

Civil Partnership (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Civil Partnership (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to enable persons of different sexes to be in a civil partnership; and for connected purposes.

Extension of civil partnership to different sex couples

1 Different sex civil partnerships

- 5 (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 1 (civil partnership), in subsection (1) the words “of the same sex” are repealed.

2 Recognition of overseas different sex relationships

- 10 (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 212 (meaning of “overseas relationship”), subsection (1)(b)(i) is repealed.
- (3) In section 213 (specified relationships)—
- (a) in subsection (1), for “by Schedule 20” substitute—
- 15 “(a) in the case of a relationship registered by two people who under the relevant law are of the same sex when the relationship is registered, by Part 1 of Schedule 20,
- (b) in the case of a relationship registered by two people who under the relevant law are not of the same sex when the relationship is registered, by Part 2 of Schedule 20”,
- (b) in subsection (2), after “amend” insert “Part 1 of”,
- 20 (c) in subsection (3), after “this section” insert “amending Part 1 of Schedule 20”,
- (d) in subsection (5), after “amending” insert “Part 1 of”,
- (e) in subsection (6), after “this section” insert “amending Part 1 of Schedule 20”,
- (f) after subsection (6) insert—
- 25 “(7) The Scottish Ministers may by regulations amend Part 2 of Schedule 20 by—
- (a) adding a relationship,
- (b) amending the description of a relationship,
- (c) omitting a relationship.

- (8) Regulations under subsection (7)—
- (a) amending the description of a relationship or omitting a relationship, are subject to the affirmative procedure,
 - (b) adding a relationship, are subject to the negative procedure.”.
- 5 (4) In section 215 (overseas relationship treated as civil partnerships: the general rule)—
- (a) in subsection (2), for “subsection (3)” substitute “subsections (3) and (3A)”,
 - (b) after subsection (3) insert—
- 10 “(3A) In its application to an overseas relationship between persons of different sexes entered into before this subsection comes into force, subsection (2) is subject to—
- (a) any provision to the contrary made by or under any enactment,
 - (b) regulations under subsection (3B).
- (3B) The Scottish Ministers may by regulations provide for subsection (2)—
- (a) to have effect subject to provision made by the regulations, or
 - 15 (b) not to apply in cases specified in the regulations.
- (3C) Regulations under subsection (3B)—
- (a) may include consequential, supplementary, incidental, transitional, transitory or saving provision,
 - (b) are subject to the negative procedure.”,
 - 20 (c) in subsection (6), the word “216,” is repealed.
- (5) Section 216 (the same sex requirement) is repealed.
- (6) In schedule 20 (meaning of overseas relationship: specified relationships)—
- (a) the existing text becomes Part 1,
 - (b) in that Part, in paragraph 1, for “section 213” substitute “section 213(1)(a)”,
 - 25 (c) after that Part insert as Part 2 the text in schedule 1 of this Act.

3 Interim recognition of different sex relationships formed outwith Scotland

- (1) This section applies to a civil partnership between persons of different sexes—
- (a) which is formed when they register as civil partners of each other—
- 30 (i) in England or Wales under Part 2 of the 2004 Act,
- (ii) in Northern Ireland under Part 4 of the 2004 Act,
- (b) which is formed when they register as civil partners of each other outside the United Kingdom under an Order in Council made under section 210 or 211 of the 2004 Act, or
 - (c) which they are treated under Chapter 2 of Part 5 of the 2004 Act as having formed
 - 35 (at the time determined under that Chapter) by virtue of having registered an overseas relationship.

- (2) Two persons in a civil partnership—
- (a) mentioned in subsection (1)(a) or (c) are to be treated as being in a marriage formed under the law of the country or territory in which the civil partnership or (as the case may be) overseas relationship is registered,
 - (b) mentioned in subsection (1)(b) are to be treated as having formed a marriage in the part of the United Kingdom in which the civil partnership is, by virtue of section 210(5) or (as the case may be) 211(4) of the 2004 Act, to be treated as having been registered.
- (2A) Nothing in subsection (2) prevents persons in a civil partnership to which this section applies—
- (a) presenting themselves as civil partners of each other,
 - (b) presenting their relationship as a civil partnership.
- (3) Subsections (2) and (2A) cease to have effect when section 4 comes into force (which is when it will become possible to register a civil partnership between persons of different sexes in Scotland).
- (4) The Scottish Ministers may by regulations—
- (a) provide for subsection (2) not to apply for purposes specified in the regulations,
 - (b) make transitional or saving provision in connection with subsection (2) ceasing to have effect.
- (5) Regulations under subsection (4) are subject to the negative procedure.
- (6) In this section, “the 2004 Act” means the Civil Partnership Act 2004.

