

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 2 – Civil partnership

Section 24: Registration of civil partnership

120. Subsection (2) amends section 85 of the 2004 Act, to reflect the introduction of religious and belief celebrants to register civil partnerships. Section 85 makes provision on when two people are to be regarded as having registered as civil partners of each other and provides that both must sign the civil partnership schedule (“the schedule”).
121. Under the 2004 Act as enacted, one of the persons who must be present when the schedule is signed is the authorised registrar. The amendment made by subsection (2) (a) changes this so that it may be signed in the presence of the approved celebrant or the authorised registrar (whichever is the case). Once the couple have signed the schedule, it must also be signed by the witnesses and the person carrying out the ceremony. The amendment at subsection (2)(b) means that either the approved celebrant or the authorised registrar may sign the schedule.
122. The amendment at subsection (2)(a) also removes a reference to where the civil partnership may take place.
123. Subsection (3) makes a number of changes relating to the table of forbidden degrees. This is about people who are too closely related to each other to form a civil partnership. The opportunity has been taken to simplify the table of forbidden degrees. Subsection (2), explained below, substitutes a new Schedule 10 to the 2004 Act.
124. The amendment at subsection (3)(d) amends section 86(5) of the 2004 Act. Section 86(5) as enacted provides, in respect of people who have acquired a new gender, that references in the forbidden degrees to “former wife” includes “former husband” and references to “former husband” includes “former wife”.
125. The amendment at subsection (3)(d)(i) amends section 86(5) so that it refers to the definition of “spouse” as added by subsection (3)(c). The amendment at subsection 3(d) (ii) removes the word “former” from section 86(5). The word “former” is not needed in section 86(5) as the new Schedule 10 to the 2004 Act refers to “former spouse” and “spouse” is defined by the amendment at subsection (3)(c).
126. The amendment at subsection (3)(e) reflects the simplification of the table of forbidden degrees. The simplified table now refers to “parent” to cover both mothers and fathers: the amendment as subsection (3)(e)(i) reflects that drafting change. Subsection (3)(e) (ii) deletes a reference to “in either column” because the simplified table of forbidden degrees has one column.

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127. The amendment at subsection (5) provides a definition of “district registrar” for the purposes of section 88 of the 2004 Act. Section 88 makes provision on information which intended civil partners must submit to the district registrar. The definition added at subsection (5) includes provision to cover cases where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant.
128. The amendment at subsection (6) provides a definition of “district registrar” for the purposes of certain sections in the 2004 Act: section 89 itself (civil partnership notice book), section 90 (publicisation), section 91 (early registration), section 92 (objections to registration) and section 94 (the civil partnership schedule).
129. This definition is the same as the definition provided for section 88 except that where the civil partnership is to be registered in Scottish waters by an approved religious or belief celebrant, the district registrar is defined as the district registrar to whom the civil partnership notices were submitted (under section 88).
130. Subsection (7) amends section 90 of the 2004 Act. When publicising information about a forthcoming civil partnership, the district registrar and the Registrar General must provide the date when it is intended to register the civil partnership. The amendment makes this date more than 28 days after publicising the information rather than more than 14 days.
131. Section 91 of the 2004 Act allows for early registration of a civil partnership. Subsection (8) amends a reference in section 91 from an authorised registrar to district registrar. A definition of “the district registrar” is inserted into the 2004 Act by subsection (5). Subsection (8) also changes the 14 day period in section 91 to 28 days, in line with the change made by subsection (7).
132. Subsection (8)(c) also amends section 91 so that it is clear that a request for early registration can be made electronically. The amendment creates an equivalent provision to section 6 of the 1977 Act.
133. Subsection (9) makes a number of amendments to section 92 of the 2004 Act, on objections to the proposed registration of a civil partnership.
134. The amendment at subsection (9)(a) makes it clear that the office where any person claiming to have reason to object to a proposed civil partnership can inspect the relevant entry in the civil partnership book is the office of the district registrar (as defined).
135. The amendment at subsection (9)(b)(i) is a consequential amendment required for the substantive amendment at subsection (9)(b)(ii). This amendment relates to a case where the district registrar has received an objection to a civil partnership which is more significant than just a misdescription or inaccuracy in a notice.
136. The new provision requires the district registrar, if the civil partnership schedule has already been issued and the civil partnership is to be registered by an approved religious or belief celebrant, to notify, if possible, the celebrant of the objection and advise the celebrant not to register the civil partnership pending consideration of the objection. This is on similar lines to equivalent provision in section 5 of the 1977 Act, on objections to marriage.
137. The amendment at subsection (9)(c) reflects the changes made by the Act so that registration of civil partnerships may be through a religious or belief celebrant.
138. Section 92(5)(a) of the 2004 Act as enacted provides that if the Registrar General is satisfied, after considering an objection, that there is a legal impediment to registering a civil partnership, the Registrar General has to direct the district registrar not to register the intended civil partners and to notify them accordingly. The amendment at subsection (9)(c) amends this so that the Registrar General, once satisfied that there is a legal impediment to registering a civil partnership has “to take all reasonable steps to

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ensure that the registration of the civil partnership does not take place and must notify, or direct the district registrar to notify, the intended civil partners”.

