

POLICY NOTE

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

SSI 2022/202

The above instrument was made in exercise of the powers conferred by 23(1) of the Gender Recognition Act 2004. The instrument is subject to negative procedure.

Summary Box

The introduction of mixed sex civil partnership in Scotland means that civil partners can obtain a full Gender Recognition Certificate (GRC) and stay in their civil partnership: previously, this was only possible where both civil partners obtained a full GRC on the same day. When a civil partner obtains a full GRC, both partners can apply to have a new entry for their civil partnership made in the civil partnership register. The new entry, which will reflect the acquired gender of the partners, may in certain circumstances show the civil partnership as having been registered on a date other than the date on which it was actually registered. This Order amends an Order made in 2016 to provide that an extract of the new entry is only sufficient evidence of the date of registration where the dates shown on the existing entry and the new entry are the same.

Policy Objectives

This Order amends the Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016¹ (“the 2016 Order”). The 2016 Order modifies the operation of aspects of the law concerning the registration of marriages and civil partnerships in relation to cases in which a new entry is made in the register of marriages or the civil partnership register under the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016² (“the 2016 Regulations”). Such an entry may be made following the issue of a Gender Recognition Certificate (“GRC”).

As a result of amendments to the 2016 Regulations, a new civil partnership register entry may show a civil partnership as having been registered on a date other than that shown on the existing entry. As a consequence, this Order amends the 2016 Order to provide that, in cases in which a new entry has been made in the civil partnership register, the operation of section 41A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965³ is modified so that an extract of the entry is only sufficient evidence of the date of registration where the dates shown on the existing entry and the new entry are the same.

The 2016 Order already makes similar provision in respect of entries in the marriage register.

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

² [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](#)

³ [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(legislation.gov.uk\)](#)

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process⁴. The Policy Memorandum for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise on civil partnership held in 2018⁵.

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

The Scottish Trans Alliance have been consulted on the detail of the provisions contained in this Order and the related Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 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 Assessment⁶.
- A Child Rights and Wellbeing Impact Assessment⁷
- An Equality Impact Assessment⁸

Financial Effects

No significant costs are expected to arise as a consequence of this Order.

**Scottish Government
Justice Directorate**

June 2022

⁴ Civil Partnership (Scotland) Bill – Bills (proposed laws) – Scottish Parliament | Scottish Parliament Website

⁵ Civil Partnership (Scotland) Bill Policy Memorandum (parliament.scot)

⁶ Civil Partnership (Scotland) Bill: business and regulatory impact assessment - gov.scot (www.gov.scot)

⁷ Civil Partnership (Scotland) Bill: child rights and wellbeing impact assessment - gov.scot (www.gov.scot)

⁸ Civil Partnership (Scotland) Bill: equality impact assessment - gov.scot (www.gov.scot)