Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 ISBN 978-0-11-112240-2*

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 and section 259(8) of the Civil Partnership Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CIVIL PARTNERSHIP
MARRIAGE

The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014

Made - - - - 2014

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2) to (5) and (7) of the Scotland Act 1998(**1**) and section 259(1) of the Civil Partnership Act 2004(**2**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 and section 259(8) of the Civil Partnership Act 2004, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTION

Citation and commencement

1.—(1) This Order may be cited as the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.

(**1**) 1998 c.46.
(**2**) 2004 c.33.

(2) This Order comes into force on 16th December 2014.

Interpretation

2. In this Order—

"the 1977 Act" means the Marriage (Scotland) Act 1977(**3**);

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992(**4**);

"the 2004 Act" means the Gender Recognition Act 2004(**5**);

"the 2006 Act" means the Armed Forces Act 2006(**6**);

"the 2013 Act" means the Marriage (Same Sex Couples) Act 2013(**7**);

"the 2014 Act" means the Marriage and Civil Partnership (Scotland) Act 2014(**8**).

Extent

3.—(1) Articles 1 to 3, 7, 31, paragraph 15(7) and paragraph 16 of Schedule 5 extend to England and Wales, Scotland and Northern Ireland.

(2) Articles 12 to 30, paragraph 2(7) of Schedule 4 and paragraphs 15(1), (2), (3), (4) and 19 of Schedule 5 extend to England and Wales and Scotland only.

(3) Paragraph 15(6) of Schedule 5 extends to England and Wales only.

(4) Articles 4, 5, 8 to 11, and Schedule 1, Schedule 2, Schedule 3, Schedule 4 (except as specified in paragraph (2) of this article), Schedule 5 (except as specified in paragraphs (1), (2) and (3) of this article) and Schedule 6 extend to Scotland only.

(5) Article 6 extends to Northern Ireland only.

PART 2

CONSEQUENTIAL PROVISIONS

Meaning of marriage and related expressions: Scotland

4. Schedule 1 (meaning of marriage and related expressions: Scotland) has effect.

Contrary provision to Schedule 1 and consequential modification of enactments etc. as a result

5.—(1) Schedule 2 (which makes provision to which paragraphs 1(1) and (2) and paragraphs 2 to 4 of Schedule 1 are subject and which disapplies those provisions in specified cases) has effect.

(2) Schedule 3 (which modifies enactments etc. in consequence of the provision made by Schedule 2 to this Order) has effect.

(3) Schedule 4 (which modifies the Social Security Pensions Act 1975 and the Social Security Contributions and Benefits Act 1992 in consequence of the provision made by Schedule 2 to this Order and makes further consequential modifications to those Acts) has effect.

(**3**) 1977 c.15.
(**4**) 1992 c.4.
(**5**) 2004 c.7.
(**6**) 2006 c.52.
(**7**) 2013 c.30.
(**8**) 2014 asp 5.

PART 3

SCOTTISH SAME SEX MARRIAGE IN NORTHERN IRELAND

Treatment of Scottish same sex marriage in Northern Ireland

6.—(1) Under the law of Northern Ireland, a Scottish marriage of a same sex couple is to be treated as a civil partnership registered in Scotland (and accordingly, the spouses are to be treated as civil partners).

(2) In this Part "Scottish marriage" means—

(a) a marriage which was solemnised in Scotland in accordance with the 1977 Act;

(b) a marriage which was changed from a civil partnership in accordance with provision made under section 10 of the 2014 Act;

(c) a marriage which was solemnised in accordance with Part 1 or 3 of Schedule 6 to the 2013 Act in relation to which the relevant part of the United Kingdom is Scotland;

(d) a marriage which was changed from a civil partnership in accordance with Part 5 of this Order.

Recognition of a dissolution of a deemed civil partnership

7.—(1) If—

(a) a final order is made in relation to the deemed civil partnership; and

(b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the Scottish marriage that it has in relation to the deemed civil partnership.

(2) If—

(a) a separation order is made in relation to the relevant couple as parties to the deemed civil partnership; and

(b) the validity of that order is recognised throughout the United Kingdom,

that order has, throughout the United Kingdom, the same effect in relation to the couple as parties to the Scottish marriage that it has in relation to them as parties to the deemed civil partnership (and has effect in relation to any other persons accordingly).

(3) In this article—

"deemed civil partnership" means the civil partnership which the actual marriage is treated as being by virtue of article 6;

"final order" means—

(a) the dissolution or annulment of a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;

(b) an overseas dissolution or annulment;

"relevant couple" means the same sex couple who are parties to the actual marriage; and

"separation order" means—

(a) a legal separation of the parties to a civil partnership obtained from a court of civil jurisdiction in Northern Ireland;

(b) an overseas legal separation of the parties to a civil partnership.