Power to enable marriages to become civil partnerships

3A Power to enable marriages to become civil partnerships

- (1) The Scottish Ministers may by regulations make provision for, or in connection with, enabling the parties to a marriage—
- (a) to register as civil partners of each other,
 - (b) to change their marriage into a civil partnership.
- (2) Regulations under subsection (1) may in particular make provision—
- (a) about the marriages to which the regulations apply,
 - (b) about the ways in which marriages may be changed into civil partnerships under the regulations,
 - (c) modifying the Civil Partnership Act 2004 in its application—
 - (i) to registering civil partnerships and changing marriages into civil partnerships under the regulations, and
 - (ii) to civil partnerships formed by registration and civil partnerships formed by marriages changing into civil partnerships under the regulations,
 - (d) modifying the definition of “qualifying civil partnership” in section 5 of the Marriage (Scotland) Act 1977,
 - (da) modifying section 11(2)(b) of the Marriage and Civil Partnership (Scotland) Act 2014 in its application to qualifying civil partnerships where the parties to the

civil partnership were married to each other immediately before the civil partnership was formed,

(e) about the effect of registering civil partnerships and changing marriages into civil partnerships under the regulations,

(f) about when the resulting civil partnership is to be treated as having been formed and when the marriage is to be treated as having ended,

(g) for fees of such amounts as may be specified in or determined in accordance with the regulations.

(3) Regulations which make provision under subsection (1)(b) may provide for the regulations to apply only to marriages in categories specified in the regulations.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult the Registrar General of Births, Deaths and Marriages for Scotland.

(5) Regulations under subsection (1)—

(a) may make different provision for different purposes,

(b) may include incidental, supplementary, consequential, transitional, transitory or saving provision,

(c) may modify any enactment (including this Act),

(d) are (except where subsection (6) applies) subject to the negative procedure.

(6) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

Recognition of marriages converted to civil partnerships outwith Scotland

3B Recognition of marriages converted to civil partnerships outwith Scotland

(1) The Scottish Ministers may by regulations make provision of the type described in subsection (2) in relation to a marriage that is converted into a civil partnership in accordance with provision made under—

(a) section 2(5)(a) of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019, or

(b) section 8(5)(a) of the Northern Ireland (Executive Formation etc) Act 2019.

(2) The provision mentioned in subsection (1) is—

(a) provision for such a marriage to be treated in the law of Scotland as if the parties had registered as civil partners of each other in England and Wales or (as the case may be) Northern Ireland,

(b) provision as to—

(i) the date on which the parties' marriage is to be treated as having ended,

(ii) the date on which the parties are to be treated as having registered as civil partners.

(3) Regulations under subsection (1)—

(a) may make different provision for different purposes,

(b) may include incidental, supplementary, consequential, transitional, transitory or saving provision,

- (c) may modify any enactment (including this Act),
 - (d) are (except where subsection (4) applies) subject to the negative procedure.
- (4) Regulations under subsection (1) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

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*Eligibility and registration in Scotland***4 Eligibility of persons of different sexes to enter into a civil partnership**

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 86 (eligibility), subsection (1)(a) is repealed.

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

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- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 94A (persons who may register civil partnerships)—

- (a) in subsection (1)—

- (i) after “A civil partnership” insert “between persons of the same sex”,
- (ii) in paragraph (a)(i) after “civil partnerships” insert “between persons of the same sex”,
- (iii) in paragraph (a)(ii) after “section 94B” insert “to register civil partnerships between persons of the same sex”,
- (iv) in paragraph (a)(iii) after “section 94E” insert “to register civil partnerships between persons of the same sex”,

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- (b) after subsection (2) insert—

“(2A) A civil partnership between persons of different sexes may be registered by and only by—

- (a) a person who is—

- (i) a celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being a celebrant, is recognised by a religious or belief body so prescribed as entitled to register civil partnerships between persons of different sexes on its behalf,
- (ii) registered under section 94B to register civil partnerships between persons of different sexes, or
- (iii) temporarily authorised under section 94E to register civil partnerships between persons of different sexes, or

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- (b) a person who is a district registrar or assistant registrar appointed under section 87.

