



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 3

#### CIVIL PARTNERSHIP: SCOTLAND

### CHAPTER 1

#### FORMATION AND ELIGIBILITY

#### 85 Formation of civil partnership by registration

- (1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule, in the presence of—
  - (a) each other,
  - (b) two witnesses both of whom have attained the age of 16, and
  - [<sup>F1</sup>(c) the approved celebrant or, as the case may be, the authorised registrar.]
- (2) But the two people must be eligible to be so registered.
- (3) Subsection (1) applies regardless of whether subsection (4) is complied with.
- (4) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other by—
  - (a) each of the two witnesses, and
  - (b) [<sup>F2</sup>the approved celebrant or, as the case may be,] the authorised registrar.

#### Textual Amendments

- F1** S. 85(1)(c) substituted for s. 85(1)(c) and words (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), ss. 24(2)(a), 36; S.S.I. 2014/287, art. 3, sch.

*Status: Point in time view as at 16/05/2018.*

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**F2** Words in s. 85(4)(b) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), **ss. 24(2)(b)**, 36; S.S.I. 2014/287, art. 3, sch.

## 86 Eligibility

- (1) Two people are not eligible to register in Scotland as civil partners of each other if—
- (a) they are not of the same sex,
  - (b) they are related in a forbidden degree,
  - (c) either has not attained the age of 16,
  - (d) either is married or already in civil partnership, or
  - (e) either is incapable of—
    - (i) understanding the nature of civil partnership, or
    - (ii) validly consenting to its formation.
- [<sup>F3</sup>(2) Subject to subsection (3), a person is related to another person in a forbidden degree if related to that person in a degree specified in Schedule 10.]
- (3) [<sup>F4</sup>A person who is related to another person in a degree specified in paragraph 2 of Schedule 10 (relationships by affinity) is not related to that person] in a forbidden degree if—
- (a) both persons have attained the age of 21, and
  - (b) the younger has not at any time before attaining the age of 18 lived in the same household as the elder and been treated by the elder as a child of the elder’s family.
- [<sup>F5</sup>(3A) For the purposes of paragraph 2 of Schedule 10, “spouse” means—
- (a) in the case of a marriage between persons of different sexes, a wife in relation to her husband or a husband in relation to his wife, and
  - (b) in the case of a marriage between persons of the same sex, one of the parties to the marriage in relation to the other.]

[<sup>F6</sup>(4) Paragraph 2 of Schedule 10 has effect subject to the modifications specified in subsection (5) in the case of a person (here the “relevant person”) whose gender has become the acquired gender under the Gender Recognition Act 2004 (c. 7).

(5) The reference in [<sup>F7</sup>subsection (3A)(a) as it applies to] that paragraph to—

    - (a) a <sup>F8</sup>... wife of the relevant person includes any <sup>F8</sup>... husband of the relevant person, and
    - (b) a <sup>F8</sup>... husband of the relevant person includes any <sup>F8</sup>... wife of the relevant person.]

[<sup>F9</sup>(5A) This section and Schedule 10 have effect as if any reference in that Schedule to a [<sup>F10</sup>parent] within any of the degrees of relationship specified <sup>F11</sup>... included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).]

(6) <sup>F12</sup>.....

(7) <sup>F13</sup>.....

(8) References in this section and in Schedule 10 to relationships and degrees of relationship are to be construed in accordance with section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9).

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- (9) For the purposes of this section, a degree of relationship specified in paragraph 1 of Schedule 10 exists whether it is of the full blood or the half blood.
- (10) Amend section 41(1) of the Adoption (Scotland) Act 1978 (c. 28) (application to determination of forbidden degrees of provisions of that Act relating to the status conferred by adoption) as follows—
- (a) after first “marriage” insert “, to the eligibility of persons to register as civil partners of each other”, and
  - (b) for “and incest” substitute “, to such eligibility and to incest”.

#### Textual Amendments

- F3** S. 86(2) substituted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(a\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F4** Words in s. 86(3) substituted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(b\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F5** S. 86(3A) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(c\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F6** S. 86(4)(5) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), [ss. 33](#), 46(2), { [Sch. 1 para. 2\(b\)](#) }; [S.S.I. 2006/212](#), [art. 2](#) (subject to [art. 3-13](#))
- F7** Words in s. 86(5) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(d\)\(i\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F8** Words in s. 86(5) repealed (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(d\)\(ii\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F9** S. 86(5A) inserted (1.9.2009) by [The Human Fertilisation and Embryology \(Consequential Amendments and Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/1892\)](#), [art. 2](#), [Sch. 1 para. 4](#)
- F10** Word in s. 86(5A) substituted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(e\)\(i\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F11** Words in s. 86(5A) repealed (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), [ss. 24\(3\)\(e\)\(ii\)](#), 36; [S.S.I. 2014/287](#), [art. 3](#), sch.
- F12** S. 86(6) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), [ss. 33](#), 46(2), { [Sch. 3](#) }; [S.S.I. 2006/212](#), [art. 2](#) (subject to [art. 3-13](#))
- F13** S. 86(7) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), [ss. 33](#), 46(2), { [Sch. 3](#) }; [S.S.I. 2006/212](#), [art. 2](#) (subject to [art. 3-13](#))

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