

POLICY NOTE

THE GENDER RECOGNITION (MARRIAGE AND CIVIL PARTNERSHIP REGISTRATION) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/201

The above instrument was made by the Registrar General, with the approval of the Scottish Ministers, in exercise of the powers conferred by paragraph 20A(1) of schedule 3 of the Gender Recognition Act 2004. The instrument is subject to negative procedure.

Summary Box

The Civil Partnership (Scotland) Act 2020 (the 2020 Act) made provision on the introduction of mixed sex civil partnership in Scotland. As mixed sex civil partnership is now available, it is possible for a person in a civil partnership to obtain a full Gender Recognition Certificate (GRC) and stay in the civil partnership: previously, this was only possible if both civil partners obtained a GRC on the same day. This instrument makes provision on the re-registration of a civil partnership after obtaining a GRC to reflect the changes made by the 2020 Act.

Policy Objectives

These Regulations amend the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016¹ (“the 2016 Regulations”). These provide for the making of a new entry in the register of marriages or the civil partnership register when a full Gender Recognition Certificate (GRC) is issued to a party, or to each party, to a marriage or civil partnership.

The 2016 Regulations made provision for the making of a new entry in the civil partnership register when both civil partners have been issued with full GRCs on the same day. In consequence of the introduction of mixed sex civil partnership in Scotland, and amendments to the Gender Recognition Act 2004 made by the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”), it has become possible for a full GRC to be issued to only one of the parties to a civil partnership and for the civil partnership to continue. The Civil Partnership (Scotland) Act 2020 (Commencement No. 4, Saving and Transitional Provision) Regulations 2021 commenced the amendments made by the 2020 Act on gender recognition².

These Regulations now amend the 2016 Regulations to provide for the making of a new entry in the civil partnership register when a full GRC has been issued to either one or both civil partners. The policy intention is to follow the registration procedures that were laid down by the 2016 Regulations and adjust them to reflect the amendments made by the 2020 Act. (It was already possible for a full GRC to be issued to only one of the parties to a marriage and for the marriage to continue: registration procedures currently reflect that).

¹ [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](#)

² [The Civil Partnership \(Scotland\) Act 2020 \(Commencement No. 4, Saving and Transitional Provision\) Regulations 2021 \(legislation.gov.uk\)](#)

The provisions added by regulation 2(4) and (5) provide for the particulars recorded in the original civil partnership register entry to be modified in the new entry where necessary to prevent a party's transgender status being disclosed as a result of showing the date the civil partnership was registered or the identity of the religious or belief celebrant who registered it or the place where it was registered.

Regulation 2(7) and the schedule substitute the form to be used for an application by civil partners to re-register their civil partnership following gender recognition. Updated guidance has been prepared for civil partners, and married couples, wishing to re-register their civil partnership, or marriage, following gender recognition. This guidance is attached as an annex to this Policy Note.

Regulation 2(3) amends the provisions of the 2016 Regulations relating to applications by married couples to prevent a party's transgender status being disclosed where the marriage was originally solemnised outside the UK through the UK consular service or the UK armed forces.

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.

The Registrar General and the Scottish Ministers have worked closely together on the preparation of these Regulations and the related Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022.

The Scottish Trans Alliance have been consulted on the detail of the provisions contained in these Regulations and the related Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022.

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

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.

³ [Civil Partnership \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

⁴ [Civil Partnership \(Scotland\) Bill Policy Memorandum \(parliament.scot\)](#)

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

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

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

⁸ [Civil Partnership \(Scotland\) Bill Financial Memorandum \(parliament.scot\)](#)

Costs arising from this SSI are negligible. The number of persons seeking to stay in their marriage after obtaining a GRC is low⁹. Given this, the number of civil partners seeking to stay in their civil partnership after obtaining a full GRC is also expected to be low.

National Records of Scotland
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⁹ UK statistics on applications for GRCs by marital status are at [Tribunal Statistics Quarterly: January to March 2021 - GOV.UK \(www.gov.uk\)](#) [See Main Tables and then GRP 4]. See also [Tribunal Statistics Quarterly: October to December 2021 - GOV.UK \(www.gov.uk\)](#) {section 6}.

ANNEX

RE-REGISTRATION OF MARRIAGES AND CIVIL PARTNERSHIPS FOLLOWING GENDER RECOGNITION GUIDANCE FOR APPLICANTS

Introduction

1. This guidance has been produced by the Scottish Government and National Records of Scotland (NRS) to advise you on your options on the re-registration of your marriage or civil partnership, following the issue of a full Gender Recognition Certificate. In this guidance note, the full Gender Recognition Certificate is referred to as a “full GRC”.
2. This guidance only covers marriages and civil partnerships that are recorded in a marriage or civil partnership register in Scotland. This includes marriages and civil partnerships carried out through the UK consular service and UK armed forces overseas where the couple elected Scotland as the relevant part of the UK and NRS hold details of the marriage or civil partnership. If your marriage or civil partnership was registered elsewhere in the UK, or by an overseas country, you will need to approach the registration authorities in the relevant country about updating your marriage or civil partnership certificate to reflect gender recognition.
3. This guidance only covers the re-registration of marriages or civil partnerships following gender recognition. If the person(s) who has obtained a full GRC was born in Scotland, NRS will provide you separately with information on birth registration following gender recognition.
4. This guidance reflects the arrangements for re-registering a marriage or civil partnership after obtaining a full GRC under the current Gender Recognition Act 2004. It will be updated as required to reflect any relevant changes to marriage, civil partnership, gender recognition or other legislation that would impact these arrangements.