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(2B) The Scottish Ministers may prescribe a religious or belief body under subsection (2A)(a)(i) only if—

- (a) the body requests them to do so, and
- (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.”,

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- (c) in subsection (3)—
- (i) for “or (2)(a)” substitute “, (2)(a), (2A)(a) or (2B)(a)”,
 - (ii) in paragraph (a) after “subsection (2)(a)” insert “or subsection (2B)(a)”,
 - (iii) in paragraph (b) after “civil partnerships” insert “between persons of the same sex or between persons of different sexes”,
 - (iv) in paragraph (c) after “civil partnerships” insert “between persons of the same sex or between persons of different sexes”,
 - (v) in paragraph (d) after “civil partnerships” in the second place that it appears insert “between persons of the same sex or between persons of different sexes”,
- (d) in subsection (4)(a) after “subsection (1)(a)” insert “or (2A)(a)”,
- (e) in subsection (5) for “subsection (2)(b)” substitute “subsections (2)(b) and (2B)(b)”,
- (f) in section 126(4) (regulations) after “94A(1)(a)(i)” insert “, (2A)(a)(i)”.

6 Registration and removal of celebrants

- (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 94B (registration of nominated persons as celebrants)—
- (a) in subsection (1) after “civil partnerships” insert “between persons of the same sex”,
 - (b) after subsection (1) insert—

“(1A) A religious or belief body, not being prescribed by virtue of section 94A(2A)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to register civil partnerships between persons of different sexes.”.
 - (c) in subsection (2)—
 - (i) after “(1)” insert “or (1A)”,
 - (ii) after “that body” insert “in relation to registering civil partnerships between persons of the same sex or, as the case may be, civil partnerships between persons of different sexes”,
 - (d) in subsection (6)—
 - (i) in paragraph (a) after “(1)” insert “or (1A)”,
 - (ii) in paragraph (b) after “(1)” insert “or (1A)”,
 - (e) after subsection (6) insert—

“(6A) The register mentioned in subsection (6)(a)(ii) is to be in two parts—

 - (a) the first part containing the details mentioned in subsection (6)(a)(ii) in relation to persons nominated by religious or belief bodies to register civil partnerships between persons of the same sex, and
 - (b) the second part containing those details in relation to persons nominated by religious or belief bodies to register civil partnerships between persons of different sexes.”.

- (3) In section 94C (removal of celebrant's name from register)—
- (a) in subsection (1)(b) after “94B(1)” insert “or (1A)”,
 - (b) in subsection (5) after “94B(1)” insert “or (1A)”.

7 Temporary authorisation of celebrants

(1) The Civil Partnership Act 2004 is amended as follows.

(2) In section 94E (temporary authorisation of celebrants)—

(a) after subsection (2) insert—

“(2A) An authorisation under subsection (1)(b) may be granted in relation to—

(a) civil partnerships between persons of the same sex only,

(b) civil partnerships between persons of different sexes only, or

(c) both.”,

(b) in subsection (3) after “(1)(b)” insert “in relation to civil partnerships between persons of the same sex”,

(c) after subsection (3) insert—

“(3A) The Registrar General may grant an authorisation to a person under subsection (1)(b) in relation to civil partnerships between persons of different sexes only if the religious or belief body of which the person is a member—

(a) is prescribed by virtue of section 94A(2A)(a)(i), or

(b) has nominated members (whether or not including that person) under section 94B(1A).”.

8 Second registration of civil partnership

(1) The Civil Partnership Act 2004 is amended as follows.

(2) After section 97 insert—

“97A Second civil partnership registration

(1) Subsection (2) applies where—

(a) two people have registered a specified relationship (within the meaning of section 213) or a relationship which meets the general conditions (within the meaning of section 214), whether before or after section 8 of the Civil Partnership (Scotland) Act 2020 comes into force, and

(b) that relationship would result in them being treated as having formed a civil partnership under the law of Scotland (by virtue of section 1(1)(b) and Chapter 2 of Part 5) but for the fact that they cannot prove that the relationship has been registered as mentioned in section 212(1)(b).

(2) An authorised registrar may, on an application made by the parties to the relationship, subject to the approval of the Registrar General and to subsection (3), register their civil partnership as if they had not already registered that relationship with each other.

(3) Sections 85 to 100 apply for the purpose of registering a civil partnership under this section as they apply to registering a civil partnership under section 1, subject to the modifications set out in subsections (4) to (11).

