

POLICY NOTE

THE CIVIL PARTNERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 4, SAVING AND TRANSITIONAL PROVISION) REGULATIONS 2021

SSI 2021/351 (C. 25)

The above instrument was made in exercise of the powers conferred by section 16(2) and (3) of the Civil Partnership (Scotland) Act 2020. The instrument is laid but not subject to further parliamentary procedure.

This instrument commences provisions of the Civil Partnership (Scotland) Act 2020.

It commences section 10 of the 2020 Act, on the registration of a civil partnership in Scotland where a couple have entered into a civil partnership overseas but are unable to show they have done so (for example because of the destruction of documents).

It also commences paragraphs 5, 6(2) and 7 of schedule 2 of the 2020 Act to make consequential amendments to legislation concerning gender recognition so that a civil partner obtaining gender recognition can stay in the civil partnership

Policy Objectives

Section 10 of the 2020 Act make provision in respect of civil partners who are unable to evidence their overseas relationship. This could be, for example, because of the destruction of documents. The provisions give civil partners in this position the ability to secure the rights and responsibilities of their relationship through a second registration in Scotland. This is a facility that is already available to parties who have gone through a marriage ceremony abroad but are unable to prove the marriage.

Paragraphs 5, 6(2) and 7 of schedule 2 of the 2020 Act make consequential amendments to legislation concerning gender recognition so that a civil partner obtaining gender recognition can stay in the civil partnership.

Up until 1 June 2021, civil partnership in Scotland was exclusively a same sex relationship. This meant that civil partners obtaining gender recognition could not stay in their civil partnership as mixed sex civil partnership was not legally recognised. That has now changed and paragraph 5 of schedule 2 makes a number of modifications to the Gender Recognition Act 2004 (“the 2004 Act”), These are now commenced by this SSI.

Paragraph 6(2) of schedule 2 makes a modification to the law on dissolution of civil partnership. Currently, the issuing of an interim gender recognition certificate (“GRC”) to one of the partners is a ground for dissolving the partnership.

The modifications in schedule 2 to the 2004 Act mean that a full GRC can be issued to one civil partner by the Gender Recognition Panel, (“the GRP”) but only if the other partner consents to the partnership continuing. In these circumstances, the previous issue of an interim GRC will cease to be a ground for dissolution. However, it is also possible for a full

GRC to be issued by a sheriff under section 4E of the 2004 Act. The issuing of a full GRC to a person in a civil partnership under section 4E does not mean that the person's partner has consented to the civil partnership continuing. Therefore, the amendments made by paragraph 6(2) provide that the issuing of an interim GRC remains a ground of dissolution despite the subsequent issuing of a full GRC by the sheriff under section 4E.

Paragraph 7 of schedule 2 modifies section 30 of the Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act"). Section 30 of the 2014 Act empowers the Scottish Ministers to make regulations about the solemnisation or registration of a marriage or civil partnership that is renewed after a full GRC has been issued.

Paragraph 7 of schedule 2 adjusts 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 GRC to just one of the partners.

Regulation 3 makes transitional provision concerning applications under the 2004 Act that have been submitted before 30 November 2021 but not yet determined. Where it appears to the GRP that the outcome of the application may be different if dealt with in accordance with the amended provisions, provision is made for the applicant to be given an opportunity to have the application dealt with in accordance with those provisions and to provide any further information required.

The GRP operates across the UK. Similar transitional provision has been made for England and Wales¹ and Northern Ireland².

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process³. The Policy Memorandum for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise on civil partnership held in 2018⁴. As these Regulations bring into force provisions of the 2020 Act, no further consultation has been carried out in relation to this instrument.

Impact Assessments

The Scottish Government prepared and published a range of Impact Assessments for the Bill which preceded the 2020 Act:

- A Business and Regulatory Impact Assessment⁵.
- A Child Rights and Wellbeing Impact Assessment⁶
- An Equality Impact Assessment⁷

¹ [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ [Civil Partnership \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](https://www.scottish.parliament.uk)

⁴ [Civil Partnership \(Scotland\) Bill Policy Memorandum \(parliament.scot\)](https://www.parliament.scot)

⁵ [Civil Partnership \(Scotland\) Bill: business and regulatory impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot)

⁶ [Civil Partnership \(Scotland\) Bill: child rights and wellbeing impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot)

Financial Effects

As indicated above, a Business and Regulatory Impact Assessment was prepared for the Bill which preceded the 2020 Act. A Financial Memorandum was also prepared for the Bill⁸.

Costs arising from the provisions being commenced by this SSI are negligible. The number of couples seeking to register a marriage in Scotland after being unable to prove they married overseas is low as is the number of persons seeking to stay in their marriage after obtaining a GRC⁹.

Given this, the number of applications by civil partners to register a civil partnership in Scotland as a consequence of being unable to evidence an overseas relationship is expected to be low and the number of civil partners seeking to stay in their partnership after obtaining a full GRC is also expected to be low.

Scottish Government
Justice Directorate

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⁷ [Civil Partnership \(Scotland\) Bill: equality impact assessment - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁸ [Civil Partnership \(Scotland\) Bill Financial Memorandum \(parliament.scot\)](http://parliament.scot)

⁹ UK statistics on applications for GRCs by marital status are at [Tribunal Statistics Quarterly: January to March 2021 - GOV.UK \(www.gov.uk\)](http://www.gov.uk) [See Main Tables and then GRP 4].