

Equalities, Human Rights and Civil Justice Committee

22nd Meeting, 2022 (Session 6), Tuesday 6
September 2022

Subordinate legislation

Note by the Clerk

Purpose of the paper

1. This paper invites the Committee to consider the following two negative instruments:
 - [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Scotland\) Amendment Regulations 2022 \(SSI 2022/201\)](#) – Policy Note and links to relevant impact assessments are at [Annexe A](#).
 - [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Modification\) \(Scotland\) Amendment Order 2022 \(SSI 2022/202\)](#) – Policy Note and links to relevant impact assessments are at [Annexe B](#).

The Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 2022 (SSI 2022/201)

2. These Regulations amend the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 (“the 2016 Regulations”) which provide for the making of a new entry in the register of marriages or the civil partnership register when a full Gender Recognition Certificate is issued to a party, or to each party, to a marriage or civil partnership.
3. The 2016 Regulations have previously only made provision for the making of a new entry relating to a civil partnership when both partners have been issued with full Gender Recognition Certificates.
4. In consequence of the introduction of mixed sex civil partnership in Scotland and the associated amendments to the Gender Recognition Act 2004 made by the Civil Partnership (Scotland) Act 2020, it has become possible for a full Gender Recognition Certificate to be issued to only one of the parties to a civil partnership and for the civil partnership to continue.

5. These Regulations make consequential amendments to the 2016 Regulations to provide for the making of a new entry in the civil partnership register when a full Gender Recognition Certificate has been issued to either one or both partners.
6. The provisions provide for the particulars recorded in the original civil partnership register entry to be modified in the new entry where necessary to prevent party's transgender status or history being disclosed by showing either the date the civil partnership was registered, the identity of the religious or belief celebrant who registered it, or the place where it was registered.
7. Regulation 2(7) and the schedule substitute the form to be used for an application by civil partners.
8. Regulation 2(3) amends the provisions of the 2016 Regulations relating to applications by married couples to prevent a party's transgender status or history being disclosed where the marriage was originally solemnised outside the UK in accordance with certain enactments.

The Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022 (SSI 2022/202)

9. This Order amends the Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016 ("the 2016 Order"). The 2016 Order modifies the operation of the law concerning the registration of marriages and civil partnerships where a new entry is made in the register of marriages or the civil partnership register in accordance with the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 ("the 2016 Regulations").
10. Such an entry may be made when a full Gender Recognition Certificate has been issued to a party, or to both parties, to a marriage or civil partnership, so the information on the register does not identify them as having obtained a gender recognition certificate.
11. In consequence of amendments to the 2016 Regulations, a new civil partnership register entry may show a civil partnership as having been registered on a date other than that shown on the existing entry. This Order amends the 2016 Order so that, in cases in which a new entry has been made in the civil partnership register, an extract of the entry is only sufficient evidence of the date of registration where the dates shown on the existing entry and the new entry are the same.

Delegated Powers and Law Reform Committee Consideration

12. The Delegated Powers and Law Reform Committee (DPLR) considered the instruments at its meeting on 21 June 2022. The DPLR Committee agreed that it did not need to draw the Parliament's attention to either of the instruments on any grounds within its remit.

Equalities, Human Rights and Civil Justice Committee Consideration

13. The instruments were laid on 9 June 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. They are subject to negative procedure and are due to come into force on 23 September 2022.
14. **The Committee is invited to consider any issues which it wishes to raise on these instruments and is required to report to the Parliament by 19 September 2022 on both instruments.**

Procedure for negative instruments

15. 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.
16. 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).
17. 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.
18. 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.
19. 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.

20. 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.

21. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Clerks to the Committee
September 2022

Annexe A

SSI 2022/201

The Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 2022

Policy Note

The above instrument was made by the Registrar General, with the approval of the Scottish Ministers, in exercise of the powers conferred by paragraph 20A(1) of schedule 3 of the Gender Recognition Act 2004. The instrument is subject to negative procedure.

Summary

The Civil Partnership (Scotland) Act 2020 (the 2020 Act) made provision on the introduction of mixed sex civil partnership in Scotland. As mixed sex civil partnership is now available, it is possible for a person in a civil partnership to obtain a full Gender Recognition Certificate (GRC) and stay in the civil partnership: previously, this was only possible if both civil partners obtained a GRC on the same day. This instrument makes provision on the re-registration of a civil partnership after obtaining a GRC to reflect the changes made by the 2020 Act.

Policy objectives

These Regulations amend the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016¹ (“the 2016 Regulations”). These provide for the making of a new entry in the register of marriages or the civil partnership register when a full Gender Recognition Certificate (GRC) is issued to a party, or to each party, to a marriage or civil partnership.

The 2016 Regulations made provision for the making of a new entry in the civil partnership register when both civil partners have been issued with full GRCs on the same day. In consequence of the introduction of mixed sex civil partnership in Scotland, and amendments to the Gender Recognition Act 2004 made by the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”), it has become possible for a full GRC to be issued to only one of the parties to a civil partnership and for the civil partnership to continue. The Civil Partnership (Scotland) Act 2020 (Commencement

¹ [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

No. 4, Saving and Transitional Provision) Regulations 2021 commenced the amendments made by the 2020 Act on gender recognition².

