

POLICY NOTE

THE CIVIL PARTNERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 3, SAVING AND TRANSITIONAL PROVISION) REGULATIONS 2021

SSI 2021/23 (C. 1)

The above instrument was made in exercise of the powers conferred by sections 3(5)(b), 15 and 16(2) of the Civil Partnership (Scotland) Act 2020. The instrument is subject to the negative Parliamentary procedure,

Purpose of the instrument.

These Regulations commence aspects of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”). The key objectives are to enable the registration of mixed sex civil partnerships in Scotland to start from 1 June 2021 and to make provision to recognise mixed sex civil relationships from outwith Scotland as civil partnerships. In relation to registration, these Regulations commence provisions to remove bars in the Civil Partnership Act 2004 (“the 2004 Act”) to civil partnerships being mixed sex and commence provisions relating to celebrants. On recognising mixed sex civil relationships from elsewhere as civil partnerships, these Regulations commence relevant provisions and make transitional provision so no recognition is granted where one or both of the parties is already in a relationship recognised under Scots law.

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 at Westminster under section 104 of the Scotland Act 1998 on consequential provision on reserved and cross-border matters following the 2020 Act; changes to IT; training and guidance for registrars; and the preparation of public-facing information and guidance for couples considering entering into a mixed sex civil partnership in Scotland.

Regulation 2 commences on 1 June 2021 a number of provisions of the 2020 Act, as outlined in the table contained in the schedule of the regulations:-

- Section 1 (different sex civil partnerships)(for all remaining purposes). Section 1 removes the requirement that the two people be of the same sex and thereby extends civil partnership to different sex couples.
- Section 2 and schedule 1 (recognition of overseas different sex relationships) (for all remaining purposes). Section 2 makes provision on the recognition in Scotland of overseas mixed sex relationships and amends the 2004 Act. Amongst other requirements, one of the ways in which an overseas relationship can be recognised is by being “specified”. Schedule 1 inserts part 2 into schedule 20 of the 2004 Act to specify a number of overseas mixed sex relationships.
- Section 4 (power to enable marriages to become civil partnerships). Section 4 provides the Scottish Ministers with a regulation-making power to enable marriages to become civil partnerships, if the parties so wish.

- Section 5 (Recognition of marriages converted to civil partnerships outwith Scotland). 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 provides the Scottish Ministers with a regulation-making power to enable the recognition of those converted marriages as civil partnerships in Scotland.
- Section 6. (Eligibility of persons of different sexes to enter into a civil partnership) Section 86(1) of the 2004 Act sets out the circumstances in which two people are not eligible to register as civil partners. These disqualifying criteria include that the two people are not of the same sex. Section 6 repeals this.
- Section 7(1) and (2)(a), (c), (d) and (f) (for all remaining purposes) and section 7(2)(b) (for the purpose of inserting and bringing into force for all remaining purposes section 94A(2A) and (2B)(a) of the 2004 Act). (Persons who may register civil partnerships between persons of different sexes). Section 7 of the Act amends section 94A of the 2004 to make provision about the persons who may register mixed sex civil partnerships, including religious or belief celebrants.
- Section 8 (registration and removal of celebrants). Section 8 of the Act amends the 2004 Act in respect of sections 94B and 94C. Under 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, that person becomes an approved celebrant. Section 8(2) of the Act amends section 94B so celebrants can be nominated and approved for the purpose of registering mixed sex civil partnerships.
- Section 9 (temporary authorisation of celebrants). Section 9 amends section 94E of the 2004 Act. Section 94E provides that a temporary authorisation may be granted by the Registrar General to allow a celebrant to register one or more specified civil partnerships or to allow the celebrant to register civil partnerships over a specified period of time. Section 9 amends section 94E so that such temporary authorisations may be granted so celebrants can register mixed sex civil partnerships.
- Section 11 (postponement of decree of dissolution where religious impediment to marry exists) (for all remaining purposes). Section 11 provides 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 dissolution. It applies where the applicant is prevented from entering into a 'religious marriage' ('religious marriage' is defined as a marriage solemnised by a marriage celebrant of a religious body specified by the Scottish Ministers) by virtue of a requirement of the religion of that marriage and the other party can act to remove that impediment
- Section 12. (marriage between civil partners in a qualifying civil partnership: celebrants). There is provision under current law for civil partners to marry each other. This ability will apply to mixed sex civil partnerships. No religious or belief celebrant who is authorised to solemnise mixed sex marriages 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. This provides 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
- Section 14 and schedule 2 (consequential modification) (for the purpose of bringing into force the modifications of enactments provided for in schedule 2, other than those provided for in paragraphs 5, 6(2) and (3), and 7). This commences the consequential modification of enactments provided for in schedule 2 of the 2020 Act, other than

paragraphs 5 (on the Gender Recognition Act 2004); 6(2) (on aspects of dissolution of a civil partnership following the issue of a gender recognition certificate), 6(3) (on extending the register of dissolutions run by National Records of Scotland to cover declarators of nullity as well) and 7 (on regulations on the renewal of a civil partnership following the issuing of a full gender recognition certificate to one of the partners).