(4) Section 85 (formation of civil partnership by registration) applies as if the words “the approved celebrant or, as the case may be,” in both places where they occur, were omitted.

(5) Section 86 (eligibility) does not apply in respect of the parties already being in civil partnership with each other.

(6) Section 88 (notice of proposed civil partnership) applies as if after subsection (1) there were inserted—

“(1A) Both parties must submit to the authorised registrar a statutory declaration—

(a) stating that they have previously registered their relationship, and

(b) specifying the date, place and country or territory at which, and the circumstances in which, they did so.”.

(7) Section 93A does not apply.

(8) Section 94 (the civil partnership schedule) applies as if after subsection (1) there were inserted—

“(1A) In the case of a civil partnership to be registered under section 97A, the civil partnership schedule is to contain such modifications as the Registrar General may direct to indicate that the parties have previously entered into a civil partnership with each other.”.

(9) Section 94A (persons who may register civil partnerships) applies as if subsections (1)(a), (2), (2A)(a), (2B), (3), (4)(a) and (b) and (5) were omitted.

(10) Sections 94B to 94E do not apply.

(11) Section 95 (further provision as to registration) applies as if after subsection (2) there were inserted—

“(2A) As soon as practicable after the civil partnership schedule has been signed in accordance with section 85, the authorised registrar must make an endorsement on it in the following terms—

“This civil partnership registration was carried out under section 97A of the Civil Partnership Act 2004, following a statutory declaration by the parties that they registered a relationship with each other on [date] at [place] in [country or territory].”.”.

Dissolution

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

(1) The Civil Partnership Act 2004 is amended as follows.

(2) After section 121 insert—

“121A Postponement of decree of dissolution where religious impediment to marry exists

(1) Notwithstanding that irretrievable breakdown of a civil partnership has been established in an action for dissolution, the court may—

(a) on the application of a party (“the applicant”), and

- (b) if satisfied—
 - (i) that subsection (2) applies, and
 - (ii) that it is just and reasonable to do so,

postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).

- (2) This subsection applies where—
 - (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage, and
 - (b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.
 - (3) A party complies with this subsection by acting in the way described in subsection (2)(b).
 - (4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).
 - (5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from the relevant religious body confirming that the other party has acted in the way described in subsection (2)(b).
 - (6) For the purposes of subsection (5), a religious body is “relevant” if the applicant considers the body competent to provide the confirmation referred to in that subsection.
 - (7) In this section—
 - “religious marriage” means a marriage solemnised by a marriage celebrant of a specified religious body, and “religion of that marriage” is to be construed accordingly,
 - “specified” means specified by regulations made by the Scottish Ministers.
 - (8) Any reference in this section to a marriage celebrant of a specified religious body is a reference to—
 - (a) a minister, clergyman, pastor or priest of such a body,
 - (b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 as empowered to solemnise marriages,
 - (c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.”.
- (3) In section 126(4) (regulations), for “or 106(3)(a)(i)” substitute “, 106(3)(a)(i) or 121A(7)”.

Marriage between civil partners in a qualifying civil partnership: celebrants

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

- (1) The Marriage (Scotland) Act 1977 is amended as follows.
- (2) In section 8 (persons who may solemnise marriage), after subsection (1A) insert—

“(1AA) For the avoidance of doubt, nothing in subsection (1)(a)—

- (a) imposes a duty on any person who is an approved celebrant in relation to marriage between persons of different sexes to solemnise a marriage between civil partners in a qualifying civil partnership (within the meaning of section 5(6)),
- (b) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise such a marriage.”.

Forced civil partnerships

11 Forced civil partnerships

- (1) The Anti-social Behaviour, Crime and Policing Act 2014 is amended as follows.
- (2) In section 122 (offence of forced marriage: Scotland)—
 - (a) in subsection (1), after “marriage” in both places where it occurs insert “or civil partnership”,
 - (b) in subsection (2), after “marriage” in both places where it occurs insert “or civil partnership”,
 - (c) after subsection (4) insert—
 - “(4A) “Civil partnership” includes—
 - (a) a civil partnership which exists by virtue of the Civil Partnership Act 2004, and
 - (b) a purported civil partnership.”,
 - (d) The section title becomes “**Offence of forced marriage or forced civil partnership: Scotland**”.

