

## POLICY NOTE

### THE CIVIL PARTNERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 5) REGULATIONS 2023

SSI 2023/146 (C. 15)

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 before the Scottish Parliament.

#### Summary Box

These are commencement regulations. The provisions brought into force amend section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 to make it an offence to coerce a person to enter into a civil partnership, and amend section 122 of the Civil Partnership Act 2004 to provide for the inclusion of declarators of nullity of civil partnership in a register of dissolutions operated by National Records of Scotland.

#### Policy Objectives

The Civil Partnership (Scotland) Act 2020<sup>1</sup> (“the 2020 Act”) extended the availability of civil partnership to mixed sex couples and made some other changes to the law on civil partnership. Section 13 amends section 122 of the Anti-social Behaviour, Crime and Policing Act 2014<sup>2</sup> (“the 2014 Act”) to apply the forced marriage offence under the law of Scotland to civil partnerships as well.

As paragraph 121 of the Policy Memorandum<sup>3</sup> for the Bill which led to the 2020 Act noted, there are currently no provisions in place in Scotland which relate to forced civil partnership. The Scottish Government’s view is that the extension of civil partnership to mixed sex couples may create a loophole. Therefore, the Scottish Government considered it appropriate to extend the forced marriage offence to cover forced civil partnership as well.

Paragraph 127 of the Policy Memorandum went on to note that Part 1 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011<sup>4</sup> (“the 2021 Act”) contains civil measures on forced marriage, including forced marriage protection orders. These orders can contain prohibitions, restrictions or requirements, or other measures intended to protect someone from forced marriage.

Section 10 of the 2011 Act provides the Scottish Ministers with the power to make an Order applying Part 1 (or part of Part 1) to civil partnerships. That power is subject to the

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<sup>1</sup> Civil Partnership (Scotland) Act 2020 - <https://www.legislation.gov.uk/asp/2020/15/contents/enacted>

<sup>2</sup> Anti-social Behaviour, Crime and Policing Act 2014 (legislation.gov.uk) - <https://www.legislation.gov.uk/ukpga/2014/12/section/122/enacted>

<sup>3</sup> Civil Partnership (Scotland) Bill Policy Memorandum (parliament.scot) - <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/policy-memorandum-civil-partnership-scotland-bill.pdf>

<sup>4</sup> Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (legislation.gov.uk) - <https://www.legislation.gov.uk/asp/2011/15/contents/enacted>

affirmative procedure. Along with these commencement regulations, the Scottish Ministers are laying before Parliament a draft Order under section 10 of the 2011 Act. If this draft Order is approved by Parliament, the intention is these commencement regulations and the Order will come into force around the same time, to provide a comprehensive package of measures against forced civil partnership.

These commencement regulations also commence paragraph 6(3) of schedule 2 of the 2020 Act. The effect is to amend section 122 of the Civil Partnership Act 2004<sup>5</sup> (“the 2004 Act”) so that the register of dissolutions of civil partnership operated by National Records of Scotland can cover declarators of nullity of civil partnership as well.

A declarator of nullity granted by the courts is a declaration that the relationship never existed in the eyes of the law. Declarators of nullity are rare: the Civil Justice Statistics for 2021/22 show that in that year one application for a declarator of nullity of marriage or civil partnership was initiated before the courts<sup>6</sup>. This figure is along the same lines as figures for previous years.

## **Consultation**

There has been no specific consultation on these commencement regulations.

The UK Supreme Court made a declaration in 2018 that the 2004 Act was incompatible with the European Convention on Human Rights in so far as it made civil partnership available only to same sex couples<sup>7</sup>. Following this, the Scottish Government consulted on two options for the future of civil partnership in Scotland<sup>8</sup>. The first involved closure of civil partnership to new relationships from a specific date in the future. The second involved making civil partnership available to mixed sex couples. After this consultation, the Scottish Government introduced into Parliament the Bill which led to the 2020 Act making civil partnership available to mixed sex couples.

More recently, the Scottish Government has written to the Foreign, Commonwealth and Development Office (which runs a Forced Marriage Unit); the Crown Office and Procurator Fiscal Service; and Police Scotland to advise of the intention to commence the extension of the forced marriage offence to civil partnership and to extend the provisions on forced marriage protection orders to cover forced civil partnerships.

The Scottish Government has also consulted National Records of Scotland on extending the register of dissolutions of civil partnership so this covers declarators of nullity of civil partnership as well.

## **Impact Assessments**

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<sup>5</sup> Civil Partnership Act 2004 (legislation.gov.uk) - <https://www.legislation.gov.uk/ukpga/2004/33/section/122>

<sup>6</sup> Civil justice statistics in Scotland 2021-22 - gov.scot (www.gov.scot) See the supporting documents; the main tables; table 5 – family procedure cases initiated and disposed of in the civil courts, by case type, 2012-13 to 2021-22 - <https://www.gov.scot/publications/civil-justice-statistics-scotland-2021-22/>

<sup>7</sup> The judgment in the Supreme Court case is at <https://www.supremecourt.uk/cases/uksc-2017-0060.html>

<sup>8</sup> The future of civil partnership in Scotland - Scottish Government - Citizen Space (consult.gov.scot) - <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/>

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

- A Business and Regulatory Impact Assessment<sup>9</sup>
- A Child Rights and Wellbeing Impact Assessment<sup>10</sup>
- An Equality Impact Assessment<sup>11</sup>

### **Financial Effects**

No significant costs are expected as a consequence of these commencement regulations.

As indicated above, extending the forced marriage offence so it covers forced civil partnership as well is closing a potential loophole. The Scottish Government is not expecting a significant volume of prosecutions in relation to forced civil partnership. Up until now there have been no recorded court proceedings under section 122 of the 2014 Act (data in this area is currently available up to the year 2020/21). The Police recorded three forced marriage offences in 2019-20 and one in 2021-22<sup>12</sup>.

Similarly, the extension of the register of dissolutions to cover declarators of nullity of civil partnership is not expected to have significant costs, given that declarators of nullity are rare.

Scottish Government  
Justice Directorate

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<sup>9</sup> Civil Partnership (Scotland) Bill: business and regulatory impact assessment - gov.scot (www.gov.scot) - <https://www.gov.scot/publications/civil-partnership-scotland-bill-business-regulatory-impact-assessment/>

<sup>10</sup> Civil Partnership (Scotland) Bill: child rights and wellbeing impact assessment - <https://www.gov.scot/publications/civil-partnership-scotland-bill-child-rights-wellbeing-impact-assessment/>

<sup>11</sup> Civil Partnership (Scotland) Bill: Equality Impact Assessment - <https://www.gov.scot/publications/civil-partnership-scotland-bill-equality-impact-assessment/>

<sup>12</sup> See the answer to this Parliamentary Question: Written question and answer: S6W-16089 | Scottish Parliament Website - <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-16089>