

# CIVIL PARTNERSHIP (SCOTLAND) ACT 2020

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Civil Partnership (Scotland) Act 2020. They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### OVERVIEW

3. The Act modifies the law so that persons of different sexes can enter into civil partnerships.
4. The [Civil Partnership Act 2004](#) (“the 2004 Act”) created in the UK a new form of legal relationship: the civil partnership. It was made available only to same sex couples as an alternative to marriage, which was not then a legal relationship available to them. That changed, in Scotland, with the [Marriage and Civil Partnership \(Scotland\) Act 2014](#), which allowed same sex couples to marry. This resulted in same sex couples having a choice between marriage or civil partnership, while marriage remained the only form of legally recognised relationship available to different sex couples. In 2018, the UK Supreme Court found that difference in treatment in England and Wales to be incompatible with the European Convention on Human Rights<sup>1</sup>. The Act removes that difference in treatment in Scotland by extending the option to enter into a civil partnership to different sex couples.
5. In connection with that main effect, the Act also:
  - makes consequential amendments to Scottish family law,
  - allows for the recognition of certain overseas relationships between different sex couples,
  - allows provision to be made to enable the parties to a marriage to change their relationship into a civil partnership,
  - makes consequential amendments to legislation concerning gender recognition,
  - creates an offence of forcing someone into a civil partnership.
6. As an Act of the Scottish Parliament, the Act’s provisions fall to be read in accordance with the interpretation rules in [Part 1 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#). Any text the Act adds to an Act of the UK Parliament (such as the 2004 Act) falls to be interpreted in accordance with the interpretative rules that apply to Acts of the UK Parliament, which are principally set out in the [Interpretation Act 1978](#).

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<sup>1</sup> [R \(on the application of Steinfeld and Keidan\) v Secretary of State for International Development \[2018\] UKSC 32](#).

## COMMENTARY ON PROVISIONS

### *Extension of civil partnership to different sex couples*

#### *Section 1: Different sex civil partnerships*

7. [Section 1\(1\) of the 2004 Act](#) defines a civil partnership as a relationship between two people of the same sex. Section 1 of the Act removes the requirement that the two people be of the same sex and thereby extends civil partnership to different sex couples.
8. Interpretation legislation, which governs what expressions mean when they are used in primary and secondary legislation, defines “civil partnership” by reference to section 1 of the 2004 Act.<sup>2</sup> Therefore, changing the definition of civil partnership in section 1 of the 2004 Act means that uses of the expression in other legislation will automatically encompass different sex civil partnerships (subject to there not being a statement, or a clear contextual indication, to the contrary).

#### *Section 2: Recognition of overseas different sex relationships*

9. [Part 5 of the 2004 Act](#) makes provision for civil partnerships (however described) formed outwith the United Kingdom. Chapter 1 of that Part provides for the registration of civil partnerships at British consulates and by members of UK armed forces outwith the United Kingdom. Chapter 2 of that Part makes provision for certain overseas relationships to be recognised as civil partnerships in Scots law (as well as in the legal systems of the other UK jurisdictions). Couples are treated as having formed a civil partnership if they have registered an “overseas relationship”, which is defined in [section 212 of the 2004 Act](#). Amongst other things, the definition (as enacted) requires that both people in the relationship are of the same sex. Section 2(2) of the Act removes that requirement from the definition of “overseas relationship”.
10. The definition of “overseas relationship” in section 212 of the 2004 Act also requires that a relationship be either:
  - “a specified relationship”, which is defined in [section 213](#) as a relationship of a kind that is specified for the purposes of section 212 in [schedule 20](#), or
  - one that complies with the general conditions set out in [section 214](#).
11. Section 2(3) of the Act amends section 213 of the 2004 Act so that overseas relationships between different sex couples can be specified in Part 2 of schedule 20. Section 2(6) of the Act inserts Part 2 into schedule 20, which contains those overseas relationships that are to be treated as civil partnerships in Scotland. Section 2(3) of the Act allows the Scottish Ministers to amend Part 2 of schedule 20 by regulations. The regulations will be subject to the affirmative procedure if they amend or omit a relationship, and the negative procedure if they add a relationship. The negative procedure is defined by [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), and the affirmative procedure is defined by [section 29 of that Act](#).
12. [Section 215 of the 2004 Act](#) provides that an overseas relationship is to be treated as having been entered into at the time it is registered in the overseas jurisdiction or at the time that section came into force, whichever is later. Section 2(4) of the Act amends section 215 to allow the Scottish Ministers to make contrary provision as to when overseas relationships between persons of different sexes are to be treated as having been entered into.

