

Civil Partnership (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Civil Partnership (Scotland) Bill, introduced in the Scottish Parliament on 30 September 2019.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 57–FM);
 - a Policy Memorandum (SP Bill 57–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 57–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

Overview

5. The Bill modifies the law so that persons of different sexes can enter into civil partnerships.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

6. The [Civil Partnership Act 2004](#) (“the 2004 Act”) created in the UK a new form of legal relationship: the civil partnership. It was made available only to same sex couples as an alternative to marriage, which was not then a legal relationship available to them. That changed, in Scotland, with the [Marriage and Civil Partnership \(Scotland\) Act 2014](#), which allowed same sex couples to marry. This resulted in same sex couples having a choice between marriage or civil partnership, while marriage remained the only form of legally-recognised relationship available to different sex couples. In 2018, the UK Supreme Court found that difference in treatment in England and Wales to be incompatible with the European Convention on Human Rights¹. The Bill will remove that difference in treatment in Scotland by extending the option to enter into a civil partnership to different sex couples.

7. In connection with that main aim, the Bill will also:

- make consequential amendments to Scottish family law,
- allow for the recognition of certain overseas relationships between different sex couples,
- make consequential amendments to legislation concerning gender recognition,
- create an offence of forcing someone into a civil partnership.

8. As a Bill for an Act of the Scottish Parliament, the Bill’s provisions fall to be read in accordance with the interpretation rules in [Part 1 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#). Any text the Bill adds to an Act of the UK Parliament (such as the 2004 Act) will fall to be interpreted in accordance with the interpretative rules that apply to Acts of the UK Parliament, which are principally set out in the [Interpretation Act 1978](#).

Commentary on provisions

Extension of civil partnership to different sex couples

Section 1: Different sex civil partnerships

9. [Section 1\(1\) of the 2004 Act](#) defines a civil partnership as a relationship between two people of the same sex. Section 1 of the Bill

¹ [R \(on the application of Steinfeld and Keidan\) v Secretary of State for International Development \[2018\] UKSC 32](#).

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

removes the requirement that the two people be of the same sex and thereby extends civil partnership to different sex couples.

10. Interpretation legislation, which governs what expressions mean when they are used in primary and secondary legislation, defines “civil partnership” by reference to section 1 of the 2004 Act.² Therefore, changing the definition of civil partnership in section 1 of the 2004 Act means that uses of the expression in other legislation will automatically encompass different sex civil partnerships (subject to there not being a statement, or a clear contextual indication, to the contrary).

Section 2: Recognition of overseas different sex relationships

11. [Part 5 of the 2004 Act](#) makes provision for civil partnerships (however described) formed outwith the United Kingdom. Chapter 1 provides for the registration of civil partnerships at British consulates and by UK armed forces outwith the United Kingdom. Chapter 2 makes provision for certain overseas relationships to be recognised as civil partnerships in Scots law (as well as the legal systems of the other UK jurisdictions). Couples are treated as having formed a civil partnership if they have registered an “overseas relationship”, which is defined in [section 212 of the 2004 Act](#). Amongst other things, the definition (as enacted) requires that both people in the relationship are of the same sex. Section 2(2) of the Bill removes that requirement from the definition of “overseas relationship”.

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

² The interpretation legislation which applies to Acts of the Scottish Parliament and Scottish statutory instruments since June 2010 is the Interpretation and Legislative Reform (Scotland) Act 2010 (see [section 1 of that Act](#) for fuller details of the legislation to which it applies by default). Older Acts of the Scottish Parliament and Scottish statutory instruments fall to be interpreted in accordance with the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc. of Acts of the Scottish Parliament\) Order 1999 \(S.I. 1999/1379\)](#). The interpretation of Acts of the UK Parliament and subordinate legislation made by members of the UK Government largely fall to be interpreted in accordance with the Interpretation Act 1978.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

- “a specified relationship”, which is defined in [section 213](#) as a relationship of a kind that is specified for the purposes of section 212 in [schedule 20](#), or
- or one that complies with the general conditions set out in [section 214](#).