Consequential modifications

12 Consequential modifications

Schedule 2 modifies other enactments.

Final provisions

13 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may—
 - (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).
- (3) Regulations under this section—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, but
 - (b) otherwise are subject to the negative procedure.

14 Commencement

- (1) The following provisions come into force on the day after Royal Assent: this section and section 13 and 15.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section—
 - (a) may make different provision for different purposes,
 - (b) may include transitional, transitory or saving provision.

15 Short title

The short title of this Act is the Civil Partnership (Scotland) Act 2020.

SCHEDULE 1
(introduced by section 2(6)(c))

RECOGNITION OF OVERSEAS DIFFERENT SEX RELATIONSHIPS

1 The following is the text to be inserted as Part 2 of schedule 20 of the Civil Partnership
 5 Act 2004—

“PART 2

SPECIFIED RELATIONSHIPS: DIFFERENT SEX COUPLES

1 A relationship is specified for the purposes of section 213(1)(b) (meaning of
 10 “overseas relationship”) if it is registered in a country or territory given in the
 first column of the table and fits the description given in relation to that country
 or territory in the second column—

<i>Country or territory</i>	<i>Description</i>
Andorra	unió estable de parella (stable couple union)
Argentina: Autonomous City of Buenos Aires	unión civil (civil union)
Australia: Australian Capital Territory	civil partnership
Australia: New South Wales	a relationship registered under the Relationships Register Act 2010
Australia: Queensland	civil partnership
Australia: South Australia	registered relationship
Australia: Tasmania	significant relationship
Australia: Victoria	registered domestic relationship
Austria	eingetragene Partnerschaft (registered partnership)
Belgium	the relationship referred to as cohabitation légale, wettelijke samenwoning or gesetzliches zusammenwohnen (legal cohabitation)
Bermuda	domestic partnership
Brazil	união estável (stable union)
Canada: Manitoba	the relationship referred to as common-law relationship or as union de fait
Canada: Nova Scotia	domestic partnership
Canada: Quebec	the relationship referred to as union civile or as civil union

	<i>Country or territory</i>	<i>Description</i>
	Chile	acuerdo de unión civil (civil union agreement)
	Colombia	unión de hecho (de facto union)
5	Cyprus	civil cohabitation
	Ecuador	unión civil (civil union)
	the Falkland Islands	civil partnership
	France	pacte civil de solidarité (civil solidarity pact)
10	Gibraltar	civil partnership
	Greece	σύμφωνο συμβίωσης (cohabitation agreement)
	Hungary	bejegyzett élettársi kapcsolat (registered partnership)
15	Isle of Man	civil partnership
	Israel	civil union
	Luxembourg	the relationship referred to as partenariat enregistré or eingetragene Partnerschaft (registered partnership)
20	Malta	civil union
	Mexico: Campeche	sociedad civil de convivencia (civil cohabitation union)
	Mexico: Coahuila	pacto civil de solidaridad (civil solidarity pact)
25	Mexico: Mexico City Federal District	sociedad de convivencia (cohabitation arrangement)
	Mexico: Michoacan	sociedad de convivencia (cohabitation arrangement)
30	Mexico: Tlaxcala	sociedad de convivencia solidaria (permanent cohabitation arrangement)
	Netherlands	geregistreerd partnerschap (registered partnership)
	New Zealand	civil union
	San Marino	unione civile (civil union)
35	South Africa	civil partnership
	United States of America: California	domestic partnership

<i>Country or territory</i>	<i>Description</i>
United States of America: Colorado	the relationship between designated beneficiaries
5 United States of America: Colorado	civil union
United States of America: District of Columbia	domestic partnership
United States of America: Hawaii	civil union
10 United States of America: Illinois	civil union
United States of America: Maine	domestic partnership
United States of America: Nevada	domestic partnership
15 United States of America: New Jersey	domestic partnership
United States of America: Washington	state registered domestic partnership”.

SCHEDULE 2
(introduced by section 12)

CONSEQUENTIAL MODIFICATIONS

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

- 1 (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is modified as follows.
- 25 (2) In section 14(5) (duty to give information of particulars of birth), in both places that it appears, after “married to” insert “or in a civil partnership with”.
- (3) In section 18(1) (births of children born out of wedlock), in both places that it appears, after “married to” insert “or in a civil partnership with”.
- (4) In section 20(1)(c) (re-registration in certain cases)—
- 30 (a) after “not then married to” insert “or in a civil partnership with”,
- (b) after “subsequently married” insert “or entered into a civil partnership with”.