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<sup>2</sup> The interpretation legislation which applies to Acts of the Scottish Parliament and Scottish statutory instruments since June 2010 is the Interpretation and Legislative Reform (Scotland) Act 2010 (see [section 1 of that Act](#) for fuller details of the legislation to which it applies by default). Older Acts of the Scottish Parliament and Scottish statutory instruments fall to be interpreted in accordance with the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc. of Acts of the Scottish Parliament\) Order 1999 \(S.I. 1999/1379\)](#). Acts of the UK Parliament and subordinate legislation made by members of the UK Government largely fall to be interpreted in accordance with the Interpretation Act 1978.

13. **Section 216 of the 2004 Act** prevents an overseas relationship from being recognised as a civil partnership in accordance with Part 5 of the 2004 Act if the parties to it were not of the same sex under UK law at “the critical time” (which is defined in subsection (5)). Section 2(5) of the Act repeals section 216 so that whether the parties were of the same sex at any time is irrelevant to the question of whether their overseas relationship can be recognised as a civil partnership in Scots law.

### ***Section 3: Interim recognition of different sex relationships formed outwith Scotland***

14. Section 3 of the Act makes interim arrangements for the recognition in Scotland of different sex civil partnerships registered elsewhere in the United Kingdom and different sex overseas relationships. It provides for those civil partnerships (as well as different sex overseas relationships) to be treated as marriages, and for the civil partners to be treated as spouses, until civil partnerships between persons of different sexes become registrable in Scotland by virtue of the coming into force of section 6 of the Act. The Scottish Ministers may by regulations prescribe purposes for which this provision does not apply.
15. Subsection (3) makes clear that the interim recognition of those relationships as marriages does not prevent people in those relationships referring to their relationship as a civil partnership and to themselves as being civil partners of each other.

### ***Power to enable marriages to become civil partnerships***

#### ***Section 4: Power to enable marriages to become civil partnerships***

16. **The Marriage and Civil Partnership (Scotland) Act 2014** made provision so that a civil partnership can be changed to a marriage. Section 4 of the Act provides the Scottish Ministers with a regulation-making power to enable marriages to become civil partnerships, if the parties so wish. The regulations may, among others things, make provision about the types of marriages the regulations are to apply to; the ways in which marriages can be changed to civil partnerships; and the effect of registering a civil partnership and changing a marriage into a civil partnership under the regulations, including when the resulting civil partnership is to be treated as having begun and when the marriage is to be treated as having ended.

### ***Recognition of marriages converted to civil partnerships outwith Scotland***

#### ***Section 5: Recognition of marriages converted to civil partnerships outwith Scotland***

17. The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 and the Northern Ireland (Executive Formation etc) Act 2019 allow for the conversion of a marriage into a civil partnership in England and Wales, and Northern Ireland, respectively. Section 5 of the Act provides the Scottish Ministers with a regulation-making power to enable the recognition of those converted marriages as civil partnerships in Scotland.

### ***Eligibility and Registration in Scotland***

#### ***Section 6: Eligibility of persons of different sexes to enter into a civil partnership***

18. **Section 86(1) of the 2004 Act** sets out the circumstances in which two people are not eligible to register as civil partners, including that the parties are related in a forbidden degree or that one or both is under 16. These disqualifying criteria include in section 86(1)(a) that the two people are not of the same sex. Section 6 of the Act repeals section 86(1)(a).

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

19. Section 7 of the Act amends section 94A of the 2004 Act. Section 94A makes provision about the persons who may register same sex civil partnerships. It sets out both the categories of approved celebrant and provisions regarding the prescription of religious or belief bodies by regulations. A celebrant of a prescribed body or a person recognised by that body as entitled to register civil partnerships on its behalf is an approved celebrant without having to be individually registered as such. Section 7 of the Act amends section 94A to create two different categories of persons who may register civil partnerships: those in relation to same sex civil partnerships and those in relation to different sex civil partnerships.
20. Section 94A(2A)(a)(i), added by section 7(2)(b) of the Act, empowers the Scottish Ministers to prescribe religious or belief bodies so that their celebrants are authorised to register different sex civil partnerships. This will complement the power in section 94A(1)(a)(i) of the 2004 Act, which, as amended by section 7(2) of the Act, will be restricted to same sex civil partnerships. Section 7(2)(f) of the Act adds the new regulation-making power contained in section 94A(2A)(a)(i) to the list of powers set out in section 126(4) of the 2004 Act. Those powers are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure as set out in section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

***Section 8: Registration and removal of celebrants***

21. Section 8 of the Act amends the 2004 Act in respect of sections 94B and 94C.
22. In accordance with section 94B of the 2004 Act, a religious or belief body can nominate one of its members to the Registrar General. If the nomination is accepted and the individual's name is entered in a register, that person becomes an approved celebrant. Section 8(2) of the Act amends section 94B to provide for celebrants to be nominated and approved separately for the purposes of registering same sex and mixed sex civil partnerships.

