

# CIVIL PARTNERSHIP ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Civil Partnerships: Scotland**

#### **Introduction**

#### *Chapter 1 - Formation and eligibility*

#### *Section 85: Formation of civil partnership by registration*

173. This section provides that a civil partnership is formed when both persons sign the completed civil partnership schedule before two witnesses aged 16 years or over and an authorised registrar (all being present). Registering as civil partners of each other creates the legal relationship between the two persons, but registration cannot take place unless both persons are eligible to be registered.

#### *Section 86: Eligibility*

174. *Subsection (1)* provides that two people are not eligible to register in Scotland as civil partners of each other if –
- a) they are not of the same sex,
  - b) they are related in a forbidden degree
  - c) either of them is under 16
  - d) either of them is married or already in a civil partnership
  - e) either is incapable of
    - (i) understanding the nature of a civil partnership
    - (ii) validly consenting to its formation
175. *Subsection (2)* defines “forbidden degree” by reference to columns 1 and 2 of Schedule 10.
176. *Subsections (3) and (4)* set out the circumstances in which persons over 21, within the relationships of affinity set out in paragraphs 2 and 3 of Schedule 10, will not be related in a forbidden degree.
177. *Subsections (5) to (7)* apply the provisions of this section and Schedule 10, with appropriate modifications, to the case of a person wishing to form a civil partnership in his acquired gender under the Gender Recognition Act 2004.
178. *Subsections (9) and (10)* set out that half blood relationships and adoptive relationships are included within the degrees of relationship specified in paragraph 1 of Schedule 10.

*These notes refer to the Civil Partnership Act 2004 (c.33)  
which received Royal Assent on 18th November 2004*

In practice, this means for example, that a person could not form a civil partnership with their sibling, whether that sibling was full blood, half blood or adopted.