Modification of the Family Law (Scotland) Act 1985

- 2 (1) The Family Law (Scotland) Act 1985 is modified as follows.

- (2) In section 9(1)(c)(ii) (principles to be applied)—
- (a) after “child”, in the first place that it appears, insert “of the civil partnership,”,
 - (b) the words from “who has been accepted” to “parents” are repealed.
- (3) In section 27(1) (interpretation)—
- (a) in the definition of “child”—
 - (i) after “married to” insert “or in a civil partnership with”,
 - (ii) after “child of a marriage” insert “or the child of a civil partnership”,
 - (b) in the definition of “family” the words from “and in relation to a civil partnership” to “parents” are repealed.

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10 *Modification of the Law Reform (Parent and Child) (Scotland) Act 1986*

- 3 (1) The Law Reform (Parent and Child) (Scotland) Act 1986 is modified as follows.
- (2) In section 5 (presumptions)—
- (a) in subsection (1)(a) after “married to” insert “or in a civil partnership with”,
 - (b) in subsection (2) for the words from “apply” to the end substitute “apply—
 - (a) in the case of a void, voidable or irregular marriage as it applies in the case of a valid and regular marriage,
 - (b) in the case of a void or voidable civil partnership as it applies in the case of a valid civil partnership.”.

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Modification of the Children (Scotland) Act 1995

- 20 4 (1) The Children (Scotland) Act 1995 is modified as follows.
- (2) In section 3 (provisions relating both to parental responsibilities and to parental rights)—
- (za) in subsection (1)(a) after “married to” insert “or in a civil partnership with”,
 - (a) in subsection (1)(b)—
 - (i) in sub-paragraph (i) after “married to” insert “or in a civil partnership with”,
 - (ii) in sub-paragraph (ii) after “married to” insert “or in a civil partnership with”.
 - (b) in subsection (2) for the words from “been” to the end substitute “been—
 - (a) married to the mother at any time when he was a party to a purported marriage with her which was—
 - (i) voidable; or
 - (ii) void but believed by them (whether by error of fact or law) in good faith at that time to be valid;
 - (b) in a civil partnership with the mother at any time when he was a party to a purported civil partnership with her which was—
 - (i) voidable; or
 - (ii) void but believed by them (whether by error of fact or law) in good faith at that time to be valid.”.

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- (3) In section 12 (restrictions on decrees for divorce, separation or annulment affecting children), for subsection (4) substitute—

“(4) In this section “child of the family”, in relation to the parties to a marriage or civil partnership, means a child—

- (a) of both of them; or
 (b) who has been treated by both of them as a child of their family, not being a child who is placed with them as foster parents by a local authority or voluntary organisation.”.

Modification of the Gender Recognition Act 2004

- (1) The Gender Recognition Act 2004 is modified as follows.

- (2) In section 3 (evidence), after subsection (6F) insert—

“(6G) If the applicant is a party to a protected Scottish civil partnership, an application under section 1(1) must also include—

- (a) a statutory declaration by the applicant that the applicant wishes the civil partnership to continue after the issue of a full gender recognition certificate (if that is the case), and

(b) either—

- (i) 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
 (ii) a statutory declaration by the applicant that no such declaration by the applicant's civil partner is included.

(6H) If an application includes a statutory declaration of consent by the applicant's civil partner under subsection (6G)(b)(i), the Gender Recognition Panel must give the civil partner notice that the application has been made.”.

- (3) In section 3D (evidence for granting applications on alternative grounds: Scotland)—

(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 of consent (within the meaning of section 3(6G)(b)(i)) by the applicant's civil partner (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”.

(4) In section 4 (successful applications)—

(a) in subsection (3)(e), for “(3C)(b)” substitute “(3C)(c)”,

(b) in subsection (3C)—

(i) paragraph (b) is repealed,

(ii) after paragraph (a) insert—

“(c) the applicant is a party to a protected Scottish civil partnership and both parties to the partnership consent to it continuing after the issue of a full gender recognition certificate,”,

(c) in subsection (3D)—

(i) paragraphs (c) and (d) are repealed,

(ii) after paragraph (b) insert—

“(ba) the applicant is a party to a protected Scottish civil partnership and either party to the partnership does not consent to it continuing after the issue of a full gender recognition certificate,”,

(d) after subsection (3E) insert—

“(3EA) If a Gender Recognition Panel issues a full gender recognition certificate under this section to an applicant who is a party to a protected Scottish civil partnership, the Panel must give the applicant's civil partner notice of the issue of the certificate.”,

(e) subsection (3F) is repealed.

