

Civil Partnership (Scotland) Act 2020

2020 asp 15

Extension of civil partnership to different sex couples

1 Different sex civil partnerships

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 1 (civil partnership), in subsection (1) the words “of the same sex” are repealed.

2 Recognition of overseas different sex relationships

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 212 (meaning of “overseas relationship”), subsection (1)(b)(i) is repealed.
- (3) In section 213 (specified relationships)—
 - (a) in subsection (1), for “by Schedule 20” substitute—
 - “(a) in the case of a relationship registered by two people who under the relevant law are of the same sex when the relationship is registered, by Part 1 of Schedule 20,
 - (b) in the case of a relationship registered by two people who under the relevant law are not of the same sex when the relationship is registered, by Part 2 of Schedule 20”,
 - (b) in subsection (2), after “amend” insert “Part 1 of”,
 - (c) in subsection (3), after “this section” insert “amending Part 1 of Schedule 20”,
 - (d) in subsection (5), after “amending” insert “Part 1 of”,
 - (e) in subsection (6), after “this section” insert “amending Part 1 of Schedule 20”,
 - (f) after subsection (6) insert—
 - “(7) The Scottish Ministers may by regulations amend Part 2 of Schedule 20 by—
 - (a) adding a relationship,
 - (b) amending the description of a relationship,
 - (c) omitting a relationship.
- (8) Regulations under subsection (7)—

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- (a) amending the description of a relationship or omitting a relationship, are subject to the affirmative procedure,
 - (b) adding a relationship, are subject to the negative procedure.”.
- (4) In section 215 (overseas relationship treated as civil partnerships: the general rule)—
- (a) in subsection (2), for “subsection (3)” substitute “subsections (3) and (3A)”,
 - (b) after subsection (3) insert—
 - “(3A) In its application to an overseas relationship between persons of different sexes entered into before this subsection comes into force, subsection (2) is subject to—
 - (a) any provision to the contrary made by or under any enactment,
 - (b) regulations under subsection (3B).
 - (3B) The Scottish Ministers may by regulations provide for subsection (2)
 - (a) to have effect subject to provision made by the regulations, or
 - (b) not to apply in cases specified in the regulations.
 - (3C) Regulations under subsection (3B)—
 - (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (b) are subject to the negative procedure.”,
 - (c) in subsection (6), the word “216,” is repealed.
- (5) Section 216 (the same sex requirement) is repealed.
- (6) In schedule 20 (meaning of overseas relationship: specified relationships)—
- (a) the existing text becomes Part 1,
 - (b) in that Part, in paragraph 1, for “section 213” substitute “section 213(1)(a)”,
 - (c) after that Part insert as Part 2 the text in schedule 1 of this Act.

3 Interim recognition of different sex relationships formed outwith Scotland

- (1) This section applies to a civil partnership between persons of different sexes—
- (a) which is formed when they register as civil partners of each other—
 - (i) in England or Wales under Part 2 of the 2004 Act,
 - (ii) in Northern Ireland under Part 4 of the 2004 Act,
 - (b) which is formed when they register as civil partners of each other outside the United Kingdom under an Order in Council made under section 210 or 211 of the 2004 Act, or
 - (c) which they are treated under Chapter 2 of Part 5 of the 2004 Act as having formed (at the time determined under that Chapter) by virtue of having registered an overseas relationship.
- (2) Two persons in a civil partnership—
- (a) mentioned in subsection (1)(a) or (c) are to be treated as being in a marriage formed under the law of the country or territory in which the civil partnership or (as the case may be) overseas relationship is registered,

- (b) mentioned in subsection (1)(b) are to be treated as having formed a marriage in the part of the United Kingdom in which the civil partnership is, by virtue of section 210(5) or (as the case may be) 211(4) of the 2004 Act, to be treated as having been registered.
- (3) Nothing in subsection (2) prevents persons in a civil partnership to which this section applies—
 - (a) presenting themselves as civil partners of each other,
 - (b) presenting their relationship as a civil partnership.
- (4) Subsections (2) and (3) cease to have effect when section 6 comes into force (which is when it will become possible to register a civil partnership between persons of different sexes in Scotland).
- (5) The Scottish Ministers may by regulations—
 - (a) provide for subsection (2) not to apply for purposes specified in the regulations,
 - (b) make transitional or saving provision in connection with subsection (2) ceasing to have effect.
- (6) Regulations under subsection (5) are subject to the negative procedure.
- (7) In this section, “the 2004 Act” means the Civil Partnership Act 2004.