13. Section 2(3) of the Bill amends section 213 of the 2004 Act so that overseas relationships between different sex couples can be specified in Part 2 of schedule 20. Section 2(6) of the Bill inserts Part 2 into schedule 20, which contains those overseas relationships that are to be treated as civil partnerships in Scotland. Section 2(3) of the Bill allows the Scottish Ministers to amend Part 2 of schedule 20 by regulations. The regulations will be subject to the affirmative procedure if they amend or omit a relationship, and the negative procedure if they add a relationship. The negative procedure is defined by [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), and the affirmative procedure is defined by [section 29 of that Act](#).

14. [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 Bill amends section 215 to allow the Scottish Ministers to make contrary provision as to when overseas relationships between persons of different sexes are to be treated as having been entered into.

15. [Section 216 of the 2004 Act](#) prevents an overseas relationship from being recognised as a civil [partnership](#) in accordance with Part 5 of the 2004 Act if the parties to it were not of the same sex under UK law at “the critical time” (which is defined in subsection (5)). Section 2(5) of the Bill repeals section 216 so that whether the parties were of the same sex at any time is irrelevant to the question of whether their overseas relationship can be recognised as a civil partnership in Scots law.

Section 3: Interim recognition of different sex relationships formed outwith Scotland

16. The UK Government is required to provide for different sex civil partnerships in England and Wales by 31 December 2019, by virtue of section 2 of the Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019. Until such time as different sex civil partnerships are recognised

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

in Scotland, interim arrangements are needed to recognise those relationships. Section 3 of the Bill provides for those civil partnerships (as well as different sex overseas relationships) to be treated as marriages, and for the civil partners to be treated as spouses, until civil partnerships between persons of different sexes become registrable in Scotland. The Scottish Ministers may by regulations prescribe purposes for which this provision does not apply.

Eligibility and Registration in Scotland

Section 4: Eligibility of persons of different sexes to enter into a civil partnership

17. [Section 86\(1\) of the 2004 Act](#) sets out the circumstances in which two people are not eligible to register as civil partners, including that the parties are related in a forbidden degree or that one or both is under 16 (in contrast to section 1 of the 2004 Act, which sets out what does constitute a civil partnership). These disqualifying criteria include in section 86(1)(a) that the two people are not of the same sex. Section 4 of the Bill repeals section 86(1)(a) entirely.

Section 5: Persons who may register civil partnerships between persons of different sexes

18. Section 5 of the Bill amends section [94A of the 2004 Act](#). Section 94A makes provision about the persons who may register same sex civil partnerships. It sets out both the categories of approved celebrant and provisions regarding the prescription of religious or belief bodies by regulations. A celebrant of a prescribed body or a person recognised by that body as entitled to register civil partnerships on its behalf is an approved celebrant without having to be individually registered as such. Section 5 of the Bill amends section 94A to create two different categories of persons who may register civil partnerships: those in relation to same sex civil partnerships and those in relation to different sex civil partnerships.

19. Section 94A(2A)(a)(i), added by section 5(3) of the Bill, empowers the Scottish Ministers to prescribe religious or belief bodies so that their celebrants are authorised to register different sex civil partnerships. This will complement the power in section 94A(1)(a)(i) of the 2004 Act, which, once amended by section 5(2) of the Bill, will be restricted to same sex civil partnerships. Section 5(7) of the Bill adds the new regulation-making power contained in section 94A(2A)(a)(i) to the list of powers set out in [section 126\(4\) of the 2004 Act](#). Those powers are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure as

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

set out in [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)).

Section 6: Registration and removal of celebrants

20. Section 6 of the Bill amends the 2004 Act in respect of sections [94B](#) and [94C](#).

21. In accordance with section 94B of the 2004 Act, a religious or belief body can nominate one of its members to the Registrar General. If the nomination is accepted and the individual's name is entered in a register, that person becomes an approved celebrant. Section 6(1) amends section 94B to create nominations of two different categories. One aspect of this is the creation, in section 6(1)(e), of a two part register: one containing nominations in respect of same sex civil partnerships and one in respect of different sex civil partnerships.