139. Subsection (10) amends section 93 of the 2004 Act so that it only covers cases where the civil partnership is being registered through a civil ceremony.
140. Subsection (10)(a)(ii) makes provision on where a civil ceremony may take place. It may take place at:
- the registration office of the authorised registrar;
 - an appropriate place in the registration district of the authorised registrar (“appropriate place” is defined through the next set of amendments);
 - with the approval of the Registrar General, the registration office of another authorised registrar;
 - with the approval of the Registrar General, an appropriate place in the registration district of another authorised registrar; or
 - an appropriate place in Scottish waters.
141. Subsection (10)(b) provides definitions of “appropriate place”, “local registration authority” and “religious premises”. “Appropriate place” excludes “religious premises” which ensures that civil ceremonies to register civil partnerships cannot take place in religious premises. Similar definitions are inserted into the 1977 Act in relation to marriage by section 21 of this Act.
142. Subsection (10)(c) repeals sections 93(2) and (3) of the 2004 Act. These are now unnecessary. Section 93(2) made provision on civil partnerships taking place outwith the authorised registrar’s district. This is now covered by the provision outlined above on where a civil ceremony may take place.
143. Section 93(3) of the 2004 Act made provision which banned civil partnerships from taking place in religious premises. The ban on civil ceremonies to register civil partnerships taking place in religious premises remains in place, as outlined above. Subsequent provision is made to establish religious and belief ceremonies to register civil partnerships. Such ceremonies may take place in religious premises.
144. Subsection (11) adds section 93A to the 2004 Act, on the date and place of religious or belief registration of civil partnerships. The procedures outlined in section 93A are in line with procedures contained in section 6 of the 1977 Act, in relation to the solemnisation of marriage.
145. Under section 93A the civil partnership should be registered on the date and at the place specified in the schedule. If this cannot be done and a new date or place is fixed, the district registrar must issue a new schedule or amend the existing one or direct the religious or belief celebrant to amend it.
146. However, special procedures apply if the new date for registration is more than 3 months after the date specified in the original schedule or if the new place for registration is in a different registration district or is in Scottish waters instead of a registration district or is in a registration district instead of Scottish waters.
147. In these cases, the Registrar General may:
- direct the district registrar to issue a new schedule;
 - direct the district registrar to amend the existing schedule or direct the religious or belief celebrant to amend it; or
 - direct the intended civil partners to send the district registrar a new notice of proposed civil partnership.

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148. Subsection (12) amends section 94 of the 2004 Act which concerns the civil partnership schedule. These amendments reflect the introduction of religious and belief ceremonies to register civil partnerships and changes made to sections 90 and 91 by subsections (7) and (8) about the minimum time period between publicising a civil partnership and it taking place.
149. The amendment at subsection (12)(c) provides that where the civil partnership is to be registered by an approved religious or belief celebrant, the district registrar must issue the completed schedule to one or both of the intended civil partners. The district registrar must not issue the schedule more than seven days before the intended civil partnership, unless authorised to do so by the Registrar General. This provision is on similar lines to section 6(4)(b) of the 1977 Act, in relation to the Marriage Schedule.
150. Subsection (13) adds sections 94A, 94B, 94C, 94D and 94E to the 2004 Act. These provisions relate to who can register a civil partnership, including religious and belief celebrants, and are based on equivalent provisions in the 1977 Act, on who can solemnise marriage.
151. Section 94A makes provision on who can register civil partnerships.
152. Under section 94A(1), a civil partnership may be registered only by a person who is:
- a celebrant of a religious or belief body prescribed by regulations or, not being a celebrant, is recognised by the body as entitled to register civil partnerships;
 - registered as a celebrant under section 94B of the 2004 Act;
 - temporarily authorised as a celebrant under section 94E;
 - a registrar.
153. Section 94A(2) provides that Ministers may only prescribe a religious or belief body if the body requests them to do so and Ministers are satisfied that the body meets the “qualifying requirements”. The “qualifying requirements” are set out in regulations made by the Scottish Ministers (see section 94A(5)). These regulations are subject to annulment in pursuance of a resolution of the Scottish Parliament (i.e. the negative procedure) by virtue of amendments made by subsection (20).
154. Section 94A(3) makes it clear that nothing in section 94A imposes a duty:
- on any religious or belief body to request to be prescribed;
 - on any such body to nominate members under section 94B to nominate members to register civil partnerships;
 - on any person to apply for temporary authorisation under section 94E to register civil partnerships;
 - on any approved celebrant for civil partnerships to register civil partnerships.
155. Section 94B(1) provides that a religious or belief body who has not been prescribed under the regulations may nominate members to the Registrar General so that they can register civil partnerships.
156. Section 94B(2) provides that the Registrar General must reject a nomination if the Registrar General considers that the nominating body is not a religious or belief body; or it already has sufficient members registered to meet its need; or it does not meet the “qualifying requirements” set out in regulations made by the Scottish Ministers; or the nominee is not a fit and proper person. These regulations are subject to annulment in pursuance of a resolution of the Parliament (i.e. negative parliamentary procedure) (section 24(20) of the Act refers).

