognition certificate.
- (4) For the avoidance of doubt, where an application has been granted under subsection (2), the applicant is to be treated for the purposes of section 1(1)(b) of the Divorce (Scotland) Act 1976 as a person to whom an interim gender recognition certificate has been issued.”.>

Alex Neil

69 In schedule 2, page 41, line 38, leave out <4(2)(c)> and insert <4(3C)(c)>

Alex Neil

28 In schedule 2, page 42, line 13, leave out <Registrar General for Scotland> and insert <following persons on a copy of the proposed draft order—

- (a) the Registrar General for Scotland,
- (b) the Gender Recognition Panel, and
- (c) such other persons as the Scottish Ministers consider appropriate>

Alex Neil

29 In schedule 2, page 42, line 20, after <spouse> insert <or civil partner>

Alex Neil

30 In schedule 2, page 42, leave out line 31

Alex Neil

31 In schedule 2, page 42, line 37, at end insert—

<() Regulations under sub-paragraph (1) may in particular make provision for fees to be payable in respect of things done under the regulations.>

Alex Neil

32 In schedule 2, page 42, line 37, at end insert—

<() Regulations under sub-paragraph (1) may make different provision for different cases or circumstances.>

Linda Fabiani

70 In schedule 2, page 42, line 37, at end insert—

<() Regulations under sub-paragraph (1)(a) must provide that where a full gender recognition certificate has been issued to a person under section 4E, the marriage must not be registered unless the person’s spouse consents in writing to that registration in the form prescribed by the regulations.>

Alex Neil

71 In schedule 2, page 43, line 11, leave out <4(2)(b)> and insert <4(3C)(b)>

Linda Fabiani

72 In schedule 2, page 43, line 11, leave out <or 4C> and insert <, 4C or 4E>

Alex Neil

73 In schedule 2, page 43, line 19, leave out <4(2)(c)> and insert <4(3C)(c)>

Alex Neil

74 In schedule 2, page 43, line 22, at end insert—

<PART 2

ALTERNATIVE GROUNDS FOR GRANTING APPLICATIONS FOR GENDER RECOGNITION CERTIFICATES

Introductory

11A The Gender Recognition Act 2004 is further amended in accordance with this Part of this schedule.

Alternative grounds for granting applications

11B In section 2 (determination of applications), after subsection (3A) insert—

“(3B) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.”.

11C After section 3B insert—

“3C Alternative grounds for granting applications: Scotland

(1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with this section.

- (2) The Panel must grant the application if satisfied that the applicant complies with the requirements imposed by and under section 3D and meets the conditions in subsections (3) to (6).
- (3) The first condition is that the applicant was a party to a protected Scottish marriage or a protected Scottish civil partnership on or before the date the application was made.
- (4) The second condition is that the applicant—
 - (a) was living in the acquired gender six years before the commencement of section 27 of the Marriage and Civil Partnership (Scotland) Act 2014,
 - (b) continued to live in the acquired gender until the date the application was made, and
 - (c) intends to continue to live in the acquired gender until death.
- (5) The third condition is that the applicant—
 - (a) has or has had gender dysphoria, or
 - (b) has undergone—
 - (i) surgical treatment, or
 - (ii) such other treatment as the Scottish Ministers may by order prescribe,
 for the purpose of modifying sexual characteristics.
- (6) The fourth condition is that the applicant is ordinarily resident in Scotland.
- (7) Before making an order under subsection (5)(b)(ii) the Scottish Ministers must consult the following persons on a copy of the proposed draft order—
 - (a) the Gender Recognition Panel,
 - (b) such other persons as the Scottish Ministers consider appropriate.
- (8) An order under subsection (5)(b)(ii)—
 - (a) may make different provision for different cases or circumstances,
 - (b) may amend any enactment (including this Act).
- (9) The Panel must reject the application if not required by subsection (2) to grant it.”.

Evidence for granting applications on alternative grounds

11D In section 3 (evidence), after subsection (9) insert—

- “(10) This section does not apply to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.”.