22. Section 6(2) of the Bill amends section 94C of the 2004 Act, which makes provision as to the removal from the register of a registered celebrant, so that it refers to removal from both categories of nomination.

Section 7: Temporary authorisation of celebrants

23. Section 7 of the Bill amends [section 94E of the 2004 Act](#). Section 94E provides that a temporary authorisation may be granted to allow the celebrant to register one or more specified civil partnerships (subsection (1)(a)) or to allow the celebrant to register civil partnerships over a specified period of time (subsection (1)(b)). Section 7(2) of the Bill adds new subsection (2A) to section 94E to provide that authorisations may be granted in relation to one category of civil partnership only or both. Sections 7(3) and (4) of the Bill amend the provision for authorisation in section 94E to set out the conditions for authorisation in respect of each category of civil partnership.

Second registration of civil partnership

Section 8: Second registration of civil partnership

24. Section 8 of the Bill amends the 2004 Act by inserting a new section 97A. It applies to civil partners who are unable to evidence their relationship, for example because of the destruction of documents, and gives them the ability to secure the rights and responsibilities of their relationship through a second registration. This is a facility that has been available to parties who have gone through a marriage ceremony abroad

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

but are unable to prove the marriage. In such circumstances, [section 20 of the Marriage \(Scotland\) Act 1977](#) provides that an authorised registrar may solemnise their marriage as if they had not already gone through a marriage ceremony.

25. By section 97A(1), the facility is made available to parties who have registered certain types of relationship which would result in them being treated as having formed a civil partnership under the law of Scotland but they are unable to prove the registration. Under section 97A(2), an authorised registrar may, subject to conditions, register the parties' civil partnership as if they had not already registered that relationship with each other. Section 97A(6) makes it a requirement that both parties submit a statutory declaration (a declaration made as set out in the [Statutory Declarations Act 1835](#)) stating specified particulars about the previous registration of their relationship for the purpose of confirming the truth of that account. The remaining subsections of section 97A apply to such a registration of a civil partnership various provisions that set out the machinery of the standard registration of civil partnerships with modifications to reflect the fact that this is a second registration.

Dissolution

Section 9: Postponement of decree of dissolution where religious impediment to marry exists

26. Section 9 of the Bill adds a new section 121A to Chapter 5 of Part 3 of the 2004 Act, which replicates [section 3A of the Divorce \(Scotland\) Act 1976](#).

27. Its effect is that, where there has been irretrievable breakdown of a relationship, the court may, on the application of one of the parties, postpone the grant of a dissolution (section 121A(1)). It applies in circumstances where the applicant for the postponement is prevented from entering into a 'religious marriage' by virtue of a requirement of the religion of that marriage and the other party can act so as to remove that impediment (section 121A(2)). In that case, the court may order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described (section 121A(5)). 'Religious marriage' is defined in section 121A(7) as a marriage solemnised by a marriage celebrant of a religious body specified by the Scottish Ministers. A power is given to the Scottish Ministers to make regulations to specify the religious faiths which can rely on this provision (section 121A(7)). Section

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

9(3) of the Bill adds this regulation-making power to [section 126\(4\) of the 2004 Act](#), which sets down the applicable procedure. They are subject to annulment in pursuance of a resolution of the Parliament (i.e. the negative procedure as set out in [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)).

Marriage between civil partners in a qualifying civil partnership: celebrants

Section 10: Marriage between civil partners in a qualifying civil partnership: celebrants

28. There is provision under current law for civil partners to marry and this ability will apply automatically to different sex civil partnerships once they are introduced by the Bill. No celebrant will be required by the legislation to solemnise such marriages. To prevent there being any doubt about the position, section 10 inserts a new section 8(1AA) into the [Marriage \(Scotland\) Act 1977](#) which states that nothing in the section imposes a duty (a) upon celebrants to solemnise a marriage between qualifying civil partners who are of different sexes or (b) on any person to apply for temporary authorisation to solemnise such a marriage.