Power to enable marriages to become civil partnerships

4 Power to enable marriages to become civil partnerships

- (1) The Scottish Ministers may by regulations make provision for, or in connection with, enabling the parties to a marriage—
 - (a) to register as civil partners of each other,
 - (b) to change their marriage into a civil partnership.
- (2) Regulations under subsection (1) may in particular make provision—
 - (a) about the marriages to which the regulations apply,
 - (b) about the ways in which marriages may be changed into civil partnerships under the regulations,
 - (c) modifying the Civil Partnership Act 2004 in its application—
 - (i) to registering civil partnerships and changing marriages into civil partnerships under the regulations, and
 - (ii) to civil partnerships formed by registration and civil partnerships formed by marriages changing into civil partnerships under the regulations,
 - (d) modifying the definition of “qualifying civil partnership” in section 5 of the Marriage (Scotland) Act 1977,
 - (e) modifying section 11(2)(b) of the Marriage and Civil Partnership (Scotland) Act 2014 in its application to qualifying civil partnerships where the parties to the civil partnership were married to each other immediately before the civil partnership was formed,
 - (f) about the effect of registering civil partnerships and changing marriages into civil partnerships under the regulations,

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- (g) about when the resulting civil partnership is to be treated as having been formed and when the marriage is to be treated as having ended,
 - (h) for fees of such amounts as may be specified in or determined in accordance with the regulations.
- (3) Regulations which make provision under subsection (1)(b) may provide for the regulations to apply only to marriages in categories specified in the regulations.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.
- (5) Regulations under subsection (1)—
- (a) may make different provision for different purposes,
 - (b) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) are (except where subsection (6) applies) subject to the negative procedure.
- (6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

Recognition of marriages converted to civil partnerships outwith Scotland

5 Recognition of marriages converted to civil partnerships outwith Scotland

- (1) The Scottish Ministers may by regulations make provision of the type described in subsection (2) in relation to a marriage that is converted into a civil partnership in accordance with provision made under—
- (a) section 2(5)(a) of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, or
 - (b) section 8(5)(a) of the Northern Ireland (Executive Formation etc) Act 2019.
- (2) The provision mentioned in subsection (1) is—
- (a) provision for such a marriage to be treated in the law of Scotland as if the parties had registered as civil partners of each other in England and Wales or (as the case may be) Northern Ireland,
 - (b) provision as to—
 - (i) the date on which the parties' marriage is to be treated as having ended,
 - (ii) the date on which the parties are to be treated as having registered as civil partners.
- (3) Regulations under subsection (1)—
- (a) may make different provision for different purposes,
 - (b) may include incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (c) may modify any enactment (including this Act),
 - (d) are (except where subsection (4) applies) subject to the negative procedure.
- (4) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

Eligibility and registration in Scotland

6 Eligibility of persons of different sexes to enter into a civil partnership

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 86 (eligibility), subsection (1)(a) is repealed.

7 Persons who may register civil partnerships between persons of different sexes

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 94A (persons who may register civil partnerships)—
 - (a) in subsection (1)—
 - (i) after “A civil partnership” insert “between persons of the same sex”,
 - (ii) in paragraph (a)(i) after “civil partnerships” insert “between persons of the same sex”,
 - (iii) in paragraph (a)(ii) after “section 94B” insert “to register civil partnerships between persons of the same sex”,
 - (iv) in paragraph (a)(iii) after “section 94E” insert “to register civil partnerships between persons of the same sex”,
 - (b) after subsection (2) insert—

“(2A) A civil partnership between persons of different sexes may be registered by and only by—

 - (a) a person who is—
 - (i) a celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a religious or belief body so prescribed as entitled to register civil partnerships between persons of different sexes on its behalf,
 - (ii) registered under section 94B to register civil partnerships between persons of different sexes, or
 - (iii) temporarily authorised under section 94E to register civil partnerships between persons of different sexes, or
 - (b) a person who is a district registrar or assistant registrar appointed under section 87.