***Section 9: Temporary authorisation of celebrants***

23. Section 9 of the Act amends section 94E of the 2004 Act. Section 94E provides that a temporary authorisation may be granted to allow the celebrant to register one or more specified civil partnerships (subsection (1)(a)) or to allow the celebrant to register civil partnerships over a specified period of time (subsection (1)(b)). Section 9(2)(a) of the Act adds new subsection (2A) to section 94E to provide that authorisations may be granted in relation to one category of civil partnership only or both. Section 9(2)(b) and (c) of the Act amend the provision for authorisation in section 94E to set out the conditions for authorisation in respect of each category of civil partnership.

***Second registration of civil partnership***

***Section 10: Second registration of civil partnership***

24. Section 10 of the Act amends the 2004 Act by inserting a new section 97A. It applies to civil partners who are unable to evidence their relationship, for example because of the destruction of documents, and gives them the ability to secure the rights and responsibilities of their relationship through a second registration. This is a facility that has been available to parties who have gone through a marriage ceremony abroad but are unable to prove the marriage. In such circumstances, section 20 of the Marriage (Scotland) Act 1977 provides that an authorised registrar may solemnise their marriage as if they had not already gone through a marriage ceremony.
25. By section 97A(1), the facility is made available to parties who have registered certain types of relationship which would result in them being treated as having formed a civil

partnership under the law of Scotland but who are unable to prove the registration. Under section 97A(2), an authorised registrar may, subject to conditions, register the parties' civil partnership as if they had not already registered that relationship with each other. Section 97A(6) makes it a requirement that both parties submit a statutory declaration (a declaration made as set out in the [Statutory Declarations Act 1835](#)) stating specified particulars about the previous registration of their relationship for the purpose of confirming the truth of that account. The remaining subsections of section 97A apply to such a registration of a civil partnership various provisions that set out the machinery of the standard registration of civil partnerships with modifications to reflect the fact that this is a second registration.

## ***Dissolution***

### ***Section 11: Postponement of decree of dissolution where religious impediment to marry exists***

26. Section 11 of the Act adds a new section 121A to Chapter 5 of Part 3 of the 2004 Act, which replicates [section 3A of the Divorce \(Scotland\) Act 1976](#).
27. Its effect is that, where there has been irretrievable breakdown of a relationship, the court may, on the application of one of the parties, postpone the grant of a dissolution (section 121A(1)). It applies in circumstances where the applicant for the postponement is prevented from entering into a 'religious marriage' by virtue of a requirement of the religion of that marriage and the other party can act so as to remove that impediment (section 121A(2)). In that case, the court may order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described (section 121A(5)).
28. 'Religious marriage' is defined in section 121A(7) as a marriage solemnised by a marriage celebrant of a religious body specified by the Scottish Ministers. A power is given to the Scottish Ministers to make regulations to specify the religious faiths which can rely on this provision (section 121A(7)). Section 11(3) of the Act adds this regulation-making power to [section 126\(4\) of the 2004 Act](#), which sets down the applicable procedure. They are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure as set out in [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)).

## ***Marriage between civil partners in a qualifying civil partnership: celebrants***

### ***Section 12: Marriage between civil partners in a qualifying civil partnership: celebrants***

29. There is provision under current law for civil partners to marry and this ability will apply automatically to different sex civil partnerships once they are introduced by the Act. No celebrant will be required by the legislation to solemnise such marriages. To prevent there being any doubt about the position, section 12 inserts a new section 8(1AA) into the [Marriage \(Scotland\) Act 1977](#) which states that nothing in the section imposes a duty (a) upon celebrants to solemnise a marriage between qualifying civil partners who are of different sexes or (b) on any person to apply for temporary authorisation to solemnise such a marriage.

## ***Forced civil partnerships***

### ***Section 13: Forced civil partnerships***

30. Section 13 of the Act amends [section 122 of the Anti-social Behaviour, Crime and Policing Act 2014](#). Section 122 makes it an offence under the law of Scotland to use coercion for the purpose of causing another person to enter into a marriage. It is amended by section 13 of the Act so as to extend to the use of coercion for the purpose

of causing another person to enter into a civil partnership, including a purported civil partnership. A purported civil partnership in this context might be one which is void as a matter of law, for example because one party did not freely consent to its formation.

### ***Consequential Modifications***

#### ***Section 14: Consequential modifications***

31. Section 14 introduces schedule 2 (which is explained below).

### ***Final provisions***

#### ***Section 15: Ancillary provision***

32. Section 15 enables the Scottish Ministers to make ancillary provision, by regulations, to give full effect to the Act or any provision made under it. This includes the power to modify other enactments (including the Act itself).
33. Regulations made under section 15 that amend the text of primary legislation (including the Act) are subject to the affirmative procedure. Otherwise, regulations under section 15 are subject to the negative procedure.
34. The affirmative procedure is defined in [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#). The negative procedure is defined in [section 28 of that Act](#).