Forced civil partnerships

Section 11: Forced civil partnerships

29. Section 11 of the Bill amends [section 122 of the Anti-social Behaviour, Crime and Policing Act 2014](#). Section 122 makes it an offence under the law of Scotland to use coercion for the purpose of causing another person to enter into a marriage. It is amended by section 11 of the Bill so as to extend to the use of coercion for the purpose of causing another person to enter into a civil partnership, including a purported civil partnership. A purported civil partnership in this context might be one which seems to exist but which fails to be valid as a matter of law, for example because it is registered by someone not authorised to do so.

Consequential Modifications

Section 12: Consequential modifications

30. Section 12 introduces schedule 2 (which is explained below).

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Final provisions

Section 13: Ancillary provision

31. Section 13 enables the Scottish Ministers to make ancillary provision, by regulations, to give full effect to the Act or any provision made under it. This includes the power to modify other enactments (including the Act itself).

32. Regulations made under section 13 that amend the text of primary legislation (including the Act) are subject to the affirmative procedure. Otherwise, regulations under section 13 are subject to the negative procedure.

33. The affirmative procedure is defined in [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#). The negative procedure is defined in [section 28 of that Act](#).

Section 14: Commencement

34. Section 14 deals with when the Act's provisions come into effect as a matter of law.

35. The Bill's final provisions (sections 13 to 15) take effect the day after the Bill receives Royal Assent.

36. The rest of the Bill's provisions take effect on the day, or days, appointed by the Scottish Ministers by regulations. Section 14 allows the regulations to appoint different days for different purposes. Regulations appointing the day that some or all of the Bill's provisions take effect will be laid before the Scottish Parliament in accordance with [section 30 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

Schedule 2

Family law

37. Paragraphs 1 to 4 of schedule 2 amend various family law acts, principally so that they accommodate different sex civil partnerships and the possibility of reproduction between civil partners.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Paragraph 1: Modification of the Registration of Births, Deaths and Marriages (Scotland) Act 1965

38. Paragraph 1 of schedule 2 amends [Part 2 of the Registration of Births, Deaths and Marriages \(Scotland\) Act 1965](#) (“the 1965 Act”). Part 2 of the 1965 Act provides for the registration of births. [Section 13](#) sets out the particulars of birth to be registered.

39. [Section 14](#) specifies which persons have a duty to give those particulars of birth, including certain fathers. Section 14(5) excludes fathers who are not married to the mother and have not been married to her since the child’s conception. It would therefore not apply the duty to a father who had been in a different sex civil partnership with the mother. Paragraph 1(2) of schedule 2 of the Bill amends section 14 to also exclude fathers who are not in a civil partnership with the mother and have not been in a civil partnership with her since the child’s conception. The overall effect of section 14, once amended, is to apply the duty to a father who has been married to or in a civil partnership with the mother at some point since the child’s conception.

40. [Section 18](#) provides that certain persons are not required to give information about the birth and shall not have their name entered on the birth registration form. Such a person is someone who is not married to the mother and has not been married to her since conception unless certain conditions are satisfied (generally requiring the mother to ask for the father’s name to be entered). Following the amendment to section 18 made by paragraph 1(3) of schedule 2 of the Bill, such a person will extend to someone who has not been in a civil partnership with the mother since conception. The effect is to put a father in a civil partnership with the mother in the same position as a father married to the mother for the purposes of section 18.

41. [Section 20 of the 1965 Act](#) provides for re-registration in certain cases, including where the register suggests that a person was born at a time when the person’s parents were not married but they have subsequently done so. Paragraph 1(4) of schedule 2 amends section 20 and extends this case to include the case where a person’s parents subsequently enter into a civil partnership.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Paragraph 2: Modification of the Family Law (Scotland) Act 1985

42. Paragraph 2 of schedule 2 amends the [Family Law \(Scotland\) Act 1985](#) (“the 1985 Act”). [Section 9 of the 1985 Act](#) sets down the principles to be applied by the court in deciding what order to make for financial provision on divorce or dissolution. Section 9(1)(c) of the 1985 Act provides that the economic burden of caring for certain children should be shared equally between the parties.