11E After section 3C (inserted by paragraph 11C) insert—

“3D Evidence for granting applications on alternative grounds: Scotland

- (1) This section applies to an application under section 1(1)(a) which states that it is an application for a certificate to be granted in accordance with section 3C.
- (2) The application must include either—

- (a) a report made by a registered medical practitioner, or
 - (b) a report made by a registered psychologist practising in the field of gender dysphoria.
- (3) If the application is based on the applicant having or having had gender dysphoria—
- (a) the reference in subsection (2) to a registered medical practitioner is to one practising in the field of gender dysphoria, and
 - (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant's gender dysphoria.
- (4) Subsection (2) is not complied with in a case where—
- (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
 - (b) treatment for that purpose has been prescribed or planned for the applicant,
- unless the report required by that subsection includes details of it.
- (5) The application must also include a statutory declaration by the applicant that the applicant meets the conditions in section 3C(3) and (4).
- (6) The application must include—
- (a) a statutory declaration as to whether or not the applicant is married or a civil partner,
 - (b) any other information or evidence required by an order made by the Scottish Ministers, and
 - (c) any other information or evidence which the Panel which is to determine the application may require,
- and may include any other information or evidence which the applicant wishes to include.
- (7) If the applicant is married, the application must include a statutory declaration as to whether the marriage is a protected Scottish marriage.
- (8) If the applicant is married, and the marriage is a protected Scottish marriage, the application must also include—
- (a) a statutory declaration of consent (within the meaning of section 3(6D)(c)(i)) by the applicant's spouse (if the spouse has made such a declaration), or
 - (b) a statutory declaration by the applicant that no such declaration by the applicant's spouse is included.
- (9) If the application includes a statutory declaration of consent by the applicant's spouse, the Panel must give the spouse notice that the application has been made.
- (10) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so.”

Membership of Panels determining applications on alternative grounds

11F In schedule 1 (Gender Recognition Panels), in paragraph 4, after sub-paragraph (3) insert—

- “(4) But a Panel need not include a medical member when determining an application under section 1(1)(a) for a certificate to be granted in accordance with section 3C.”>

Alex Neil

75 In schedule 2, page 43, line 28, leave out from beginning to <<“5D(1),”> in line 29 and insert <, after “section” insert “3D(6)(b),”>

Alex Neil

33 In schedule 2, page 43, line 31, after <20A> insert <of Schedule 3>

Alex Neil

76 In schedule 2, page 43, line 33, after <section> insert <3C(5)(b)(ii) or>

Alex Neil

34 In schedule 2, page 43, line 33, leave out from <which> to <Act> in line 34

Section 28

Alex Neil

35 In section 28, page 30, leave out lines 29 and 30

After section 28

Alex Neil

77 After section 28, insert—

<Grounds of divorce: interim gender recognition certificate followed by full certificate

- (1) The Divorce (Scotland) Act 1976 is amended as follows.
- (2) In subsection (1)(b) (issue of interim gender recognition certificate as ground on which decree of divorce may be granted), at the beginning insert “subject to subsection (3B),”.
- (3) After subsection (3A) (as inserted by section 5(3)) insert—

“(3B) Subsection (1)(b) does not apply where, under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued.”>

After section 29

Alex Neil

36 After section 29, insert—

<Form of register of marriages

In section 54 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (regulations), after subsection (1) insert—

“(1A) Regulations prescribing the form of a register of marriages under section 32 may make different provision for different cases or circumstances.”.>

Section 31

Alex Neil

37 In section 31, page 31, line 28, at end insert—

<() An order under subsection (1) may make different provision for different purposes.>

Section 32

John Mason

49 In section 32, page 32, line 2, at end insert—

<(2A) The day appointed for the provisions for the marriage of persons of the same sex to come into force must be a day after the day when amendments to the Equality Act 2010 to give effect to the amendments mentioned in subsection (2B) have been or are being brought into force.

(2B) The amendments are—

(a) in section 10 (religion or belief), after subsection (3), insert—

“(3A) For the avoidance of doubt, the protected characteristic of religion or belief may include a belief that marriage may only be between a man and a woman.”,

(b) in section 149 (public sector equality duty), after subsection (9), insert—

“(9A) Compliance with the duties in this section requires ensuring that a belief that marriage may only be between a man and a woman is respected and that no person may suffer any detriment as a result of holding or expressing such a belief.”.>

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