#### ***Section 16: Commencement***

35. Section 16 deals with when the Act's provisions come into effect as a matter of law.
36. The Act's final provisions (sections 15 to 17) take effect the day after the Bill receives Royal Assent.
37. The rest of the Act's provisions take effect on the day, or days, appointed by the Scottish Ministers by regulations. Section 16 allows the regulations to appoint different days for different purposes. Regulations appointing the day that some or all of the Act's provisions take effect will be laid before the Scottish Parliament in accordance with [section 30 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

### ***Schedule 2***

#### ***Family law***

38. Paragraphs 1 to 4 of schedule 2 amend various family law acts, principally so that they accommodate different sex civil partnerships and the possibility of reproduction between civil partners.

#### ***Paragraph 1: Modification of the Registration of Births, Deaths and Marriages (Scotland) Act 1965***

39. Paragraph 1 of schedule 2 amends [Part 2 of the Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#) ("the 1965 Act"). Part 2 of the 1965 Act provides for the registration of births. [Section 13](#) sets out the particulars of birth to be registered.
40. [Section 14](#) specifies which persons have a duty to give those particulars of birth, including certain fathers. Section 14(5) excludes fathers who are not married to the mother and have not been married to her since the child's conception. It would therefore not apply the duty to a father who had been in a civil partnership with the mother. Paragraph 1(2) of schedule 2 of the Bill amends section 14 to limit that exclusion to fathers who are neither married to nor in a civil partnership with the mother and have neither been married to nor in a civil partnership with her since the child's conception. The overall effect of section 14, once amended, is to apply the duty to a father who has

been either married to or in a civil partnership with the mother at some point since the child's conception.

41. **Section 18** provides that the name of a child's father is only to be entered in the register of births if the father is married to the mother, or has been married to her since the child's conception, or if certain conditions are satisfied (generally requiring the mother to ask for the father's name to be entered). The effect of the amendment to section 18 made by paragraph 1(3) of schedule 2 of the Act is to require the name of a child's father to be entered in the register if the father is in a civil partnership with the mother, or has been in a civil partnership with her since the child's conception.
42. **Section 20 of the 1965 Act** provides for re-registration in certain cases, including where the register suggests that a person was born at a time when the person's parents were not married but they have subsequently done so. Paragraph 1(4) of schedule 2 amends section 20 and extends this case to include the case where a person's parents subsequently enter into a civil partnership.

### ***Paragraph 2: Modification of the Family Law (Scotland) Act 1985***

43. Paragraph 2 of schedule 2 amends the **Family Law (Scotland) Act 1985** ("the 1985 Act"). **Section 9 of the 1985 Act** sets down the principles to be applied by the court in deciding what order to make for financial provision on divorce or dissolution. Section 9(1)(c) of the 1985 Act provides that the economic burden of caring for certain children should be shared equally between the parties.
44. In the case of marriage, section 9(1)(c)(i) provides that it is any "child of the marriage" under the age of 16 that is taken into account. **Section 27 of the 1985 Act** states that the expression "child of the marriage" includes a child (other than a child who has been boarded out with the parties, or one of them, by a local or other public authority or a voluntary organisation) who has been accepted by the parties as a child of the family.
45. In the case of civil partnership, section 9(1)(c)(ii), on its face, provides that it is a child under the age of 16 who has been accepted by both partners as a child of the family or in respect of whom the partners are parents by virtue of the **Human Fertilisation and Embryology Act 2008** ("the 2008 Act") that is taken into account.
46. There is therefore an asymmetry between the drafting concerning children of a marriage and that concerning children of a civil partnership. The Act takes the opportunity to remedy that asymmetry by aligning the drafting treatment of each. This is possible given that both marriage and civil partnership will now be available to both same sex and different sex couples.
47. The Act also takes the opportunity to remove references to the deeming provisions of the 2008 Act. Like those who adopt, it goes without saying that those who are parents under the 2008 Act, are parents for the purposes of the 1985 Act.
48. Paragraph 2(2) of schedule 2 amends section 9(1)(c)(ii) so that it echoes section 9(1)(a)(i) and simply refers to children of the civil partnership under the age of 16.
49. Paragraph 2(3) of schedule 2 amends section 27 of the 1985 Act (interpretation).
50. Sub-paragraph (a) amends the definition of "child" so that it includes a child whether or not its parents have ever been in a civil partnership with one another and that it now refers to "a child of the civil partnership" and makes clear that this includes a child who has been accepted by the parties as a child of the family.
51. Sub-paragraph (b) amends the definition of "family". The definition currently spells out that "family" in relation to a civil partnership means the members of the civil partnership together with any child accepted by them both as a child of the family. The specific reference to civil partnership is repealed on the basis that those words state the obvious

and are therefore unnecessary, particularly in light of the amendment to the definition of “child” in section 27, outlined above.