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157. When the Registrar General accepts a nomination, the Registrar General must, under section 94B(4)(a), determine the period during which the nominee can register civil partnerships. This period must not be more than 3 years but section 94B(5) makes it clear that the nominee may be put forward for a further period.
158. Section 94B(4)(b) allows the Registrar General to restrict the nominee to registering civil partnerships in specific areas or places. Section 94B(4)(c) allows the Registrar General to impose such other conditions as the Registrar General thinks fit.
159. When a nomination has been accepted, section 94B(6)(a) provides that the Registrar General must advise the body and the nominee accordingly, specifying the period during which the nominee can register civil partnerships and any conditions which have been imposed.
160. The Registrar General also has to enter the name of the body, the nominee and any other relevant particulars into a register open for public inspection at all reasonable times free of charge.
161. When a nomination is rejected, section 94B(6)(b) provides that the Registrar General must inform the nominating body in writing, giving reasons. Section 94B(7) makes it clear that this may be done electronically. Section 94B(8) gives the nominating body 28 days to appeal to the Scottish Ministers against a rejection.
162. Section 94B(9) provides that on any such appeal the Scottish Ministers may confirm the rejection or direct the Registrar General to accept the nomination. Ministers have to inform the nominating body of their decision and give the reasons for the decision.
163. Section 94B (9) and (10) provides that the Scottish Ministers' decision is final except that if the reason given by Ministers for confirming the rejection of a nomination is that the nominating body is not a religious or belief body, the body may appeal to the Court of Session, within 42 days of receiving the Ministers' decision.
164. The appeal can seek the determination of the court that the body is a religious or belief body. Under section 94B(11), if the court determines that the body is a religious or belief body and that the only reason given by Ministers for confirming the rejection was that the body was not a religious or belief body, the Registrar General must then accept the nomination.
165. Section 94C of the 2004 Act makes provision on the removal from the register of a celebrant registered under section 94B. As well as provisions relating to the removal of a celebrant from the register, and on the procedures for doing so, provision is also made for appeals to the Scottish Ministers against decisions made by the Registrar General.
166. Section 94C(1) provides that the Registrar General may remove a person's name from the register when:
 - the person has asked to be removed;
 - the body which nominated the person no longer wants the person to be registered;
 - the person, while registered as an approved celebrant, has been convicted of an offence under this Part of the Act;
 - the person has, for the purpose of profit or gain, been carrying on a business of registering civil partnerships;
 - the person is not a fit and proper person to register civil partnerships;
 - the person, for any other reason, should not be on the register.
167. Section 94C(2) to (7) makes provision on removals from the register on the grounds outlined in section 94(C)(1). The Registrar General must give the person at least 21 days' notice of the intention to remove the person from the register (subsection (2));

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must specify the ground of removal; must ask the person to give reasons why the person should not be removed; and must consider any representations made. Where a person's name has been removed from the register, the person may then appeal to the Scottish Ministers within 28 days of receiving notice of the removal. After a notice is given under subsection (2), the person must not register a civil partnership until the person is restored to the register or the Registrar General decides not to remove the person from the register.