(2B) The Scottish Ministers may prescribe a religious or belief body under subsection (2A)(a)(i) only if—

 - (a) the body requests them to do so, and
 - (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.”
- (c) in subsection (3)—
 - (i) for “or (2)(a)” substitute “, (2)(a), (2A)(a) or (2B)(a)”,
 - (ii) in paragraph (a) after “subsection (2)(a)” insert “or subsection (2B)(a)”,
 - (iii) in paragraph (b) after “civil partnerships” insert “between persons of the same sex or between persons of different sexes”,

- (iv) in paragraph (c) after “civil partnerships” insert “between persons of the same sex or between persons of different sexes”,
- (v) in paragraph (d) after “civil partnerships” in the second place that it appears insert “between persons of the same sex or between persons of different sexes”,
- (d) in subsection (4)(a) after “subsection (1)(a)” insert “or (2A)(a)”,
- (e) in subsection (5) for “subsection (2)(b)” substitute “subsections (2)(b) and (2B)(b)”,
- (f) in section 126(4) (regulations) after “94A(1)(a)(i)” insert “, (2A)(a)(i)”.

8 Registration and removal of celebrants

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 94B (registration of nominated persons as celebrants)—
 - (a) in subsection (1) after “civil partnerships” insert “between persons of the same sex”,
 - (b) after subsection (1) insert—
 - “(1A) A religious or belief body, not being prescribed by virtue of section 94A(2A)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to register civil partnerships between persons of different sexes.”,
 - (c) in subsection (2)—
 - (i) after “(1)” insert “or (1A)”,
 - (ii) after “that body” insert “in relation to registering civil partnerships between persons of the same sex or, as the case may be, civil partnerships between persons of different sexes”,
 - (d) in subsection (6)—
 - (i) in paragraph (a) after “(1)” insert “or (1A)”,
 - (ii) in paragraph (b) after “(1)” insert “or (1A)”,
 - (e) after subsection (6) insert—
 - “(6A) The register mentioned in subsection (6)(a)(ii) is to be in two parts—
 - (a) the first part containing the details mentioned in subsection (6)(a)(ii) in relation to persons nominated by religious or belief bodies to register civil partnerships between persons of the same sex, and
 - (b) the second part containing those details in relation to persons nominated by religious or belief bodies to register civil partnerships between persons of different sexes.”.
- (3) In section 94C (removal of celebrant’s name from register)—
 - (a) in subsection (1)(b) after “94B(1)” insert “or (1A)”,
 - (b) in subsection (5) after “94B(1)” insert “or (1A)”.

9 Temporary authorisation of celebrants

- (1) The Civil Partnership Act 2004 is amended as follows.

- (2) In section 94E (temporary authorisation of celebrants)—
- (a) after subsection (2) insert—
 - “(2A) An authorisation under subsection (1)(b) may be granted in relation to—
 - (a) civil partnerships between persons of the same sex only,
 - (b) civil partnerships between persons of different sexes only, or
 - (c) both.”
 - (b) in subsection (3) after “(1)(b)” insert “in relation to civil partnerships between persons of the same sex”,
 - (c) after subsection (3) insert—
 - “(3A) The Registrar General may grant an authorisation to a person under subsection (1)(b) in relation to civil partnerships between persons of different sexes only if the religious or belief body of which the person is a member—
 - (a) is prescribed by virtue of section 94A(2A)(a)(i), or
 - (b) has nominated members (whether or not including that person) under section 94B(1A).”

10 Second registration of civil partnership

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) After section 97 insert—

“97A Second civil partnership registration

- (1) Subsection (2) applies where—
- (a) two people have registered a specified relationship (within the meaning of section 213) or a relationship which meets the general conditions (within the meaning of section 214), whether before or after section 10 of the Civil Partnership (Scotland) Act 2020 comes into force, and
 - (b) that relationship would result in them being treated as having formed a civil partnership under the law of Scotland (by virtue of section 1(1)(b) and Chapter 2 of Part 5) but for the fact that they cannot prove that the relationship has been registered as mentioned in section 212(1)(b).
- (2) An authorised registrar may, on an application made by the parties to the relationship, subject to the approval of the Registrar General and to subsection (3), register their civil partnership as if they had not already registered that relationship with each other.
- (3) Sections 85 to 100 apply for the purpose of registering a civil partnership under this section as they apply to registering a civil partnership under section 1, subject to the modifications set out in subsections (4) to (11).
- (4) Section 85 (formation of civil partnership by registration) applies as if the words “the approved celebrant or, as the case may be,” in both places where they occur, were omitted.

- (5) Section 86 (eligibility) does not apply in respect of the parties already being in civil partnership with each other.
- (6) Section 88 (notice of proposed civil partnership) applies as if after subsection (1) there were inserted—
- “(1A) Both parties must submit to the authorised registrar a statutory declaration—
- (a) stating that they have previously registered their relationship, and
 - (b) specifying the date, place and country or territory at which, and the circumstances in which, they did so.”.

