

CIVIL PARTNERSHIP (SCOTLAND) ACT 2020

EXPLANATORY NOTES

COMMENTARY ON PROVISIONS

Final provisions *Schedule 2*

Family law

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

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

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.