168. Section 94D makes provisions on alterations to the register of approved nominated celebrants maintained under section 94B. Provision is made that the body must notify the Registrar General when any of the events listed in section 94D occur and the Registrar General must then alter the register accordingly. The events in section 94D are:
- changes to the name or address of the religious or belief body;
 - amalgamation of the religious or belief body;
 - death of an approved celebrant;
 - any change of name, address or designation of an approved celebrant;
 - the cessation of an approved celebrant from exercising the relevant functions.
169. Section 94E makes provision on the temporary authorisation of religious or belief celebrants to register civil partnerships. Under section 94E(1), the Registrar General may grant any member of a religious or belief body temporary written authorisation to register a specific civil partnership or partnerships or to register civil partnerships during a specific period. This authorisation may contain terms and conditions. Section 94E(5) makes it clear that the authorisation can be issued electronically.
170. However, the Registrar General may only grant such temporary written authorisation when the religious or belief body of which the person is a member meets the “qualifying requirements” (section 94E(2)). The “qualifying requirements” are defined at section 94E(4) as “such requirements as may be set out in regulations made by the Scottish Ministers”. In addition, authorisation under section 94E(1)(b), which relates to authorisation for a period of time, may only be granted if the religious or belief body of which the person is a member is prescribed by regulations made under section 94A, so that its celebrants are authorised to register civil partnerships, or has nominated persons under section 94B to register civil partnerships. (section 94E(3)). The above regulations are subject to annulment in pursuance of a resolution of the Parliament (i.e. negative parliamentary procedure) (section 24(20) of the Act refers).
171. Subsection (14) amends section 95 of the 2004 Act, on further provision as to the registration of civil partnerships including in relation to the civil partnership schedule.
172. The amendment at subsection (14)(a) reflects that with the introduction of religious or belief ceremonies, it may be an approved celebrant, rather than a registrar, who asks the intended civil partners to confirm that, to the best of their knowledge, the particulars set out in the schedule are correct.
173. The amendment at subsection (14)(b) inserts a new subsection into section 95 of the 2004 Act. This provision requires civil partners who have had a religious or belief ceremony to ensure that the signed schedule is delivered to the district registrar within 3 days. (This is in line with section 15(2) of the 1977 Act, on delivering the signed Marriage Schedule to the district registrar).
174. The new section 95(3A) of the 2004 Act provides that the district registrar must not enter the particulars set out in the schedule for a religious or belief civil partnership in the register, unless and until the district registrar receives a duly signed schedule.

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175. The new section 95(3B) empowers the Registrar General to take steps if satisfied that a civil partnership has been properly registered and the schedule has been signed but then lost or destroyed. In these cases, the Registrar General may direct the district registrar to complete an exact copy of the schedule and, so far as practicable, arrange for it to be signed again by those who signed the original schedule. The new section 95(3C) provides that once the copy schedule has been signed, the district registrar must arrange for its particulars to be entered into the register.
176. Subsection (15) adds section 95ZA to the 2004 Act, on registrar's power to require delivery of civil partnership schedule. This new provision is in line with section 16 of the 1977 Act, on a registrar's power to require delivery of marriage schedule.
177. Under the new provision, if the district registrar does not receive the schedule within 21 days from the date of registration, the district registrar may serve a notice in the prescribed form on either of the civil partners requiring that the schedule be delivered or sent through the post to the registrar within 8 days. If this notice is not complied with, the district registrar may serve a second notice in the prescribed form requiring the person to attend personally at the registration office within 8 days in order to deliver the schedule. Failure to comply with this second notice is a criminal offence (the offence is added by subsection (19)). Section 126 of the 2004 Act means that regulations prescribing forms under section 95ZA are subject to annulment in pursuance of a resolution of the Scottish Parliament (i.e. negative procedure).
178. Subsection (17) relates to section 96, on civil partnership with former spouse. This follows a divorce on the grounds of the issue of an interim gender recognition certificate.
179. The amendment at (a) is a consequential change, reflecting the amendments to section 91 made by subsection (8), and the amendment at (b) is also a consequential change, reflecting the amendments made to section 94 by subsection (12). (The amendments made by subsection (12) are explained at paragraphs 148 and 149).
180. The amendments at subsection (18) relate to section 97 of the 2004 Act, on the issue of a certificate of no impediment where two people propose to enter into a civil partnership in England and Wales but one of them resides in Scotland. The first amendment changes the period in which the certificate should normally be issued from no earlier than 14 days to no earlier than 28 days. Section 97(5) of the 2004 Act makes provisions for objections in writing to the district registrar against the issue of a certificate. The second amendment makes it clear that any such objection may be submitted electronically.
181. Subsection (19) makes provision in respect of criminal offences and does so by amending section 100 of the 2004 Act.
182. The amendment at (a)(i) extends three offences which currently only apply to authorised registrars (or persons pretending to be authorised registrars) to approved celebrants (or persons pretending to be approved celebrants).
183. Following the amendments, the offences now relates to a person who knowingly:
- “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other before any civil partnership schedule available to him at the time of registration has been duly completed”;
 - “not being an approved celebrant or, as the case may be, an authorised registrar, conducts himself in such a way as to lead intended civil partners to believe that he is authorised to register them as civil partners of each other ”;
 - “being an approved celebrant or, as the case may be, an authorised registrar, purports to register two people as civil partners of each other without both of them being present”.