**Paragraph 3: Modification of the Law Reform (Parent and Child) (Scotland) Act 1986**

52. Paragraph 3 of schedule 2 amends the [Law Reform \(Parent and Child\) Scotland Act 1986](#). It amends [section 5](#) (presumptions) so that the conditions under which a man will be presumed to be the father of a child are extended to where he was in a civil partnership with the mother of the child at any time between conception and birth, even in the case of a void or voidable civil partnership.

**Paragraph 4: Modification of the Children (Scotland) Act 1995**

53. Paragraph 4 of schedule 2 amends the [Children \(Scotland\) Act 1995](#) (“the 1995 Act”). [Section 3 of the 1995 Act](#) sets out the circumstances in which a parent will automatically acquire parental responsibilities and rights in relation to a child.
54. Paragraph 4(2) of schedule 2 amends section 3 of the 1995 Act to extend those circumstances to where the father was in a civil partnership with the mother at the time of the child’s conception or subsequently.
55. Paragraph 4(2) of schedule 2 also amends section 3 of the 1995 Act to make clear that a purported civil partnership will suffice for this purpose, if conditions are met.
56. Paragraph 4(3) of schedule 2 amends the definition of “child of the family” in [section 12 of the 1995 Act](#). That definition defines “child of the family” in two different ways, one relating to the parties to a marriage and the other relating to the parties to a civil partnership. The introduction of different sex civil partnerships affords the opportunity to streamline that definition. Paragraph 4(3) repeals the existing two limbs of the definition in section 12 and replaces it with a single global definition, which captures children of both of the parties or children treated by both of them as a child of the family. The provision is silent as to the means by which the child came to be a child of both of them for the reasons set out above.

**Change of gender of civil partners**

57. Paragraphs 5, 6(2) and 7 of schedule 2 of the Act make consequential amendments to legislation concerning gender recognition so that a civil partner obtaining gender recognition can stay in the civil partnership.

**Introduction**

58. The position, prior to section 1 of the Act coming into force, is that civil partnership is only available to same sex couples. As a result, the law has prevented one partner in a civil partnership from changing gender because that would result in an impermissible different sex civil partnership. Schedule 2 of the Act modifies the following enactments to allow for the fact that, once section 1 comes into force, a civil partnership will be able to continue when the partners are no longer the same gender:

- the Gender Recognition Act 2004,
- the Civil Partnership Act 2004,
- the Marriage and Civil Partnership (Scotland) Act 2014.

**Modification of the Gender Recognition Act 2004**

**Overview of the modifications to the Gender Recognition Act**

59. The Gender Recognition Act enables people to change their legal gender. A change in legal gender is effected by the issuing of a full gender recognition certificate. The process for obtaining a full gender recognition certificate begins with an application to a gender recognition panel under [section 1 of the Gender Recognition Act](#).



60. **Section 4 of that Act** sets out the circumstances in which a gender recognition panel, having granted an application, must issue a full gender recognition certificate or an interim gender recognition certificate. If the person who made the application is in a civil partnership, and the person's partner is not also changing gender, section 4 provides that a gender recognition panel can only issue an interim gender recognition certificate. This is because issuing a full gender recognition certificate to only one of the partners would result in a different sex civil partnership which, as mentioned in paragraph 58 above, was not permitted when the Gender Recognition Act was enacted.
61. The issuing of an interim gender recognition certificate allows the civil partnership to be dissolved (under **section 117(2)(b) of the Civil Partnership Act 2004**), at which point the court must issue a full gender recognition certificate under **section 5A of the Gender Recognition Act**. The issuing of an interim gender recognition certificate can also lead to the issuing of a full gender recognition if the civil partnership ends as a result of the other partner's death (see **section 4F of the Gender Recognition Act**).
62. Paragraph 5 of schedule 2 modifies the Gender Recognition Act so that being in a civil partnership will cease to be an absolute barrier to one partner obtaining a full gender recognition certificate. In their effect, the modifications largely mirror those made to the Gender Recognition Act by **the Marriage and Civil Partnership (Scotland) Act 2014**, which made same sex marriage possible and in consequence modified the Gender Recognition Act so that being married ceased to be an absolute barrier to one spouse obtaining a full gender recognition certificate.