In relation to section 7 of the 2020 Act, these regulations do not commence section 94A(2B)(b) of the 2004 Act. Section 94A(2B)(b) provides that the Scottish Ministers could only prescribe a religious or belief body to register mixed sex civil partnerships if the Scottish Ministers are satisfied that the body meets the qualifying requirements.

The concept of the qualifying requirements for religious or belief bodies solemnising marriage or registering civil partnership was first introduced by amendments made by the Marriage and Civil Partnership (Scotland) Act 2014. The aim of them is to uphold the dignity and solemnity of marriage and civil partnership. None of the provisions introducing the qualifying requirements have been commenced as before laying down any qualifying requirements the Scottish Government intends to carry out a full public consultation, including with religious and belief bodies. This consultation has been delayed by other pressures, including Covid-19, but work will be carried out on it as time permits.

Regulation 3, which comes into force on 1 June 2021, makes saving and transitional provision in respect of the end of interim recognition of mixed sex relationships from outwith Scotland as marriages.

Under section 3 of the 2020 Act, those mixed sex relationships formed outwith Scotland that will be recognised as civil partnerships when sections 1 and 2 and schedule 1 are brought fully into force are treated for an interim period in Scots law as marriages formed under the law of the jurisdiction where the relationship was registered. Section 3 was commenced from 1 February 2021 by the Civil Partnership (Scotland) Act 2020 (Commencement No. 1 and Interim Recognition of Different Sex Relationships) Regulations 2020 (SSI 2020/414).¹

The interim scheme of recognition ceases to have effect when section 6 of the 2020 comes into force, which is when it will become possible to register a mixed civil partnership in Scotland. By virtue of this SSI, section 6 comes into force on 1 June 2020.

Section 3(5) of the 2020 Act empowers the Scottish Ministers to make transitional or saving provision in connection with the interim scheme ceasing to have effect.

The aim of the transitional and saving provisions in these regulations for the interim scheme is to ensure that anything done in relation to the “deemed” marriage during the interim period continues to apply once the relationships become recognised as mixed sex civil partnerships in Scotland from 1 June 2021.

Therefore, provision is made so that:

- Anything done by one of both of the “deemed” spouses in relation to the deemed marriage during the interim period continues to apply after 1 June 2021.

¹ [The Civil Partnership \(Scotland\) Act 2020 \(Commencement No. 1 and Interim Recognition of Different Sex Relationships\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- Anything done by anybody else in relation to the deemed marriage during the interim period continues to apply.
- Any concluded and on-going court and tribunal proceedings in relation to the deemed marriage are unaffected.
- In any private documents (eg wills) any references to “spouse” are read as meaning “civil partner” unless it is clear the contrary was intended.

This is on similar lines to provision made when an interim scheme for recognising same sex marriages from England and Wales as civil partnerships came to an end, when same sex marriage was introduced in Scotland².

Regulation 4, which comes into force from 1 February 2021, makes transitional provision in respect of the recognition of overseas relationships. This Regulation applies both in relation to the scheme of interim recognition (as marriages) established by section 3 and the full scheme of recognition (as civil partnerships) established by section 2.

Regulation 4(1) modifies section 212 of the 2004 Act in its application to mixed sex relationships formed outside the UK before 1 February 2021 so that the relationship can only qualify as an ‘overseas relationship’ for the purposes of that section where:

- neither of the parties was already a civil partner or lawfully married on the date the relationship concerned was entered into; and
- neither of the parties was a civil partner or lawfully married immediately before 1 February 2021 or in the case of a relationship that was dissolved or annulled 1 February 2021, immediately before the date of dissolution or annulment.

The effect is to ensure that a mixed sex relationship that has already been formed overseas before the start of the interim scheme of recognition is not eligible to be recognised in Scotland as a civil partnership (or as a marriage under the interim recognition arrangements) if the effect of doing so would be to result in a person being in more than one registered relationship under Scots law.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process for the 2020 Act³. The Policy Memorandum⁴ 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 largely bring into force provisions of the 2020 Act, no further consultation has been carried out in relation to these Regulations.

Impact Assessments

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

² [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) and Marriage and Civil Partnership \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(legislation.gov.uk\)](#)

³ <https://beta.parliament.scot/bills/civil-partnership-scotland-bill>

⁴ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/policy-memorandum-civil-partnership-scotland-bill.pdf>

- A Business and Regulatory Impact Assessment (BRIA)⁵
- An Equality Impact Assessment (EQIA)⁶
- A Child Rights and Wellbeing Impact Assessment (CRWIA)⁷.

Financial Effects

The financial effects of the 2020 Act are detailed in the BRIA and Financial Memorandum⁸ prepared in respect of the Bill that preceded the 2020 Act.

Scottish Government
Justice Directorate
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⁵ <https://www.gov.scot/publications/civil-partnership-scotland-bill-business-regulatory-impact-assessment/>

⁶ <https://www.gov.scot/publications/civil-partnership-scotland-bill-equality-impact-assessment/>

⁷ <https://www.gov.scot/publications/civil-partnership-scotland-bill-child-rights-wellbeing-impact-assessment/>

⁸ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/financial-memorandum-civil-partnership-scotland-bill.pdf>