43. In the case of marriage, section 9(1)(c)(i) provides that it is any “child of the marriage” under the age of 16 that is taken into account. [Section 27 of the 1985 Act](#) states that the expression “child of the marriage” includes a child (other than a child who has been boarded out with the parties, or one of them, by a local or other public authority or a voluntary organisation) who has been accepted by the parties as a child of the family.

44. In the case of civil partnership, section 9(1)(c)(ii), on its face, provides that it is a child under the age of 16 who has been accepted by both partners as a child of the family or in respect of whom the partners are parents by virtue of the [Human Fertilisation and Embryology Act 2008](#) (“the 2008 Act”) that is taken into account.

45. There is therefore an asymmetry between the drafting concerning children of a marriage and that concerning children of a civil partnership. The Bill takes the opportunity to remedy that asymmetry by aligning the drafting treatment of each. This is possible given that both marriage and civil partnership will now be available to both same sex and different sex couples.

46. The Bill also takes the opportunity to remove references to the deeming provisions of the 2008 Act. Like those who adopt, it goes without saying that those who are parents under the 2008 Act, are parents for the purposes of the 1985 Act.

47. Paragraph 2(2) of schedule 2 amends section 9(1)(c)(ii) so that it echoes section 9(1)(a)(i) and simply refers to children of the civil partnership under the age of 16.

48. Paragraph 2(3) of schedule 2 amends section 27 of the 1985 Act (interpretation).

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

49. Sub-paragraph (a) amends the definition of “child” so that it includes a child whether or not its parents have ever been in a civil partnership with one another and that it now refers to “a child of the civil partnership” and makes clear that this includes a child who has been accepted by the parties as a child of the family.

50. Sub-paragraph (b) amends the definition of “family”. The definition currently spells out that “family” in relation to a civil partnership means the members of the civil partnership together with any child accepted by them both as a child of the family. The specific reference to civil partnership is repealed on the basis that those words state the obvious and are therefore unnecessary, particularly in light of the amendment to the definition of “child” in section 27, outlined above.

Paragraph 3: Modification of the Law Reform (Parent and Child) (Scotland) Act 1986

51. Paragraph 3 of schedule 2 amends the [Law Reform \(Parent and Child\) Scotland Act 1986](#). It amends [section 5](#) (presumptions) so that the conditions under which a man will be presumed to be the father of a child are extended to where he was in a civil partnership with the mother of the child at any time between conception and birth, even in the case of a void or voidable civil partnership.

Paragraph 4: Modification of the Children (Scotland) Act 1995

52. Paragraph 4 of schedule 2 amends the [Children \(Scotland\) Act 1995](#) (“the 1995 Act”). [Section 3 of the 1995 Act](#) sets out the circumstances in which a father will automatically acquire parental responsibilities and rights in relation to a child.

53. Paragraph 4(2)(a) of schedule 2 amends section 3 of the 1995 Act to extend those circumstances to where the father was in a civil partnership with the mother at the time of the child’s conception or subsequently. Paragraph 4(2)(b) of schedule 2 amends section 3(2) of the 1995 Act to make clear that a purported civil partnership will suffice for this purpose, if conditions are met.

54. Paragraph 4(3) of schedule 2 amends the definition of “child of the family” in [section 12 of the 1995 Act](#). That definition defines “child of the family” in two different ways, one relating to the parties to a marriage and the other relating to the parties to a civil partnership. The introduction of

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

different sex civil partnerships affords the opportunity to streamline that definition. Paragraph 4(3) repeals the existing two limbs of the definition in section 12 and replaces it with a single global definition, which captures children of both of the parties or children treated by both of them as a child of the family. The provision is silent as to the means by which the child came to be a child of both of them for the reasons set out above.