(5) In section 4C (married person with interim certificate: issue of full certificate (Scotland))—

(a) in subsection (1), for “in either of the following cases” substitute “if, on an application by the person (“the applicant”), the Panel is satisfied that the conditions set out in subsection (1A) are met”,

(b) after subsection (1) insert—

“(1A) The conditions referred to in subsection (1) are—

(a) an interim gender recognition certificate has been issued to the applicant,

(b) when the interim gender recognition certificate was issued, the applicant and another person (“P”) were the parties to—

(i) a protected Scottish marriage, or

(ii) a protected Scottish civil partnership,

(c) the applicant and P are still, or have since become, the parties to—

(i) a protected Scottish marriage, or

- (ii) a protected Scottish civil partnership, and
- (d) P consents to the marriage or civil partnership continuing after the issue of a full gender recognition certificate.”,
- (c) subsections (2) and (3) are repealed,
- 5 (d) in subsection (4), for “(2) or (3)” substitute “(1)”,
- (e) in subsection (5), for “(2)” substitute “(1)”,
- (f) subsection (6) is repealed,
- (g) in subsection (7)—
- (i) for “(2) or (3)” substitute “(1)”,
- 10 (ii) after “3(6D)(b)(i)” insert “or (6G)(b)(i)”,
- (iii) after “spouse” insert “or (as the case may be) civil partner”,
- (h) subsection (8) is repealed,
- (i) in subsection (9), after “spouse” insert “or (as the case may be) civil partner”,
- (j) the section title becomes “**Married person or civil partner with interim certificate: issue of full certificate (Scotland)**”.
- 15 (6) In section 4D (application under section 4C: death of spouse)—
- (a) in subsection (1)—
- (i) for “4C(2) or (3)” substitute “4C”,
- (ii) after “applicant’s spouse” insert “or (as the case may be) civil partner”,
- 20 (iii) in paragraph (a) after “spouse” insert “or civil partner”,
- (b) the section title becomes “**Application under section 4C: death of spouse or civil partner**”.
- (7) In section 4E (married person with interim certificate: issue of full certificate on application to the sheriff (Scotland))—
- 25 (a) in subsection (1)—
- (i) for paragraph (b) substitute—
- “(b) the person and another person (“P”) are the parties to—
- (i) a protected Scottish marriage, or
- (ii) a protected Scottish civil partnership”,
- 30 (ii) in paragraph (c)—
- (A) for “the person’s spouse” substitute “P”,
- (B) for “the spouse” substitute “P”,
- (C) after “marriage” insert “or (as the case may be) civil partnership”,
- (b) in subsection (2), for paragraphs (a) and (b) substitute—
- 35 “(a) at the time when the interim gender recognition certificate was issued, the applicant and P were the parties to—
- (i) a protected Scottish marriage, or

- (ii) a protected Scottish civil partnership,
- (b) the applicant and P are still, or have since become, the parties to—
 - (i) a protected Scottish marriage, or
 - (ii) a protected Scottish civil partnership, and”,
- 5 (c) in subsection (3), after “spouse” insert “or (as the case may be) civil partner”,
- (d) the section title becomes “**Married person or civil partner with interim certificate: issue of full certificate on application to the sheriff (Scotland)**”.
- (8) Section 4F is repealed.
- (9) In section 5A (issue of full certificate where applicant has been a civil partner), after
10 subsection (1) insert—
 - “(1A) Subsection (1) does not apply where a full gender recognition certificate has already been issued, to the party to whom the interim gender recognition certificate was issued, by the sheriff under section 4E.”.
- (10) Section 5C is repealed.
- 15 (11) Section 5D is repealed.
- (12) In section 7 (applications: supplementary), in subsection (1) the word “4F,” is repealed,
- (13) In section 8 (appeals etc.)—
 - (a) in subsection (1), the word “4F,” is repealed,
 - (b) in subsection (5), the word “4F,” is repealed,
 - 20 (c) in subsection (5B), the word “4F,” is repealed.
- (13A) For section 11B substitute—

