



Name of Country and Jurisdiction:

## Scotland, United Kingdom

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to Scotland, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Scotland for an authority to grant a divorce/dissolution?



### 1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE <sup>1</sup>	GEOGRAPHY	LEGISLATION	AVAILABLE TO SAME-SEX COUPLES
Marriage, registered	Scotland	Marriage (Scotland) Act 1977  Marriage and Civil Partnership (Scotland) Act 2014	Yes
Civil Partnership, registered	All of the UK	Civil Partnership Act 2004	Yes (only same-sex couples)

<sup>1</sup> It is possible for opposite-sex or same-sex individuals to live together as cohabitants. This relationship is not legally recognised by the State and cohabitants do not receive the same rights and benefits received by spouses or civil partners. Cohabitants may have certain rights under principles of equity and trusts law.



**2. What are the requirements to be able to enter into the above relationships?**

Example(s):

- (i) If a geographic link is required:



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>There is no legal residency requirement.</p> <p>A UK national living overseas can ordinarily marry a same sex partner at the UK consulate or embassy in that overseas territory if marriage is otherwise not possible in that overseas territory and if they nominate England, Wales or Scotland as their deemed place of marriage. The UK consulate or embassy will decline to conduct ceremonies if the local authorities object.</p>
Civil Partnership	<p>There is no legal residency requirement.</p> <p>A UK national living overseas can ordinarily enter into a civil partnership at the UK consulate or embassy in that overseas territory if a same-sex civil union is otherwise not possible in that overseas territory. The UK consulate or embassy will decline to conduct ceremonies if the local authorities object.</p>

- (ii) If other substantive eligibility criteria must be satisfied:

Different rules apply where one party intends to enter a legal relationship with another party who is not from the European Economic Area or Switzerland and where that party is subject to immigration control. In that case, both parties must go to a 'designated' register office where certain additional documents (in addition to those required below) such as a visa, an EEA family permit or a Marriage Visitor visa may be required depending on where the parties come from in order to enable such parties to enter that legal relationship.

Different rules also apply for individuals who are detained, house-bound, or UK nationals serving abroad, for example in the army, navy or air force, and who intend to enter into one of the legal relationships below.

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Both parties to the marriage must be:</p> <ul style="list-style-type: none"> <li>• at least 16 years of age on the day of the marriage;</li> <li>• not related to each other in a way which would prevent their marrying;</li> <li>• unmarried and not in a civil partnership, unless that civil partnership is between the same two people intending to marry; and</li> <li>• capable of understanding the nature of the marriage ceremony and of consenting to marrying.</li> </ul> <p>Each party should give 15 clear days' notice of its intention to marry alongside a declaration to the appropriate religious figure or the registrar for the district in which the marriage is to take place.</p> <p>The registrar will enter the particulars into the Marriage Schedule. This must be collected in person by one of the parties to the marriage within 7 days of the intended date of marriage.</p> <p>A religious marriage can take place anywhere in Scotland within 3 months beginning on the day the notice was recorded.</p> <p>Immediately after the ceremony the Marriage Schedule must be signed in black fountain pen by the parties, the witnesses, and the person performing the marriage. It must be returned to the registrar within 3 days so that the marriage can be registered; otherwise the marriage is void.</p> <p>A civil ceremony can take place at any approved place within 3 months of notice being given; the registrar will register the marriage.</p>
Civil partnership	<p>The eligibility criteria are the same as for civil marriage, except that both parties must be of the same sex.</p> <p>Each party should give notice of its intention to enter a civil partnership, alongside a declaration to the district registrar for the district in which the civil partnership is to take place. This should be sent with the prescribed fee, a copy of the birth certificate, information as to whether a party to the civil partnership has been married or in a civil partnership before, and proof that such relationship has come to an end.</p> <p>On receipt of the notice, the District Registrar will enter this into the Civil Partnership Book and publicise particulars which include the names of the intended civil partners and the date of the intended civil-partnership ceremony (which must be more than 14 days after the particulars are published).</p> <p>The District Registrar will then complete a Civil Partnership Schedule once the 14 days have passed, provided that it is not more than three months since the notice was received.</p> <p>The partnership ceremony is essentially the same as for civil marriage.</p>



### 3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).

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- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