Change of gender of civil partners

55. Paragraphs 5-7 of schedule 2 of the Bill make consequential amendments to legislation concerning gender recognition so that a civil partner obtaining gender recognition can stay in the civil partnership.

Introduction

56. The position, prior to section 1 of the Bill coming into force, is that civil partnership is only available to same sex couples. As a result, the law has prevented one partner in a civil partnership from changing gender because that would result in an impermissible different sex civil partnership. Schedule 2 of the Bill modifies the following enactments to allow for the fact that, once section 1 comes into force, a civil partnership will be able to continue when the partners are no longer the same gender:

- the Gender Recognition Act 2004,
- the Civil Partnership Act 2004,
- the Marriage and Civil Partnership (Scotland) Act 2014.

Modification of the Gender Recognition Act 2004

Overview of the modifications to the Gender Recognition Act

57. The Gender Recognition Act enables people to change their legal gender. A change in legal gender is effected by the issuing of a full gender recognition certificate. The process for obtaining a full gender recognition certificate begins with an application to a gender recognition panel under [section 1 of the Gender Recognition Act](#). [Section 4 of that Act](#) sets out the circumstances in which a gender recognition panel, having granted an application, must issue a full gender recognition certificate or an interim gender recognition certificate. If the person who made the application is in a civil partnership, and the person's partner is not also changing gender, section 4 provides that a gender recognition panel can only issue an interim gender recognition certificate. This is because issuing a full gender recognition certificate to only one of the partners would result in a different sex civil partnership which, as mentioned in paragraph 56 above, was not

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

permitted when the Gender Recognition Act was enacted. The issuing of an interim gender recognition certificate allows the civil partnership to be dissolved (under [section 117\(2\)\(b\) of the Civil Partnership Act 2004](#)), at which point the court must issue a full gender recognition certificate under [section 5A of the Gender Recognition Act](#). The issuing of an interim gender recognition certificate can also lead to the issuing of a full gender recognition if the civil partnership ends as a result of the other partner's death (see [section 4F of the Gender Recognition Act](#)).

58. Paragraph 5 of schedule 2 modifies the Gender Recognition Act so that being in a civil partnership will cease to be an absolute barrier to one partner obtaining a full gender recognition certificate. In their effect, the modifications largely mirror those made to the Gender Recognition Act by [the Marriage and Civil Partnership \(Scotland\) Act 2014](#), which made same sex marriage possible and in consequence modified the Gender Recognition Act so that being married ceased to be an absolute barrier to one spouse obtaining a full gender recognition certificate.

Modification of sections 3 and 3D

59. [Sections 3 and 3D of the Gender Recognition Act](#) set out requirements that an application under section 1 must satisfy. (The requirements set out in section 3 apply if the application does not bear to be an application for a certificate under section 3A, 3C or 3E, whereas the requirements set out in section 3D apply if the application does bear to be an application for a certificate under section 3C.)³ Those sections are modified by sub-paragraphs (2) and (3) of paragraph 5 of schedule 2 so that applicants have to provide, as part of an application, a statutory declaration about the applicant's civil partnership. In particular, there must be a declaration about whether or not the applicant's civil partner consents to the partnership continuing. If a statutory declaration is made that the applicant's partner has consented to the partnership continuing, sections 3 and 3D are further modified so that the gender recognition panel, on receiving such a statutory declaration, must inform the applicant's civil partner. Whether or not an applicant's civil partner has consented to their civil partnership continuing will determine whether a full gender recognition

³ See [section 2 of the Gender Recognition Act](#). The Bill does not modify the requirements associated with applications that bear to be for certificates under section 3A or 3E because those provisions relate to applications by persons ordinarily resident in England and Wales.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

certificate or an interim certificate has to be issued (see paragraph 61 below).

60. It is a crime to deliberately make a false statement in a statutory declaration (see [section 44\(2\) of the Criminal Law \(Consolidation\) \(Scotland\) Act 1995](#)).

