

CIVIL PARTNERSHIP (SCOTLAND) ACT 2020

EXPLANATORY NOTES

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.¹ 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

¹ 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.

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.
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.