**A**

(a)	<p>Civil partnerships are not available to opposite-sex couples.</p> <p>Marriage is available to same-sex couples as of 31 December 2014.</p> <p>Unlike marriage, no religious organisation may hold a civil partnership. The civil partnership may not take place on religious premises and there must be no religious element to the partnership ceremony.</p>
(b)	<p>No person may enter into a civil partnership if they are already married (either to someone else, or to the person with whom they wish to enter into a civil partnership).</p> <p>No person may enter into an opposite sex marriage if they are already in a civil partnership.</p> <p>As of 16 December 2014, a couple in a civil partnership may convert their status to marriage. Their marriage will be deemed to be effective as of the date of their civil partnership.</p>
(c)	<p>There are no major differences in the rights available to couples in marriages or civil partnerships, although currently civil partners do not share with married couples certain survivor rights under occupational pension schemes. See also response to Q.6 below for differences in the grounds for dissolving a civil partnership compared with the grounds for divorce under marriage.</p>

**Q**

**4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?**

**A**

Marriage	Two people are not eligible to enter into marriage if either of them is already lawfully married or already in a civil partnership with a person who is not one of the couple.
Civil Partnership	Two people are not eligible to register as civil partners if either of them is already a civil partner or lawfully married.

**Q**

**5. When a couple comes to Scotland, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?**

**A**

Marriage	<p>An opposite-sex marriage lawfully formed outside Scotland is automatically recognised in Scotland as a marriage. This includes polygamous marriages entered into on or after 1 August 1971. An exception applies in the case of polygamous marriages entered into overseas where either party was at the time of the marriage domiciled in the UK or any country whose law does not permit polygamous marriages.</p> <p>A same-sex marriage lawfully formed outside Scotland is recognised as a marriage.</p>
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Civil partnership	<p>A civil partnership lawfully entered into in England, Wales or Northern Ireland is automatically recognised in Scotland as a civil partnership.</p> <p>Same-sex unions/partnerships falling short of 'marriage' lawfully entered into outside the UK (and which satisfy certain conditions) are categorised as overseas relationships and automatically recognised as civil partnerships in Scotland.</p>
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**6. How can each form of relationship be dissolved? What is the residency requirement or other link to Scotland for an authority to grant a divorce/dissolution?**



Marriage	<p>A marriage can be brought to an end by divorce where:</p> <ul style="list-style-type: none"> <li>i) one person has committed adultery (adultery can only occur where a partner has had sex with someone of the opposite sex);</li> <li>ii) the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;</li> <li>iii) the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;</li> <li>iv) the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; or</li> <li>v) the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.</li> </ul> <p>A marriage can also be annulled where it is void (for example, because one partner was already married or in a civil partnership) or is voidable (for example, where the marriage has not been consummated, save that this does not apply to same-sex marriages).</p> <p>A presumption of death order will also bring a marriage to an end.</p> <p>An overseas same-sex marriage may also be ended in similar circumstances where the partners satisfy the same conditions for overseas civil partnerships (i.e. domiciled or habitually resident).</p> <p>A court in Scotland will recognise a judgment concerning the divorce, annulment or legal separation of partners in a marriage where made by a court of an EU Member State.</p>
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<p>Civil Partnership</p>	<p>A civil partnership can be dissolved, annulled or terminated on the grounds that it has broken down irretrievably, it is void or voidable, because one of the partners is presumed dead or due to legal separation of the partners. A civil partnership can also be brought to an end on the death of a civil partner.</p> <p>An overseas civil partnership is voidable if it is voidable under the law of the country in which it was registered. Further, a Court order can be sought to declare that a dissolution, annulment or legal separation obtained outside Scotland is recognised in Scotland.</p> <p>Where:</p> <ol style="list-style-type: none"> <li>both civil partners are habitually resident in the UK or were habitually resident, and one of the partners remains in the UK;</li> <li>the respondent (i.e. the civil partner who did not apply for dissolution, annulment or separation) is habitually resident in the UK or the petitioner (i.e. the civil partner applying for the dissolution, annulment or separation) is habitually resident in the UK and has resided there for at least one year immediately preceding the presentation of the petition; or</li> <li>the petitioner is domiciled and habitually resident in the UK and has resided there for at least six months immediately preceding the presentation of the petition,</li> </ol> <p>A court in Scotland has jurisdiction to dissolve or annul or legally separate civil partners.</p> <p>A dissolution, annulment or legal separation effected by a court in England and Wales, Scotland or Northern Ireland will be recognised throughout the United Kingdom.</p> <p>A court in Scotland will recognise a judgment concerning the dissolution, annulment or legal separation of partners in a civil partnership where made by a court of an EU Member State.</p>
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**Sources:**

- Marriage (Scotland) Act 1977
- Civil Partnership Act 2004
- Marriage and Civil Partnership (Scotland) Act 2014
- The Consular Marriages and Marriages under Foreign Law Order 2014
- <https://www.gov.uk/government/publications/comparison-of-civil-partnership-and-marriage-for-same-sex-couples>
- Divorce (Scotland) Act 1976