PART 4

STATE PENSIONS

Category B retirement pension for married person

8.—(1) Section 48A of the 1992 Act(**9**) (Category B retirement pension for married person) does not confer a right to a Category B retirement pension on a person by reason of the person being married to a person of the same sex who was born before 6th April 1950.

(2) But that does not prevent section 48A from conferring a right to such a pension on a woman by reason of her marriage to another woman ("the spouse") if—

(a) the spouse is a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and

(b) the marriage subsisted before the time when that certificate was issued.

Category B retirement pension for widows and widowers

9.—(1) Section 48B of the 1992 Act(**10**) (Category B retirement pension for widows and widowers) does not confer a right to a Category B retirement pension on a woman who attained pensionable age before 6th April 2010 by reason of her marriage to another woman.

(2) But that does not prevent section 48B from conferring a right to such a pension on a woman by reason of her marriage to another woman ("the spouse") if—

(a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and

(b) the marriage subsisted before the time when that certificate was issued.

Category B retirement pension for widowers

10.—(1) Section 51(1ZA) of the 1992 Act(**11**) (category B retirement pension for widowers) does not confer a right to a Category B retirement pension on a person if the person attains pensionable age on or after 6th April 2010.

(2) Section 51(1ZA) of the 1992 Act does not confer a right to a Category B retirement pension on a woman by reason of her marriage to another woman ("the spouse") if—

(a) the spouse was, at the time of her death, a woman by virtue of a full gender recognition certificate having been issued under the 2004 Act; and

(b) the marriage subsisted before the time when that certificate was issued.

Adult dependency increases

11.—(1) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—

(a) section 83 of the 1992 Act(**12**) (pension increase (wife)) does not cease to apply by virtue of the change of gender; and

(**9**) Section 48A was inserted by the Pensions Act 1995 (c.26) ("the 1995 Act"), Schedule 4, paragraph 3(1) and was amended by the Civil Partnership Act 2004 (c.33), Schedule 24(3), paragraph 25; the Pensions Act 2007 (c.22) ("the 2007 Act"), Schedule 1(1), paragraph 2(3) and Schedule 2(3), paragraph 7; and the 2013 Act, Schedule 4(5), paragraph 11.

(**10**) Section 48B was inserted by the 1995 Act, Schedule 4, paragraph 3(1); and was amended by Civil Partnership Act 2004, Schedule 24(3), paragraph 26; the 2007 Act, Schedule 1(1), paragraph 3 and Schedule 2(3), paragraph 8; and the 2013 Act, Schedule 4(5), paragraph 12.

(**11**) Section 51(1ZA) was inserted by the 2013 Act, Schedule 4(5), paragraph 13.

(**12**) Section 83 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.

(b) in the continued application of section 83 in such a case, references to a pension payable to a man, or references to his wife, are to be construed accordingly.

(2) In a case where a full gender recognition certificate is issued to a person under the 2004 Act—

(a) section 84 of the 1992 Act(**13**) (pension increase (husband)) does not cease to apply by virtue of the change of gender; and

(b) in the continued application of section 84 in such a case, references to a pension payable to a woman, or references to her husband, are to be construed accordingly.

Converted or changed civil partnerships

12.—(1) This article applies where a civil partnership is converted into a marriage under section 9 of the 2013 Act, or is changed into a marriage in accordance with provision made under the 1977 Act, section 10 of the 2014 Act or Part 5 of this Order.

(2) For the purposes of section 48A of, and paragraph 5A(1)(b) of Schedule 3(**14**) to, the 1992 Act—

(a) the civil partnership is to be treated as having subsisted during the period that begins with the day when it was formed and ends with the day before the conversion day; and

(b) the marriage is to be treated as subsisting only from the conversion day.

(3) In this article "conversion day" means the day when the civil partnership is converted into a marriage or changed into a marriage.

PART 5

MARRIAGE OVERSEAS

CHAPTER 1

General

Protection of freedom of expression etc.: forces marriages

13.—(1) This article applies to any chaplain serving in any of Her Majesty's forces in a country or territory outside the United Kingdom.

(2) For the avoidance of doubt, nothing in this Order so far as it makes provision as to the persons who may solemnise marriages of persons of the same sex affects the exercise of—

(a) the Convention right to freedom of thought, conscience and religion;

(b) the Convention right to freedom of expression; or

(c) any equivalent right conferred by rule of law.

(3) In this article—

"Convention right" has the same meaning as in the Human Rights Act 1998(**15**); and

"Her Majesty's forces" has the same meaning as in the 2006 Act.

(**13**) Section 84 was repealed by the 2007 Act, Schedule 7(2), paragraph 1 but is subject to savings specified in section 4 of that Act.
(**14**) Paragraph 5A of Schedule 3 was inserted by the 2007 Act, section 1(3) and amended by the 2013 Act, Schedule 4(5), paragraphs 11 and 12.
(**15**) 1998 c.42.