“11B Change in gender of civil partner

- (1) This section applies in relation to a protected civil partnership if (by virtue of
25 section 4(2)(c) or 4A) a full gender recognition certificate is issued to a party to the partnership.
- (2) The continuity of the protected civil partnership is not affected by the relevant change in gender.
- (3) If the protected civil partnership is a protected overseas relationship, the
30 continuity of the civil partnership continues by virtue of subsection (2) notwithstanding any impediment under the relevant law.
- (4) In this section—
 - “impediment” means anything which would affect the continuation of the overseas relationship merely by virtue of the relevant change in gender,
 - 35 “relevant change in gender” means the change or changes in gender occurring by virtue of the issue of the full gender recognition certificate or certificates,
 - “relevant law”, in relation to the protected overseas relationship in question, has the same meaning as in Chapter 2 of Part 5 of the Civil
40 Partnership Act 2004.”.

- (14) In section 11D (continuity of civil partnership: Scotland), for the words from “full” to the end substitute “a full gender recognition certificate to either (or both) of the civil partners.”.
- (15) In section 22 (prohibition on disclosure of information), in subsection (2)(a) for the words from “under” to “6(1)” substitute “under any other section of this Act”,
- (16) In section 24 (orders and regulations), in subsection (5B) the words “or 5D(1)” are repealed.
- (17) In section 25 (interpretation), in subsection (1)—
- (a) in the definition of “full gender recognition certificate”, for “5A or 5D” substitute “or 5A”,
 - (b) in the definition of “protected civil partnership”, for the words from “means” to the end substitute “means—
 - (a) a civil partnership under the law of England and Wales or under the law of Northern Ireland, or
 - (b) an overseas relationship that is treated as a civil partnership by virtue of Chapter 2 of Part 5 of the Civil Partnership Act 2004, and “protected overseas relationship” means a protected civil partnership within paragraph (b),”.
- (18) In schedule 3 (registration)—
- (a) in paragraph 19, the word “4F,” is repealed,
 - (b) in paragraph 20A(4), in the definition of qualifying Scottish civil partnership, for “each” substitute “one, or each,”.

Modification of the Civil Partnership Act 2004

6 (1) The Civil Partnership Act 2004 is modified as follows.

- (2) In section 117 (dissolution)—
- (a) in subsection (2)(b), before “an interim” insert “subject to subsection (3A),”,
 - (b) after subsection (3) insert—
 - “(3A) Subsection (2)(b)—
 - (a) does not apply where, under the Gender Recognition Act 2004, a Gender Recognition Panel issues a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued, but
 - (b) continues to apply despite a full gender recognition certificate being issued to that person by the sheriff under section 4E of that Act.”.
- (3) In section 122 (registration of dissolution of civil partnership)—
- (a) in subsection (1), after “dissolution” insert “and of declarator of nullity”,
 - (b) in subsection (5), after “dissolution” insert “or, as the case may be, of the declarator of nullity of civil partnership”,
 - (c) the section title becomes “**Registration of dissolutions and declarators of nullity of civil partnerships**”.

(4) In section 225 (jurisdiction of Scottish courts)—

(a) after subsection (3) insert—

“(3A) The sheriff has jurisdiction to entertain an action for declarator of nullity of a civil partnership if (and only if)—

(a) the requirements as to domicile or habitual residence that would apply were the action to have been begun in the Court of Session under subsection (3) (other than paragraph (c)) are met, and

(b) either of the ostensible civil partners—

(i) was resident in the sheriffdom for a period of 40 days ending with the date when the action is begun, or

(ii) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date and has no known residence in Scotland at that date.”,

(b) in subsection (4)—

(i) “(but only where the court is the Court of Session)” is repealed,

(ii) for “(3)” in both places that it appears substitute “(3A)”.

(5) In section 237 (supplementary provisions relating to recognition of dissolution etc.), in subsection (2)(b)(ii), for “legal relationships between two people of the same sex” substitute “relationships of the sort that the civil partnership in question is (whether generally, between two persons of the same sex, or between two persons of different sexes)”.

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

7 (1) The Marriage and Civil Partnership (Scotland) Act 2014 is modified as follows.

(2) In section 30 (renewed marriage or civil partnership following issue of full gender recognition certificate), in subsection (1)(b) for “both parties” substitute “a party (or both parties)”.

Civil Partnership (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to enable persons of different sexes to be in a civil partnership; and for connected purposes.

Introduced by: Shirley-Anne Somerville
On: 30 September 2019
Bill type: Government Bill

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