
EXPLANATORY NOTE

(This note is not part of the Order)

This Order principally makes provision consequential on the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”) which allows opposite sex couples to register as civil partners of each other in Scotland.

Paragraph 1 of Schedule 1 amends the Gender Recognition Act 2004 in relation to applications under that Act by persons who are parties to protected Scottish civil partnerships.

Paragraph 1(2) amends section 3F which makes provision regarding the evidence that requires to be provided by applicants seeking to have a gender recognition certificate granted in accordance with section 3E. The amendments require applicants who are parties to a protected Scottish civil partnership to provide the Gender Recognition Panel with evidence as to whether or not the applicant’s civil partner consents to the civil partnership continuing after the issue of a full gender recognition certificate.

Paragraph 1(3) amends section 11B, as substituted by the 2020 Act, and in so far as extending to Scotland, to make provision regarding the effect on the relevant law of the continuation of a protected overseas relationship by virtue of that section.

Paragraph 1(4) amends section 11D to extend the effect of that provision to cases where a full gender recognition certificate is issued to only one of the parties to a protected Scottish civil partnership.

Paragraph 1(5) amends section 25 so as to extend to England and Wales and Northern Ireland definitions of “protected Scottish civil partnership” and “protected Scottish marriage”.

Paragraph 2 of Schedule 1 amends sections 38(3) and 45(3) of the Human Fertilisation and Embryology Act 2008 so that those provisions apply with equal effect where a child is treated as the child of a marriage and where a child is treated as the child of a civil partnership.

Paragraph 3 of Schedule 1 amends the Equality Act 2010 in relation to the religious or belief registration of civil partnerships between opposite sex couples in Scotland, and the religious or belief solemnisation of marriages between opposite sex civil partners in Scotland.

Paragraph 3(2) amends section 110, which concerns the liability of employees and agents, in relation to the circumstances in which refusal to solemnise a marriage or to register a civil partnership does not contravene that section.

The new subsection inserted by paragraph 3(2)(a) provides that there is no contravention where a celebrant refuses to solemnise a religious or belief marriage for the reason that the marriage is between persons of the opposite sex who are in a civil partnership with each other. Paragraph 3(2)(b) amends subsection (5D) to provide that there is no contravention where a celebrant refuses to register a religious or belief civil partnership for the reason that the celebrant does not wish to register either civil partnerships generally, or those between same sex couples or those between opposite sex couples.

Paragraph 3(4) amends paragraph 25B of Schedule 3 in relation to the circumstances in which refusal to solemnise a marriage, to register a civil partnership, or to participate in such a ceremony does not contravene the prohibition against discrimination in the provision of services provided for in section 29.

The new sub-paragraphs inserted in paragraph 25B by paragraph 3(4)(a) and (c) provide that there is no contravention where a celebrant refuses to solemnise a religious or belief marriage, or where a person refuses to participate in such a marriage, for the reason that the marriage is between persons of

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the opposite sex who are in a civil partnership with each other. Paragraph 3(4)(b) and (d) amend subparagraphs (2) and (4) to provide that there is no contravention where a celebrant refuses to register a religious or belief civil partnership, or where a person refuses to participate in such a registration, for the reason that they do not wish to register, or participate in, either civil partnerships generally, or those between same sex couples or those between opposite sex couples.

Paragraph 3(4)(e) extends the definition of “relevant Scottish marriage” so that it no longer refers exclusively to marriages between persons of the same sex.

Paragraph 3(5) amends paragraph 2 of Schedule 23 in relation to the circumstances in which refusal to allow premises in Scotland to be used for the solemnisation of a marriage or the registration of a civil partnership does not contravene Parts 3, 4 or 7 of the Act.

Paragraph 4 of Schedule 1 amends paragraphs 1 and 8 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013 so that a couple who are in a qualifying civil partnership with each other (as defined by section 5(6) of the Marriage (Scotland) Act 1977) do not satisfy the conditions for a consular or armed forces marriage overseas. The amendment does not affect the provision in Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 ([S.I. 2014/3229](#)) under which couples whose civil partnerships were registered in Scotland can change their civil partnership into a marriage overseas. This amendment is consequential on the Marriage and Civil Partnership (Scotland) Act 2014 which amended the Marriage (Scotland) Act 1977 so as to allow the parties to a qualifying civil partnership to marry in Scotland.

In terms of article 4(2)(d) of the Civil Partnership (Registration Abroad and Certificates) Order 2005 ([S.I. 2005/2761](#)), a couple are only eligible to register a civil partnership overseas under that Order where insufficient facilities exist for them to enter into an overseas relationship under the law of the country or territory in which it is proposed to register the civil partnership. Paragraph 1 of Schedule 2 amends that Order to prescribe the circumstances in which a country or territory is to be treated as having sufficient facilities in respect of same sex and opposite sex couples for whom Scotland is the relevant part of the United Kingdom.

Paragraph 2(2) of Schedule 2 amends the definition of “civil partnership” in article 13 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014 to exclude opposite sex civil partners. The effect is to restrict the provision in Part 5 of that Order by which civil partnerships registered in Scotland can be changed into marriages overseas to couples in same sex civil partnerships. The amendment does not affect the law concerning the marriage of the parties to a qualifying civil partnership in Scotland, or concerning the changing of qualifying civil partnerships into marriages in accordance with regulations under section 10 of the Marriage and Civil Partnership (Scotland) Act 2014.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.