#### Modification of sections 3 and 3D

63. **Sections 3 and 3D of the Gender Recognition Act** set out requirements that an application under section 1 must satisfy. (The requirements set out in section 3 apply if the application does not bear to be an application for a certificate under section 3A, 3C or 3E, whereas the requirements set out in section 3D apply if the application does bear to be an application for a certificate under section 3C.)<sup>3</sup> Those sections are modified by sub-paragraphs (2) and (3) of paragraph 5 of schedule 2 so that applicants have to provide, as part of an application, a statutory declaration about the applicant's civil partnership. In particular, there must be a statutory declaration about whether or not the applicant's civil partner consents to the partnership continuing.
64. If a statutory declaration is made that the applicant's partner has consented to the partnership continuing, sections 3 and 3D are further modified so that the gender recognition panel, on receiving such a statutory declaration, must inform the applicant's civil partner. Whether or not an applicant's civil partner has consented to their civil partnership continuing will determine whether a full gender recognition certificate or an interim certificate has to be issued (see paragraph 66 below).
65. It is a crime to deliberately make a false statement in a statutory declaration (see **section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995**).

#### Modification of section 4

66. Section 4 of the Gender Recognition Act is modified by paragraph 5(4) of schedule 2 so that:
- the rule that a gender recognition panel can only issue an interim gender recognition certificate to an applicant who is in a civil partnership is abolished,
  - where the conditions for granting a gender recognition certificate are met, the applicant is in a civil partnership, and both partners consent to the civil partnership continuing, the gender recognition panel is required to issue a full gender recognition certificate,

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<sup>3</sup> See **section 2 of the Gender Recognition Act**. The Bill does not modify the requirements associated with applications that bear to be for certificates under section 3A or 3E because those provisions relate to applications by persons ordinarily resident in England and Wales.

*These notes relate to the Civil Partnership (Scotland) Act  
2020 (asp 15) which received Royal Assent on 28 July 2020*

- if the gender recognition panel issues a full gender recognition certificate in those circumstances, the panel must notify the applicant's civil partner,
- where the conditions for granting a gender recognition certificate are met, the applicant is in a civil partnership, and one of the partners does not consent to the partnership continuing, the gender recognition panel is required to issue an interim gender recognition certificate.

#### Modification of section 4C

67. **Section 4C of the Gender Recognition Act** allows an individual who has an interim gender recognition certificate to apply to a gender recognition panel for a full gender recognition certificate. Paragraph 5(5) of schedule 2 modifies section 4C so that the panel must grant a full gender recognition certificate to an applicant who is in a civil partnership if, since the issuing of the interim certificate, both parties have decided to continue their partnership.
68. The terms of the new subsection (1A) of section 4C allow for the possibility that the relationship between the applicant and the applicant's partner may have changed from a civil partnership to a marriage in the period between the granting of the interim gender recognition certificate and the application for a full gender recognition certificate under section 4C being determined. The change in the legal character of their relationship from one type to the other has no bearing on the availability of section 4C as a mechanism for going from an interim gender recognition certificate to a full gender recognition certificate.

#### Modification of section 4D

69. **Section 4D of the Gender Recognition Act**, in its original form, deals with the situation in which an application for a full gender recognition certificate has been made under section 4C and the person's spouse dies before the application is determined. In light of the modifications to section 4C discussed above, which have the effect of making that section work in the same way for applicants in civil partnerships as it works for applicants in marriages, paragraph 5(6) of schedule 2 modifies section 4D so that it too works in the same way for people in marriages and civil partnerships.

#### Modification of section 4E

70. **Section 4E of the Gender Recognition Act**, in its original form, allows a sheriff to grant a full gender recognition certificate to someone who has been granted an interim gender recognition certificate, notwithstanding the fact that the person is married and the person's spouse has not provided a statutory declaration consenting to the marriage continuing. Paragraph 5(7) of schedule 2 modifies section 4E so that the same route to being granted a full gender recognition certificate is available to people in civil partnerships.

#### Repeal of section 4F

71. **Section 4F of the Gender Recognition Act** provides a mechanism for a person with an interim gender recognition certificate to obtain a full gender recognition certificate where:
- the person's civil partner dies within 6 months of their submitting notice of their intention to change their civil partnership into a marriage, or
  - within 6 months of their civil partnership changing into a marriage the person's spouse died.
72. Paragraph 5(8) of schedule 2 repeals section 4F because the other changes the schedule makes to the Gender Recognition Act mean that changing a civil partnership into a marriage is no longer a necessary step on the route to obtaining a full gender recognition certificate (see, in particular, the discussion above in relation to sections 4 and 4C of the Gender Recognition Act).

#### Modification of section 5A

73. Paragraph 5(9) of schedule 2 modifies [section 5A of the Gender Recognition Act](#) so that it acknowledges the possibility that a full gender recognition certificate may have been issued under section 4E of that Act (the modifications to which are discussed above) before a court dissolves a civil partnership on the basis of an interim gender recognition certificate having been granted. The effect is simply to make clear that the court granting the dissolution is not to issue another full gender recognition certificate, on top of the one already issued under section 4E.

