

2022 No. 74

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CIVIL PARTNERSHIP

**The Civil Partnership (Scotland) Act 2020 and Marriage and
Civil Partnership (Scotland) Act 2014 (Consequential
Modifications) Order 2022**

Made - - - - - *26th January 2022*
Coming into force - - - - - *27th January 2022*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998(a).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, a draft of this Order has been laid before, and approved by resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Civil Partnership (Scotland) Act 2020 and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Modifications) Order 2022 and comes into force on the day after the day on which it is made.

Extent

2.—(1) Subject to paragraphs (2) to (4), this Order extends to England and Wales, Scotland and Northern Ireland.

(2) Paragraph 3 of Schedule 1 and paragraph 2 of Schedule 2 extend only to England and Wales and Scotland.

(3) Paragraphs 1(4) and (5) of Schedule 1 extend only to England and Wales and Northern Ireland.

(4) Paragraph 1(3) of Schedule 1 extends only to Scotland.

Consequential modifications

3. Schedules 1 and 2 (which make consequential modifications to primary and secondary legislation respectively) have effect.

(a) 1998 c. 46; section 104 was amended by the Scotland Act 2012 (c. 11) section 12(2)(a).

Dover House
London
26th January 2022

Alister Jack
Secretary of State
Office of the Secretary of State for Scotland

CONSEQUENTIAL MODIFICATIONS TO PRIMARY LEGISLATION

Gender Recognition Act 2004

1.—(1) The Gender Recognition Act 2004(a) is amended as follows.

(2) In section 3F (evidence for granting applications on alternative grounds: Scotland (English and Welsh and Northern Ireland residents))(b)—

(a) for subsection (7) substitute—

“(7) If the applicant is—

- (a) married, the application must include a statutory declaration as to whether the marriage is a protected Scottish marriage;
- (b) a party to a civil partnership, the application must include a statutory declaration as to whether the civil partnership is a protected Scottish civil partnership.”,

(b) after subsection (8) insert—

“(8A) If the applicant is a party to a protected Scottish civil partnership, the application must also include—

- (a) a statutory declaration by the applicant’s civil partner that the civil partner consents to the civil partnership continuing after the issue of a full gender recognition certificate (“a statutory declaration of consent”) (if the civil partner has made such a declaration); or
- (b) a statutory declaration by the applicant that no such declaration by the applicant’s civil partner is included.”,

(c) in subsection (9)—

- (i) after “applicant’s spouse” insert “or (as the case may be) civil partner”,
- (ii) after “the spouse” insert “or civil partner”.

(3) In section 11B (change in gender of civil partner)(c), for subsection (3) substitute—

“(3) If the protected civil partnership is a protected overseas relationship—

- (a) the continuity of the civil partnership continues by virtue of subsection (2) notwithstanding any impediment under the relevant law;
- (b) the relevant law is not affected by the continuation of the civil partnership by virtue of subsection (2).”.

(4) In section 11D (continuity of civil partnership: Scotland)(d), for the words from “full” to the end substitute “a full gender recognition certificate to either (or both) of the civil partners.”.

(5) In section 25 (interpretation)(e) before the definition of “registered psychologist” insert—

““protected Scottish civil partnership” means a civil partnership registered in Scotland,
“protected Scottish marriage” means a marriage solemnised in Scotland.”.

(a) 2004 c. 7.

(b) Section 3F was added by paragraph 15(4) of Schedule 5 to S.I. 2014/3229, and amended and extended to Northern Ireland by regulation 43 of S.I. 2019/1514.

(c) Section 11B was added by paragraph 11 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013 (c. 30) and substituted in so far as extending to Scotland by paragraph 5(14) of Schedule 2 to the Civil Partnership (Scotland) Act 2020 (asp 15).

(d) Section 11D, in so far as extending to England and Wales, was added by paragraph 15(6) of Schedule 5 to S.I. 2014/3229, and was extended to Northern Ireland by regulation 45(2) of S.I. 2019/1514.

(e) Section 25 was relevantly amended, in so far as extending to England and Wales, by regulation 33 of S.I. 2019/1458 and, in so far as extending to Northern Ireland, by paragraph 8(b) of Schedule 5 to S.I. 2009/1182.

Human Fertilisation and Embryology Act 2008

2.—(1) The Human Fertilisation and Embryology Act 2008(a) is amended as follows.

(2) In section 38(3) (further provision applicable where a person is to be treated as the father of the child by virtue of sections 35 and 36), at the end insert “or civil partnership”.

(3) In section 45(3) (further provision applicable where a woman is treated as a parent of the child by virtue of sections 42 and 43), at the end insert “or civil partnership”.

Equality Act 2010

3.—(1) The Equality Act 2010(b) is amended as follows.

(2) In section 110 (liability of employees and agents)—

(a) after subsection (5C)(c), insert—

“(5CA) A does not contravene this section by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the opposite sex who are in a civil partnership with each other.”,

(b) in subsection (5D), for “the civil partnership is between two persons of the same sex” substitute “A does not wish to register civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex”,

(c) in subsection (5E), after “(5C)” insert “, (5CA)”.

(3) In Schedule 3 the heading of Part 6B (Marriage of same sex couples and civil partnership: Scotland)(d) becomes “CIVIL PARTNERSHIP, MARRIAGE OF SAME SEX COUPLES AND MARRIAGE OF CIVIL PARTNERS: SCOTLAND”.