Marriage and civil partnership registers in Scotland

5. NRS and local authority registrars keep marriage and civil partnership registers. These are generally open to public inspection. All marriages and civil partnerships which take place in Scotland are recorded in these registers. An extract from the relevant entry in the marriage or civil partnership register forms what is commonly known as the marriage or civil partnership certificate.
6. Where the marriage or civil partnership took place overseas through the UK consular service or through the UK armed forces, the marriage or civil partnership is not registered in the main marriage or civil partnership registers for Scotland but a record of it is, instead, held separately by NRS.

Options available to you to re-register your marriage or civil partnership following gender recognition

7 First of all, you may choose not to re-register your marriage or civil partnership following gender recognition. This means that the original entry in the register will remain as it is and will remain open to public inspection.

9. Secondly, you can ask for your marriage or civil partnership to be re-registered through an administrative route. Generally, the registration entry will reflect your details as they were when you originally married or entered the civil partnership, with changes made to reflect the acquired gender(s) and any changes in your forename(s) and surname(s).

10. The Scottish Government and NRS recognise that one particular difficulty with the second option in some cases is that the new entry in the marriage or civil partnership register may show the couple to be in a same sex marriage or mixed sex civil partnership at a time when this was not legally possible in Scotland. This could mean that your new marriage or civil partnership entry might disclose your trans status or history, because only trans people could be shown as being in a same sex marriage or mixed sex civil partnership which began before that time.

11. Therefore, a further option if you choose in these cases is for the marriage or civil partnership to be re-registered following gender recognition showing your details as they are now. In these cases:

- The entry will reflect current information, rather than information as at the time you married or entered a civil partnership.
- The details for witnesses will remain blank.
- The date shown as the date of the marriage or civil partnership will be the date the new entry is created following gender recognition, rather than the original date of the marriage or civil partnership.

12. Changes may also have to be made if:

- you are now in a same sex marriage;
- at the date shown on the new marriage entry, the religious or belief celebrant who originally solemnised the marriage was not authorised to solemnise same sex marriage.

13. Similarly, changes may have to be made if you are in a civil partnership and at the date of the original ceremony, the religious or belief celebrant who originally registered the civil partnership was not authorised to register same sex civil partnership or mixed sex civil partnership, as the case may be.

14. In these cases, the marriage or civil partnership will be shown as having been solemnised by a civil registrar instead of by the original religious or belief celebrant. This reflects that some religious or belief bodies and celebrants have decided not to solemnise same sex marriages and some religious or belief bodies and celebrants may decide to register same sex civil partnership or mixed sex civil partnership but not both.

15. Additional changes may also be needed where the marriage or civil partnership took place overseas through the UK consular service and UK armed forces overseas. In particular, the new entry will show the marriage or civil partnership took place in Edinburgh.
16. Application forms are at Annex A of this guidance note (for marriages) and Annex B (for civil partnerships).
17. Please note that both parties in the relationship are required to apply.

Original entry in the marriage or civil partnership register not to be open to public

18. Where you choose to re-register your marriage or civil partnership following gender recognition, there will be two entries in the register: the original one and the new one. The original entry cannot be deleted as it is a record of what took place at the time. To provide more privacy, the Scottish Government has made legislation so that the original entry is not open to public inspection or search.
19. As a result, only the parties to the marriage or the civil partnership can obtain copies of the original entry from NRS (unless a court order is obtained requiring NRS to disclose information). The public will be able to see the new entry and obtain a copy as the new entry will be open to public inspection and search.

Procedure and fees

20. If you wish to re-register your marriage or civil partnership following gender recognition, NRS will, after you submit your application form, provide you with a draft of the new entry in the marriage or civil partnership register. NRS will also discuss with you whether there is any need for notes at the bottom of the entry, to reflect that this is a re-registration of an existing marriage or civil partnership.
21. Once you have agreed the draft entry with NRS, NRS will then ask the relevant local authority, where the marriage or civil partnership took place, to re-register the marriage or civil partnership. Where the marriage or civil partnership was carried out through the UK consular service or the UK armed forces, the re-registration will be in Edinburgh registration district.
22. There will be no fee for re-registering the marriage or civil partnership following gender recognition. There will be a fee, in the usual way, for any extracts (certificates) from the register.

Queries

23. NRS are happy to deal with any queries you may have on the re-registration of marriages or civil partnerships following gender recognition.