Modification of section 4

61. Section 4 of the Gender Recognition Act is modified by paragraph 5(4) of schedule 2 so that:

- the rule that a gender recognition panel can only issue an interim gender recognition certificate to an applicant who is in a civil partnership is abolished,
- where the conditions for granting a gender recognition certificate are met, the applicant is in a civil partnership, and both partners consent to the civil partnership continuing, the gender recognition panel is required to issue a full gender recognition certificate,
- if the gender recognition panel issues a full gender recognition certificate in those circumstances, the panel must notify the applicant's civil partner,
- where the conditions for granting a gender recognition certificate are met, the applicant is in a civil partnership, and one of the partners does not consent to the partnership continuing, the gender recognition panel is required to issue an interim gender recognition certificate.

Modification of section 4C

62. [Section 4C of the Gender Recognition Act](#) allows an individual who has an interim gender recognition certificate to apply to a gender recognition panel for a full gender recognition certificate. Paragraph 5(5) of schedule 2 modifies section 4C so that the panel must grant a full gender recognition certificate to an applicant who is in a civil partnership if, since the issuing of the interim certificate, both parties have decided to continue their partnership.

63. The terms of the new subsection (1A) of section 4C allow for the possibility that the relationship between the applicant and the applicant's partner may have changed from a civil partnership to a marriage in the period between the granting of the interim gender recognition certificate

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

and the application for a full gender recognition certificate under section 4C being determined. The change in the legal character of their relationship from one type to the other has no bearing on the availability of section 4C as a mechanism for going from an interim gender recognition certificate to a full gender recognition certificate.

Modification of section 4D

64. [Section 4D of the Gender Recognition Act](#), in its original form, deals with the situation in which an application for a full gender recognition certificate has been made under section 4C and the person's spouse dies before the application is determined. In light of the modifications to section 4C discussed above, which have the effect of making that section work in the same way for applicants in civil partnerships as it works for applicants in marriages, paragraph 5(6) of schedule 2 modifies section 4D so that it too works in the same way for people in marriages and civil partnerships.

Modification of section 4E

65. [Section 4E of the Gender Recognition Act](#), in its original form, allows a sheriff to grant a full gender recognition certificate to someone who has been granted an interim gender recognition certificate, notwithstanding the fact that the person is married and the person's spouse has not provided a statutory declaration consenting to the marriage continuing. Paragraph 5(7) of schedule 2 modifies section 4E so that the same route to being granted a full gender recognition certificate is available to people in civil partnerships.

Repeal of section 4F

66. [Section 4F of the Gender Recognition Act](#) provides a mechanism for a person with an interim gender recognition certificate to obtain a full gender recognition certificate where:

- the person's civil partner dies within 6 months of their submitting notice of their intention to change their civil partnership into a marriage, or
- within 6 months of their civil partnership changing into a marriage the person's spouse died.

67. Paragraph 5(8) of schedule 2 repeals section 4F because the other changes the schedule makes to the Gender Recognition Act mean that changing a civil partnership into a marriage is no longer a necessary step on the route to obtaining a full gender recognition certificate (see, in

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

particular, the discussion above in relation to sections 4 and 4C of the Gender Recognition Act).

Modification of section 5A

68. Paragraph 5(9) of schedule 2 modifies [section 5A of the Gender Recognition Act](#) so that it acknowledges the possibility that a full gender recognition certificate may have been issued under section 4E of that Act (the modifications to which are discussed above) before a court dissolves a civil partnership on the basis of an interim gender recognition certificate having been granted. The effect is simply to make clear that the court granting the dissolution is not to issue another full gender recognition certificate, on top of the one already issued under section 4E.

Repeal of section 5C

69. [Section 5C of the Gender Recognition Act](#) makes provision about the issuing of full gender recognition certificates to both parties in a civil partnership. Its purpose was to ensure that the legal gender of both partners changed simultaneously so as to avoid creating a different sex civil partnership. When different sex civil partnerships become lawful, section 5C will be redundant and therefore paragraph 5(10) removes it from the statute book.

