

POLICY NOTE

THE CIVIL PARTNERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 1 AND INTERIM RECOGNITION OF DIFFERENT SEX RELATIONSHIPS) REGULATIONS 2020

SSI 2020/414 (C. 38)

The above instrument was made in exercise of the powers conferred by sections 3(5)(a) and 16(2) of the Civil Partnership (Scotland) Act 2020. The instrument is subject to the negative procedure.

Purpose of the instrument.

These Regulations commence aspects of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”). The Regulations make provision so that mixed sex civil partnerships registered outwith Scotland are given temporary recognition in Scotland as marriages. This temporary recognition will last until the registration of mixed sex civil partnerships starts in Scotland. Once this happens, mixed sex civil partnerships registered outwith Scotland will be recognised as mixed sex civil partnerships in Scotland.

Policy Objectives

The 2020 Act will introduce mixed sex civil partnership in Scotland. Work is underway at the moment to implement the 2020 Act. This work includes SSIs; an Order under section 104 of the Scotland Act 1998 on consequential provision on reserved and cross-border matters following the 2020 Act; changes to IT; and the preparation of information and guidance for couples considering entering into a mixed sex civil partnership in Scotland.

The provisions of the 2020 Act commenced by these Regulations include section 3 which makes provision on the interim recognition of mixed sex relationships formed outwith Scotland. These relationships may have been registered elsewhere in the UK; in overseas jurisdictions; or by HM consuls and HM armed forces overseas. Section 3 provides for these relationships to be treated as marriages, and for the civil partners to be treated as spouses, until mixed sex civil partnerships become registrable in Scotland by virtue of the coming into force of section 6 of the 2020 Act.

Section 3(3) of the 2020 Act 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.

Sections 1 and 2 and schedule 1 of the 2020 Act are commenced by these Regulations for limited purposes. Their limited commencement ensures that mixed sex civil partnerships formed outwith Scotland are recognised in the law of Scotland to the extent required for section 3 to apply to them, and also for the purposes of the application of the law concerning the dissolution and annulment of civil partnerships.

Section 1 removes the requirement in the Civil Partnership Act 2004 (“the 2004 Act”) that the two people must be of the same sex in order to be in a civil partnership.

To be recognised in Scotland, a relationship registered overseas which is not a marriage needs to meet criteria laid down in the 2004 Act. Section 2 amends the 2004 Act so that overseas mixed sex relationships other than marriage can be recognised in Scotland.

By virtue of the amendments to the 2004 Act made by section 2, overseas mixed sex relationships other than marriage are recognised in Scotland either by being:

- “a specified relationship”, which is a relationship of a kind specified in schedule 20 of the 2004 Act; or
- one that complies with the general conditions set out in section 214 of the 2004 Act.

Schedule 1 of the 2020 Act amends schedule 20 of the 2004 Act to add a list of mixed sex relationships from overseas which are to be treated as “a specified relationship” and so recognised in Scotland.

Under section 3(5) of the 2020 Act, the Scottish Ministers may make regulations prescribing purposes for which the interim scheme of recognition of mixed sex civil partnerships as marriages in Scotland does not apply. Regulation 3 makes provision so that a mixed sex civil partnership registered elsewhere is not treated as a marriage for the purposes of divorce proceedings, or proceedings for the separation of a married couple, for declarator of nullity of marriage, or for declarator of marriage.

The purpose of this provision is to support civil partners in a relationship registered outwith Scotland, who are ending their relationship in Scotland, by trying to ensure that the order granted in Scotland is recognised in their home jurisdiction as ending the relationship. If the couple were treated as married for these purposes (and so, for example, required to end their relationship by divorcing rather than by dissolving a civil partnership), this might present an obstacle to the recognition of the ending of their relationship in their home jurisdiction. The commencement of sections 1 and 2 and schedule 1 for the purposes of law concerning the dissolution and annulment of civil partnerships ensures that those relationships are instead treated as civil partnerships for those purposes.

In Scotland, it is common for family actions in court to have ancillary craves requesting additional outcomes from the court as well as the main crave. Regulation 3(3) provides that determination of any application for an ancillary order in an action for the dissolution of a civil partnership, the separation of civil partners, or the declarator of nullity of civil partnership will be on the basis of the couple being recognised as married rather than in a civil partnership. This reflects that relevant Scottish legislation on the matters being sought in the ancillary craves might be different for spouses (which is how the couple are generally being treated in Scotland for this interim period) when compared with civil partners.

These Regulations also commence section 11 of the Act (postponement of decree of dissolution where religious impediment to marry exists) but only for the purpose of enabling the Scottish Ministers to make regulations in this area.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process for the 2020 Act¹. The Policy Memorandum² for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise conducted on the future of civil partnership held in 2018. As these Regulations bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument.

Impact Assessments

No specific Impact Assessments have been prepared for these Regulations. However, the Scottish Government published when the Bill was introduced:

- A Business and Regulatory Impact Assessment (BRIA)³
- An Equality Impact Assessment (EQIA)⁴
- A Child Rights and Wellbeing Impact Assessment (CRWIA)⁵.

Financial Effects

The financial effects of the 2020 Act are detailed in the BRIA and Financial Memorandum⁶ prepared in respect of the Bill that preceded the 2020 Act. No significant financial effects are expected as a consequence of these Regulations, given that the interim scheme for recognising as marriages mixed sex civil partnerships registered outwith Scotland will only be of short duration. Once the registration of mixed sex civil partnerships is established in Scotland, mixed sex civil partnerships registered outwith Scotland will be recognised as civil partnerships.

Scottish Government
Justice Directorate
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¹ <https://beta.parliament.scot/bills/civil-partnership-scotland-bill>

² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/policy-memorandum-civil-partnership-scotland-bill.pdf>

³ <https://www.gov.scot/publications/civil-partnership-scotland-bill-business-regulatory-impact-assessment/>

⁴ <https://www.gov.scot/publications/civil-partnership-scotland-bill-equality-impact-assessment/>

⁵ <https://www.gov.scot/publications/civil-partnership-scotland-bill-child-rights-wellbeing-impact-assessment/>

⁶ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/financial-memorandum-civil-partnership-scotland-bill.pdf>