(7) Section 93A does not apply.

(8) Section 94 (the civil partnership schedule) applies as if after subsection (1) there were inserted—

“(1A) In the case of a civil partnership to be registered under section 97A, the civil partnership schedule is to contain such modifications as the Registrar General may direct to indicate that the parties have previously entered into a civil partnership with each other.”.

(9) Section 94A (persons who may register civil partnerships) applies as if subsections (1)(a), (2), (2A)(a), (2B), (3), (4)(a) and (b) and (5) were omitted.

(10) Sections 94B to 94E do not apply.

(11) Section 95 (further provision as to registration) applies as if after subsection (2) there were inserted—

“(2A) As soon as practicable after the civil partnership schedule has been signed in accordance with section 85, the authorised registrar must make an endorsement on it in the following terms—

“This civil partnership registration was carried out under section 97A of the Civil Partnership Act 2004, following a statutory declaration by the parties that they registered a relationship with each other on [*date*] at [*place*] in [*country or territory*].”.”.”.

Dissolution

11 Postponement of decree of dissolution where religious impediment to marry exists

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) After section 121 insert—

“121A Postponement of decree of dissolution where religious impediment to marry exists

- (1) Notwithstanding that irretrievable breakdown of a civil partnership has been established in an action for dissolution, the court may—
 - (a) on the application of a party (“the applicant”), and
 - (b) if satisfied—

- (i) that subsection (2) applies, and
 - (ii) that it is just and reasonable to do so,
- postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).
- (2) This subsection applies where—
 - (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage, and
 - (b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.
 - (3) A party complies with this subsection by acting in the way described in subsection (2)(b).
 - (4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).
 - (5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from the relevant religious body confirming that the other party has acted in the way described in subsection (2)(b).
 - (6) For the purposes of subsection (5), a religious body is “relevant” if the applicant considers the body competent to provide the confirmation referred to in that subsection.
 - (7) In this section—
 - “religious marriage” means a marriage solemnised by a marriage celebrant of a specified religious body, and “religion of that marriage” is to be construed accordingly,
 - “specified” means specified by regulations made by the Scottish Ministers.
 - (8) Any reference in this section to a marriage celebrant of a specified religious body is a reference to—
 - (a) a minister, clergyman, pastor or priest of such a body,
 - (b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 as empowered to solemnise marriages,
 - (c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.”.
- (3) In section 126(4) (regulations), for “or 106(3)(a)(i)” substitute “, 106(3)(a)(i) or 121A(7)”.

Marriage between civil partners in a qualifying civil partnership: celebrants

12 Marriage between civil partners in a qualifying civil partnership: celebrants

- (1) The Marriage (Scotland) Act 1977 is amended as follows.
- (2) In section 8 (persons who may solemnise marriage), after subsection (1A) insert—

- “(1AA) For the avoidance of doubt, nothing in subsection (1)(a)—
- (a) imposes a duty on any person who is an approved celebrant in relation to marriage between persons of different sexes to solemnise a marriage between civil partners in a qualifying civil partnership (within the meaning of section 5(6)),
 - (b) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise such a marriage.”.

Forced civil partnerships

13 Forced civil partnerships

- (1) The Anti-social Behaviour, Crime and Policing Act 2014 is amended as follows.
- (2) In section 122 (offence of forced marriage: Scotland)—
 - (a) in subsection (1), after “marriage” in both places where it occurs insert “or civil partnership”,
 - (b) in subsection (2), after “marriage” in both places where it occurs insert “or civil partnership”,
 - (c) after subsection (4) insert—
 - “(4A) “Civil partnership” includes—
 - (a) a civil partnership which exists by virtue of the Civil Partnership Act 2004, and
 - (b) a purported civil partnership.”,
 - (d) The section title becomes “**Offence of forced marriage or forced civil partnership: Scotland**”.

Consequential modifications

14 Consequential modifications

[Schedule 2](#) modifies other enactments.

Final provisions

15 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
 - (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but

- (b) otherwise are subject to the negative procedure.

16 Commencement

- (1) The following provisions come into force on the day after Royal Assent: this section and section 15 and 17.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section—
 - (a) may make different provision for different purposes,
 - (b) may include transitional, transitory or saving provision.

17 Short title

The short title of this Act is the Civil Partnership (Scotland) Act 2020.