#### Repeal of section 5C

74. [Section 5C of the Gender Recognition Act](#) makes provision about the issuing of full gender recognition certificates to both parties in a civil partnership. Its purpose was to ensure that the legal gender of both partners changed simultaneously so as to avoid creating a different sex civil partnership. When different sex civil partnerships become lawful, section 5C will be redundant and therefore paragraph 5(10) removes it from the statute book.

#### Repeal of section 5D

75. [Section 5D of the Gender Recognition Act](#) empowers the Scottish Ministers to make provision, by order, to set up further procedures to issue full gender recognition certificates to applicants in protected Scottish civil partnerships (as defined in [section 25 of that Act](#)). The power has not been exercised since it was added to the Gender Recognition Act in 2014. As a result of the other changes schedule 2 makes to the Gender Recognition Act, the procedures for issuing full gender recognition certificates to applicants in protected Scottish civil partnerships will be the same as those for issuing full certificates to applicants in protected Scottish marriages. Paragraph 5(11) of schedule 2 repeals section 5D as the Scottish Ministers have no intention of exercising the power to create special procedures for issuing full gender recognition certificates to applicants in civil partnerships that are not available to applicants in marriages.

#### Further minor changes

76. Sub-paragraphs (12) to (19) of paragraph 5 of schedule 2 make a number of changes to the Gender Recognition Act in consequence of those discussed above. In particular, sub-paragraphs (14), (15) and (18)(b) ensure that a change in gender does not affect the continuity of a protected civil partnership or a protected Scottish civil partnership.

#### Modification of the Civil Partnership Act 2004

77. [Section 117 of the Civil Partnership Act 2004](#) sets out the process for dissolving a civil partnership in the Scottish courts. Subsection (2)(b), in its original form, makes the issuing of an interim gender recognition certificate to one of the partners a ground for dissolving the partnership. The rationale for having this as a ground of dissolution was to allow the civil partnership to be brought to an end so that a full gender recognition certificate could be issued (the rule being that a full gender recognition certificate could not be issued if that would result in a different sex civil partnership because different sex civil partnerships were impermissible).
78. The modifications to schedule 2 will make to the Gender Recognition Act 2004 (which are discussed above) will mean that a full gender recognition certificate can be issued to one civil partner, but only if the other partner consents to the partnership continuing. If an interim gender recognition certificate has been issued to one partner in a civil partnership and the civil partnership has continued after a full gender recognition certificate has been issued that can only mean (subject to one exception discussed below) that the other partner has consented to the civil partnership continuing. Since the other partner has consented to remain in the civil partnership, it follows that the issuing of the interim gender recognition certificate should cease to be a ground for dissolving the partnership. Paragraph 6(2) of schedule 2 amends section 117 of the Civil Partnership Act 2004 accordingly.
79. The exception (mentioned in the previous paragraph) to the rule that a civil partnership can only continue after the issuing of a full gender recognition certificate to one partner if the other partner consents to it continuing, is where the full gender recognition

certificate is issued by a sheriff under section 4E of the Gender Recognition Act. As the issuing of a full gender recognition certificate to a person in a civil partnership under that section does not mean that the person's partner has consented to the civil partnership continuing, the amendment to section 117 of the Civil Partnership Act 2004 provides that the issuing of an interim gender recognition certificate remains a ground of dissolution despite the subsequent issuing of a full gender recognition certificate under section 4E.

#### **Modification of the Marriage and Civil Partnership (Scotland) Act 2014**

80. Section 30 of the Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act") allows the Scottish Ministers to make regulations about the solemnisation or registration of a marriage or civil partnership that is renewed after a full gender recognition certificate has been issued. In its original form, subsection (1)(b) of section 30 only provided for regulations to deal with the renewal of a civil partnership where both partners had been issued with a full gender recognition certificate. A civil partnership could not be renewed where a full gender recognition certificate had been issued to only one of the partners, because the change of legal gender of one of the partners only would result in what was, at the time, an impermissible different sex civil partnership.
81. Paragraph 7 of schedule 2 broadens the terms of section 30(1)(b) of the 2014 Act so that regulations can be made in relation to the renewal of a civil partnership following the issuing of a full gender recognition certificate to one of the partners. This change brings the terms of paragraph (b) of section 30(1) into line with the terms of paragraph (a), which allows for regulations to be made about the renewal of a marriage following the issuing of a full gender recognition certificate to one or both of the parties to the marriage.

#### **Nullity of civil partnership and recognition of dissolution**

##### ***Paragraph 6(3) Register of Dissolutions of Civil Partnership***

82. Section 122 of the Civil Partnership Act 2004 ("the 2004 Act") requires the Registrar General to maintain a register of decrees of dissolution of civil partnership known as the Register of Dissolutions of Civil Partnership. Paragraph 6(3) of schedule 2 requires the Registrar General to include decrees of declarator of nullity of civil partnerships in that register. The modification achieves consistency with the Register of Divorces, as provided for in section 28A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, which records both decrees of divorce and decrees of declarator of nullity of marriage.

