

POLICY NOTE

THE CIVIL PARTNERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 2) REGULATIONS 2020

SSI 2020/457

The above instrument was made in exercise of the powers conferred by section 16(2) of the Civil Partnership (Scotland) Act 2020. The instrument is not subject to Parliamentary procedure and so, in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, it is laid before the Parliament.

Purpose of the instrument.

These Regulations commence aspects of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”). They commence section 2(1), (3)(f) and (4)(b) (on recognition of overseas relationships), section 7(1), (2)(b) and (2)(f) (on persons who may register civil partnerships), and paragraph 5(1) and (19)(b) of schedule 2 (on registration of civil partnerships following gender recognition) of the 2020 Act for the purpose of making regulations under powers conferred, or modified, by those provisions.

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.

These Regulations commence three areas of the 2020 Act for the purpose of making regulations.

The first area relates to overseas relationships. Part 5 of the Civil Partnership Act 2004 (“the 2004 Act”) makes provision for civil partnerships (whatever they called in the original jurisdiction) formed outwith the United Kingdom.

The definition of “overseas relationship” in section 212 of the 2004 Act requires that a relationship be either:

- “a specified relationship”, (these relationships are listed in schedule 20 of the 2004 Act) or
- one that complies with the general conditions set out in section 214 of the 2004 Act.

Section 2(3) of the 2020 Act amends the 2004 Act so that overseas relationships between mixed sex couples can be specified in Part 2 of schedule 20 of the 2004 Act. Section 2(3) of the Act allows the Scottish Ministers to amend Part 2 of schedule 20 by regulations. This power is commenced by this instrument.

Section 215 of the 2004 Act provides that an overseas relationship is to be treated as having been entered into at the time it is registered in the overseas jurisdiction or at the time that section came into force, whichever is later. Section 2(4) of the Act amends section 215 to allow the Scottish Ministers to make contrary provision on when overseas relationships between mixed sex couples are to be treated as having been entered into. This power is commenced by this instrument.

The second area relates to the registration of civil partnerships in Scotland.

Section 7 of the 2020 Act amends section 94A of the 2004 Act. Section 94A makes provision about the persons who may register same sex civil partnerships. It includes provisions about prescribing religious or belief bodies by regulations. A celebrant of a prescribed body (or a person recognised by a prescribed body as entitled to register civil partnerships on its behalf) is an approved celebrant without having to be individually registered as such.

Section 7 of the 2020 Act amends section 94A to create two different categories of persons who may register civil partnerships. Separate categories are created for same sex civil partnerships and for mixed sex civil partnerships.

Section 94A(2A)(a)(i) of the 2004 Act, added by section 7(2)(b) of the 2020 Act, empowers the Scottish Ministers to prescribe religious or belief bodies in relation to the registration of mixed sex civil partnerships. This instrument commences this power. Section 7(2)(f) of the Act adds the new regulation-making power in section 94A(2A)(a)(i) to the list of powers set out in section 126(4) of the 2004 Act which are subject to the negative procedure. This instrument commences this addition to the list of powers.

The third area relates to the renewal of the entry in the Register of Civil Partnerships relating to a civil partnership following gender recognition.

Paragraph 20A of schedule 3 of the Gender Recognition Act 2004 makes provision on the re-registration of marriages and civil partnerships following gender recognition. In relation to civil partnerships, the power refers to “a case where a full gender recognition certificate has been issued to each of the civil partners”. This reflects that before the 2020 Act a person in a civil partnership who obtains gender recognition can only stay in the civil partnership if both partners obtain gender recognition on the same day. This is a consequence of mixed sex civil partnerships not having been available in Scotland before the 2020 Act.

The 2020 Act introduces mixed sex civil partnership in Scotland. Paragraph 5 of schedule 2 makes a number of consequential modifications to the Gender Recognition Act 2004 so that being in a civil partnership will cease to be an absolute barrier to one partner obtaining a full gender recognition certificate.

One of these modifications relates to the powers at paragraph 20A of schedule 3 of the Gender Recognition Act 2004. Instead of referring to “each” of the civil partners, the powers will refer to “one, or each” of the civil partners. This instrument commences this modification.

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, which are commencing or modifying regulation-making powers.

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>