

# Equalities, Human Rights and Civil Justice Committee

1st Meeting, 2022 (Session 6), Tuesday 11 January 2022

## Subordinate legislation

### Note by the clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:

- [SSI 2021/461: The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations\) \(Scotland\) Amendment Regulations 2021](#)

### 2021/461: The Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Amendment Regulations 2021

2. The SSI is being laid before the Scottish Parliament under section 237(4) of the Civil Partnership Act 2004 and comes into force on 28 February 2022.
3. These Regulations amend the Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Regulations 2005 (“the 2005 Regulations”) to take account of the introduction of mixed sex civil partnership in Scotland.
4. Regulation 3 of the 2005 Regulations modifies the application of section 235 of the Civil Partnership Act 2004 which concerns the circumstances in which an order granting an overseas dissolution, annulment or legal separation of a civil partnership is to be recognised in the United Kingdom. The effect of the modification is to relax the conditions for recognition in cases where the person seeking the order was habitually resident or domiciled in a country where same sex relationships aren’t recognised and where there is no provision for the granting of such orders in relation to same sex couples.

5. The relaxation of the conditions for recognition applies where, in the country in question, there is no recognition of the relevant sort of relationship and no provision for the granting of such orders in relation to the relevant sort of relationship. “The relevant sort of relationship” is defined as referring to the sort of relationship generally, or those between same sex couples or those between mixed sex couples in particular.

## Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [21 December 2021](#). The DPLR Committee agreed that it did not need to draw the Parliament’s attention to the instrument on any grounds within its remit.
7. A copy of the Scottish Government Policy Note is included at [Annexe A](#) together with links to any associated documents.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for negative instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
9. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
10. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
11. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
12. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another

instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

13. Each negative instrument appears on the Equalities, Human Rights and Civil Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.
- 15. The Committee is invited to consider the instrument and report to the Parliament by 31 January 2022.**

Clerks to the Committee  
6 January 2022

# Annexe A

## Scottish Government Policy Note

### The Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Amendment Regulations 2021

The above instrument was made in exercise of the powers conferred by section 237(2) of the Civil Partnership Act 2004. The instrument is subject to negative procedure

#### Purpose of the instrument

The instrument is about the recognition in Scotland of an overseas dissolution, annulment or separation relating to an overseas relationship where a civil partner is in a third country. The instrument reflects that civil partnership in Scotland is now a mixed sex relationship as well as a same sex relationship.

#### Policy objectives

Section 235 of the [Civil Partnership Act 2004](#) (“the 2004 Act”) makes provision on the recognition in the UK of an overseas dissolution, annulment or separation of a relationship treated in the UK as a civil partnership. It specifies the connection that the parties to the relationship must have with the jurisdiction in which the dissolution, annulment or separation was obtained in order for it to be recognised in Scotland.

In general terms, the provisions in the 2004 Act on the recognition of overseas dissolutions of civil partnerships are modelled very closely on provisions in the [Family Law Act 1986](#) (“the 1986 Act”) on the recognition of overseas divorces.

The 1986 Act reflects that in overseas jurisdictions divorce may be obtained through court proceedings (as in the UK) or, in some places, through administrative means (eg a divorce granted by a responsible authority other than the courts).

The 1986 Act implemented in the UK the Hague Convention on the recognition of divorces and legal separations. Around 20 countries, including the UK, have ratified this Convention.

Section 237 of the 2004 Act contains supplementary provisions relating to recognition of dissolutions etc and includes a power to make regulations at

subsection. For Scotland, the powers under section 237(2) have been used to make the Civil Partnership (Supplementary Provisions Relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Regulations 2005 (SSI 2005/567).

Regulation 3 of SSI 2005/567 modifies the application of section 235 of the 2004 Act. The effect of the modification is to relax the conditions for recognition in Scotland in cases where the person seeking the order for dissolution, annulment or separation was habitually resident or domiciled in a third country where same sex relationships are not recognised and where there is no provision for the granting of such orders in relation to same sex couples.

The powers at section 237(2) were amended by paragraph 6(5) of schedule 2 of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”) to reflect the introduction of mixed sex civil partnership.

Regulation 2 of these Regulations now amends regulation 3 of SSI 2005/567. The effect is that the relaxation of the conditions for recognition applies where, in the third country in question, there is no recognition of the relevant sort of relationship and no provision for the granting of such orders in relation to the relevant sort of relationship. “Relevant sort of relationship” is defined as referring to the sort of relationship generally, or those between same sex couples or those between mixed sex couples in particular.

## Consultation

There was no specific consultation on this instrument. However, the Scottish Government carried out a public consultation before introducing the Civil Partnership (Scotland) Bill (“the Bill”), which led to the 2020 Act, into Parliament.

## Impact Assessments

There are no specific Impact Assessments for this instrument. However, the Scottish Government prepared Impact Assessments for the Bill, including an equality impact assessment.

- [Civil Partnership \(Scotland\) Bill: equality impact assessment - gov.scot \(www.gov.scot\)](http://www.gov.scot/CivilPartnership(Scotland)Bill/equality-impact-assessment)

## Financial Effects

The Scottish Government prepared a Business and Regulatory Impact Assessment for the Bill, along with a Financial Memorandum.

- [Civil Partnership \(Scotland\) Bill: business and regulatory impact assessment - gov.scot \(www.gov.scot\)](http://www.gov.scot/CivilPartnership(Scotland)Bill/business-and-regulatory-impact-assessment)

No costs are expected from this instrument. The instrument is about the recognition in Scotland of overseas dissolutions, annulments and separations rather than about cases before the Scottish courts. In any event, the number of dissolutions, annulments and separations covered by this instrument is expected to be low.