(4) In paragraph 25B of Schedule 3 (marriage of same sex couples and civil partnership: Scotland)(e)—

(a) after sub-paragraph (1), insert—

“(1A) An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the opposite sex who are in a civil partnership with each other.”,

(b) in sub-paragraph (2), for “the civil partnership is between two persons of the same sex” substitute “the approved celebrant does not wish to register civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex”,

(c) after sub-paragraph (3), insert—

“(3A) A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other.”,

(d) in sub-paragraph (4), for “the civil partnership is between two persons of the same sex” substitute “the person does not wish to participate in such ceremonies in relation to civil partnerships generally, or those between two persons of the same sex, or those between two persons of the opposite sex”,

(e) in sub-paragraph (6) in the definition of “relevant Scottish marriage” omit “of two persons of the same sex”,

(f) the heading of the paragraph becomes “*Marriage and civil partnership: Scotland*”.

(a) 2008 c. 22.

(b) 2010 c. 15.

(c) Subsections (5C) to (5H) were inserted by paragraph 19(4) of Schedule 5 to S.I. 2014/3229.

(d) Part 6B was inserted by paragraph 19(5)(c) of Schedule 5 to S.I. 2014/3229.

(e) Paragraphs 25B and 25C were added by paragraph 19(5)(c) of Schedule 5 to S.I. 2014/3229.

- (5) In paragraph 2 of Schedule 23 (organisations relating to religion or belief)—
- (a) in sub-paragraph (9A)(a)—
 - (i) after paragraph (a) insert—

“(aa) to solemnise a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other;”,
 - (ii) in paragraph (b), after “same sex” insert “or that it is between two persons of the opposite sex”,
 - (b) in sub-paragraph (9B)—
 - (i) after paragraph (a), insert—

“(aa) to solemnise a relevant Scottish marriage for the reason that the marriage is a marriage of two persons of the opposite sex who are in a civil partnership with each other;”,
 - (ii) in paragraph (b), after “same sex” insert “or that it is between two persons of the opposite sex”,
 - (c) in sub-paragraph (9C), after “(1)” insert “, (1A)”.

Marriage (Same Sex Couples) Act 2013

4.—(1) Schedule 6 (marriage overseas) to the Marriage (Same Sex Couples) Act 2013**(b)** is amended as follows.

- (2) In paragraph 1 (provision for consular marriage), after sub-paragraph (2), insert—
- “(3) For the purposes of sub-paragraph (2)(b), two people who are in a qualifying civil partnership with each other are to be treated as not having been eligible to marry each other in Scotland.
- (4) In sub-paragraph (3) “qualifying civil partnership” has the meaning given by section 5(6) of the Marriage (Scotland) Act 1977(c).”.
- (3) In paragraph 8 (provision for marriage of armed forces personnel), after sub-paragraph (3), insert—
- “(4) For the purposes of sub-paragraph (2)(b), two people who are in a qualifying civil partnership with each other are to be treated as not having been eligible to marry each other in Scotland.
- (5) In sub-paragraph (4) “qualifying civil partnership” has the meaning given by section 5(6) of the Marriage (Scotland) Act 1977.”.

(a) Sub-paragraphs (9A) to (9D) were inserted by paragraph 19(6) of Schedule 5 to S.I. 2014/3229.

(b) 2013 c. 30.

(c) Subsection (6) was inserted by the Marriage and Civil Partnership (Scotland) Act 2014, section 8(3)(b) and substituted by article 3(2) of S.S.I. 2015/371.

SCHEDULE 2

Article 3

CONSEQUENTIAL MODIFICATIONS TO SECONDARY LEGISLATION

The Civil Partnership (Registration Abroad and Certificates) Order 2005

1. In article 4 of the Civil Partnership (Registration Abroad and Certificates) Order 2005 (registration of civil partnership by registration officer)(a), after paragraph (4AA), insert—

“(4AB) If the relevant part of the United Kingdom is Scotland, a country or territory is treated by paragraph (4) as having sufficient facilities only if—

- (a) in the case of proposed civil partners who are of the same sex under the law of that country or territory, the country or territory is listed in Part 1 of Schedule 20 to the Act (as it forms part of the law of Scotland),
- (b) in the case of proposed civil partners who are of the opposite sex under that law, the country or territory is listed in Part 2 of that Schedule.”.

The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014

2.—(1) The Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014(b) is amended as follows.

(2) In article 13 (meaning of civil partnership), after “a civil partnership”, insert “between two people who are of the same sex”.

(3) Article 15 (modification of the 2004 Act) is revoked.

(a) S.I. 2005/2761. Article 4 has been amended by article 4(a) of S.I. 2012/3063, by regulation 38(3) of S.I. 2019/1458, and by regulation 18 of S.I. 2019/1514.

(b) S.I. 2014/3229.

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 the opposite sex who are in a civil partnership with each other. Paragraph 3(4)(b) and (d) amend sub-paragraphs (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.

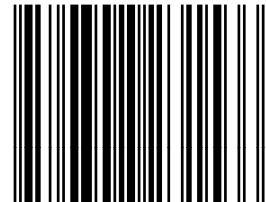
© Crown copyright 2022

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

<http://www.legislation.gov.uk/id/uksi/2022/74>

ISBN 978-0-34-823153-3



9 780348 231533