##### ***Paragraph 6(4): Jurisdiction in respects of declarator of nullity of civil partnership***

83. Section 225 of the 2004 Act makes provision regarding the jurisdiction of the Scottish courts to entertain certain types of proceedings relating to civil partnerships. At present the Court of Session is the only Scottish court with jurisdiction to entertain actions for declarator of nullity of civil partnership. Paragraph 6(4) of schedule 2 extends jurisdiction to the sheriff court in relation to such proceedings provided the case is one in which the Court of Session would have jurisdiction and a residence connection with the sheriffdom is satisfied.

##### ***Paragraph 6(5): Recognition of overseas dissolutions***

84. Sections 234 to 237 of the 2004 Act contain provisions regarding the recognition of overseas dissolutions, annulments and separations. Section 237(2)(b)(ii) allows regulations to modify the application of those provisions in circumstances where a civil partner is domiciled in a country that does not recognise same sex civil partnerships. Paragraph 6(5) of schedule 2 extends the scope of the power to allow it also to be exercised where a civil partner is domiciled in a country that does not recognise civil partnerships between two people of different sexes.

## PARLIAMENTARY HISTORY

85. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

<i>Proceedings and reports</i>	<i>Reference</i>
Bill as introduced on 30 September 2019	SP Bill 57 Civil Partnership (Scotland) Bill [as introduced] Session 5 (2019)
Policy memorandum	SP Bill 57-PM Civil Partnership (Scotland) Bill [policy memorandum] Session 5 (2019)
Explanatory notes	SP Bill 57-EN Civil Partnership (Scotland) Bill [explanatory notes] Session 5 (2019)
Financial memorandum	SP Bill 57-FM Civil Partnership (Scotland) Bill [financial memorandum] Session 5 (2019)
Delegated powers memorandum	SP Bill 57-DPM Civil Partnership (Scotland) Bill [delegated powers memorandum] Session 5 (2019)
Equalities and Human Rights Committee, day 1	SP OR EHRiC 20 January 2020, cols 2-18
Equalities and Human Rights Committee, day 2	SP OR EHRiC 27 January 2020, cols 2-38
Equalities and Human Rights Committee, day 3	SP OR EHRiC 5 March 2020, cols 1-14
Delegated Powers and Law Reform Committee, Stage 1 report	Delegated Powers and Law Reform Committee 4th report, 2020, Civil Partnership (Scotland) Bill: Stage 1 (SPP 661) 17 January 2020
Equalities and Human Rights Committee, Stage 1 report	Equalities and Human Rights Committee 1st Report, 2020, Civil Partnership (Scotland) Bill Stage 1 Report (SPP 716) 31 March 2020
Chamber, Stage 1 proceedings	SP OR 19 May 2020, cols 37-74
Marshalled list of amendments for Stage 2	SP Bill 57-ML Civil Partnership (Scotland) Bill [marshalled list of amendments for Stage 2] Session 5 (2020)
Groupings of amendments for Stage 2	SP Bill 57-G Civil Partnership (Scotland) Bill [groupings of amendments for Stage 2] Session 5 (2020)
Equalities and Human Rights Committee, Stage 2 proceedings	SP OR EHRiC 11 June 2020
Bill as amended at Stage 2	SP Bill 57A Civil Partnership (Scotland) Bill [as amended at Stage 2] Session 5 (2020)
Revised explanatory notes	SP Bill 57A-EN Civil Partnership (Scotland) Bill [revised explanatory notes] Session 5 (2020)
Supplementary financial memorandum	SP Bill 57A-DPM Civil Partnership (Scotland) Bill [supplementary delegated powers memorandum] Session 5 (2020)

*These notes relate to the Civil Partnership (Scotland) Act  
2020 (asp 15) which received Royal Assent on 28 July 2020*

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
Supplementary delegated powers memorandum	SP Bill 57A-DPM Civil Partnership (Scotland) Bill [supplementary delegated powers memorandum] Session 5 (2020)
Delegated Powers and Law Reform Committee, post-Stage 2 report	Delegated Powers and Law Reform Committee 37th Report, 2020, Civil Partnership (Scotland) Bill: as amended at Stage 2 (SPP 770) 23 June 2020
Marshalled list of amendments for Stage 3	SP Bill 57A-ML Civil Partnership (Scotland) Bill [marshalled list of amendments selected for Stage 3] Session 5 (2020)
Chamber, Stage 3 proceedings	SP OR 23 June 2020, cols 72-88
Royal Assent, 28 July 2020	2020 asp 15