Repeal of section 5D

70. [Section 5D of the Gender Recognition Act](#) empowers the Scottish Ministers to make provision, by order, to set up further procedures to issue full gender recognition certificates to applicants in protected Scottish civil partnerships (as defined in [section 25 of that Act](#)). The power has not been exercised since it was added to the Gender Recognition Act in 2014. As a result of the other changes schedule 2 makes to the Gender Recognition Act, the procedures for issuing full gender recognition certificates to applicants in protected Scottish civil partnerships will be the same as those for issuing full certificates to applicants in protected Scottish marriages. Paragraph 5(11) of schedule 2 repeals section 5D as the Scottish Ministers have no intention of exercising the power to create special procedures for issuing full gender recognition certificates to applicants in civil partnerships that are not available to applicants in marriages.

Further minor changes

71. Sub-paragraphs (12) to (18) of paragraph 5 of schedule 2 make a number of changes to the Gender Recognition Act in consequence of those discussed above.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Modification of the Civil Partnership Act 2004

72. [Section 117 of the Civil Partnership Act 2004](#) sets out the process for dissolving a civil partnership in the Scottish courts. Subsection (2)(b), in its original form, makes the issuing of an interim gender recognition certificate to one of the partners a ground for dissolving the partnership. The rationale for having this as a ground of dissolution was to allow the civil partnership to be brought to an end so that a full gender recognition certificate could be issued (the rule being that a full gender recognition certificate could not be issued if that would result in a different sex civil partnership because different sex civil partnerships were impermissible).

73. The modifications schedule 2 will make to the Gender Recognition Act 2004 (which are discussed above) will mean that a full gender recognition certificate can be issued to one civil partner, but only if the other partner consents to the partnership continuing. If an interim gender recognition certificate has been issued to one partner in a civil partnership and the civil partnership has continued after a full gender recognition certificate has been issued that can only mean (subject to one exception discussed below) that the other partner has consented to the civil partnership continuing. Since the other partner has consented to remain in the civil partnership, it follows that the issuing of the interim gender recognition certificate should cease to be a ground for dissolving the partnership. Paragraph 6 of schedule 2 amends section 117 of the Civil Partnership Act 2004 accordingly.

74. The exception (mentioned in the previous paragraph) to the rule that a civil partnership can only continue after the issuing of a full gender recognition certificate to one partner if the other partner consents to it continuing, is where the full gender recognition certificate is issued by a sheriff under section 4E of the Gender Recognition Act. As the issuing of a full gender recognition certificate to a person in a civil partnership under that section does not mean that the person's partner has consented to the civil partnership continuing, the amendment to section 117 of the Civil Partnership Act 2004 provides that the issuing of an interim gender recognition certificate remains a ground of dissolution despite the subsequent issuing of a full gender recognition certificate under section 4E.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Modification of the Marriage and Civil Partnership (Scotland) Act 2014

75. Section 30 of the Marriage and Civil Partnership (Scotland) Act 2014 allows the Scottish Ministers to make regulations about the solemnisation or registration of a marriage or civil partnership that is renewed after a full gender recognition certificate has been issued. In its original form, subsection (1)(b) of section 30 only provided for regulations to deal with the renewal of a civil partnership where both partners had been issued with a full gender recognition certificate. A civil partnership could not be renewed where a full gender recognition certificate had been issued to only one of the partners, because the change of legal gender of one of the partners only would result in what was, at the time, an impermissible different sex civil partnership.

76. Paragraph 7 of schedule 2 broadens the terms of section 30(1)(b) of the Marriage and Civil Partnership (Scotland) Act 2014 so that regulations can be made in relation to the renewal of a civil partnership following the issuing of a full gender recognition certificate to one of the partners. This change brings the terms of paragraph (b) of section 30(1) into line with the terms of paragraph (a), which allows for regulations to be made about the renewal of a marriage following the issuing of a full gender recognition certificate to one or both of the parties to the marriage.

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Civil Partnership (Scotland) Bill

Explanatory Notes

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -

www.scottish.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.scot/documents