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184. The amendment at (a)(ii) reflects changes to section 93 on place of civil registration of civil partnerships.
185. The amendments at (b) relate to new offences created as a result of the introduction of religious and belief ceremonies and to the penalty when found guilty of one of these new offences. The penalty on summary conviction is a fine not exceeding level 3 on the standard scale.
186. The offences created by (b) are:
- an approved celebrant registering a civil partnership in an area or place where the celebrant is not permitted to register a civil partnership;
 - an approved celebrant registering a civil partnership after a notice has been served by the Registrar General indicating that the Registrar General intends to remove the person’s name from the register;
 - a celebrant approved on a temporary basis registering a civil partnership not specified in the authorisation;
 - a celebrant approved on a temporary basis registering a civil partnership outwith the period specified in the authorisation;
 - a celebrant approved on a temporary basis registering a civil partnership contrary to any terms and conditions specified in the authorisation;
 - a party to a civil partnership failing to comply with a second notice from the district registrar, requiring the party to appear personally at the registration office to deliver the schedule.
187. The amendment at (c) is a consequential amendment to section 100(4) of the 2004 Act, reflecting the new offences created by (b). Section 100(4) provides that summary proceedings for an offence under section 100 may be commenced within 3 months after sufficient evidence comes to the Lord Advocate’s knowledge or within 12 months after the offence is committed (whichever period last expires).
188. Subsection (20) provides that the new powers to make regulations in respect of prescribing religious or belief bodies whose celebrants are authorised to register civil partnerships on the “qualifying requirements” (for religious and belief bodies to meet) are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure).
189. Subsection (21) adds definitions to Part 3 of the 2004 Act relating to civil partnerships in Scotland.
190. Subsection (22) introduces a new Schedule 10 to the 2004 Act, replacing the current Schedule. The new Schedule 10 is a simplified version of the existing table of forbidden degrees. No changes are made in respect of the types of relationships which mean that a couple cannot enter into a civil partnership. Instead, the change relates to how the relationships are described. The table below demonstrates this:

TABLE OF FORBIDDEN DEGREES

<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
<i>Relationships by consanguinity</i>		
Father	Mother	Parent
Son	Daughter	Child
Father’s father	Father’s mother	Grandparent

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<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
Mother's father	Mother's mother	Grandparent
Son's son	Son's daughter	Grandchild
Daughter's son	Daughter's daughter	Grandchild
Brother	Sister	Sibling
Father's brother	Father's sister	Aunt or uncle
Mother's brother	Mother's sister	Aunt or uncle
Brother's son	Brother's daughter	Niece or nephew
Sister's son	Sister's daughter	Niece or nephew
Father's father's father	Father's father's mother	Great-grandparent
Father's mother's father	Father's mother's mother	Great-grandparent
Mother's mother's father	Mother's father's mother	Great-grandparent
Mother's mother's father	Mother's mother's mother	Great-grandparent
Son's son's son	Son's son's daughter	Great-grandchild
Son's daughter's son	Son's daughter's daughter	Great-grandchild
Daughter's son son	Daughter's son's daughter	Great-grandchild
Daughter's daughter's son	Daughter's son daughter	Great-grandchild
<i>Relationships by affinity referred to in section 86(3)</i>		
Son of former wife	Daughter of former husband	Child of former spouse
Son of former civil partner	Daughter of former civil partner	Child of former civil partner
Former husband of mother	Former wife of father	Former spouse of parent
Former civil partner of father	Former civil partner of mother	Former civil partner of parent
Former husband of father's mother	Former wife of father's father	Former spouse of grandparent
Former civil partner of father's father	Former civil partner of father's mother	Former civil partner of grandparent
Former husband of mother's mother	Former wife of mother's father	Former spouse of grandparent
Former civil partner of mother's father	Former civil partner of mother's mother	Former civil partner of grandparent
Son of son of former wife	Daughter of son of former husband	Grandchild of former spouse
Son of son of former civil partner	Daughter of son of former civil partner	Grandchild of former civil partner
Son of daughter of former wife	Daughter of daughter of former husband	Grandchild of former spouse

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<i>Previous table (Column 1)</i>	<i>Previous table (Column 2)</i>	<i>New table</i>
Son of daughter of former civil partner	Daughter of daughter of former civil partner	Grandchild of former civil partner