These Regulations now amend the 2016 Regulations to provide for the making of a new entry in the civil partnership register when a full GRC has been issued to either one or both civil partners. The policy intention is to follow the registration procedures that were laid down by the 2016 Regulations and adjust them to reflect the amendments made by the 2020 Act. (It was already possible for a full GRC to be issued to only one of the parties to a marriage and for the marriage to continue: registration procedures currently reflect that).

The provisions added by regulation 2(4) and (5) provide for the particulars recorded in the original civil partnership register entry to be modified in the new entry where necessary to prevent a party's transgender status being disclosed as a result of showing the date the civil partnership was registered or the identity of the religious or belief celebrant who registered it or the place where it was registered.

Regulation 2(7) and the schedule substitute the form to be used for an application by civil partners to re-register their civil partnership following gender recognition. Updated guidance has been prepared for civil partners, and married couples, wishing to re-register their civil partnership, or marriage, following gender recognition. This guidance is attached as an annex to this Policy Note.

Regulation 2(3) amends the provisions of the 2016 Regulations relating to applications by married couples to prevent a party's transgender status being disclosed where the marriage was originally solemnised outside the UK through the UK consular service or the UK armed forces.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process³. The Policy Memorandum for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise on civil partnership held in 2018⁴.

The Registrar General and the Scottish Ministers have worked closely together on the preparation of these Regulations and the related Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022.

The Scottish Trans Alliance have been consulted on the detail of the provisions contained in these Regulations and the related Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022.

² [The Civil Partnership \(Scotland\) Act 2020 \(Commencement No. 4, Saving and Transitional Provision\) Regulations 2021 \(legislation.gov.uk\)](#)

³ [Civil Partnership \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

⁴ [Civil Partnership \(Scotland\) Bill Policy Memorandum \(parliament.scot\)](#)

Impact assessments

The Scottish Government prepared and published a range of Impact Assessments for the Bill which preceded the 2020 Act:

- [Business and Regulatory Impact Assessment](#)
- [Child Rights and Wellbeing Impact Assessment](#)
- [Equality Impact Assessment](#)

Financial effects

As indicated above, a Business and Regulatory Impact Assessment was prepared for the Bill which preceded the 2020 Act. A Financial Memorandum was also prepared for the Bill.

- [Financial Memorandum](#)

Costs arising from this SSI are negligible. The number of persons seeking to stay in their marriage after obtaining a GRC is low⁵. Given this, the number of civil partners seeking to stay in their civil partnership after obtaining a full GRC is also expected to be low.

National Records of Scotland
June 2022

⁵ UK statistics on applications for GRCs by marital status are at [Tribunal Statistics Quarterly: January to March 2021 - GOV.UK \(www.gov.uk\)](#) [See Main Tables and then GRP 4]. See also [Tribunal Statistics Quarterly: October to December 2021 - GOV.UK \(www.gov.uk\)](#) {section 6}.

Annexe B

SSI 2022/202

The Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022

Policy Note

The above instrument was made in exercise of the powers conferred by 23(1) of the Gender Recognition Act 2004. The instrument is subject to negative procedure.

Summary

The introduction of mixed sex civil partnership in Scotland means that civil partners can obtain a full Gender Recognition Certificate (GRC) and stay in their civil partnership: previously, this was only possible where both civil partners obtained a full GRC on the same day. When a civil partner obtains a full GRC, both partners can apply to have a new entry for their civil partnership made in the civil partnership register. The new entry, which will reflect the acquired gender of the partners, may in certain circumstances show the civil partnership as having been registered on a date other than the date on which it was actually registered. This Order amends an Order made in 2016 to provide that an extract of the new entry is only sufficient evidence of the date of registration where the dates shown on the existing entry and the new entry are the same.

Policy objectives

This Order amends the Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016⁶ (“the 2016 Order”). The 2016 Order modifies the operation of aspects of the law concerning the registration of marriages and civil partnerships in relation to cases in which a new entry is made in the register of marriages or the civil partnership register under the Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016⁷ (“the 2016 Regulations”). Such an entry may be made following the issue of a Gender Recognition Certificate (“GRC”).

⁶ [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Modification\) \(Scotland\) Order 2016 \(legislation.gov.uk\)](#)

⁷ [The Gender Recognition \(Marriage and Civil Partnership Registration\) \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](#)

As a result of amendments to the 2016 Regulations, a new civil partnership register entry may show a civil partnership as having been registered on a date other than that shown on the existing entry. As a consequence, this Order amends the 2016 Order to provide that, in cases in which a new entry has been made in the civil partnership register, the operation of section 41A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁸ is modified so that an extract of the entry is only sufficient evidence of the date of registration where the dates shown on the existing entry and the new entry are the same.

The 2016 Order already makes similar provision in respect of entries in the marriage register.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process⁹. The Policy Memorandum for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise on civil partnership held in 2018¹⁰.

The Scottish Ministers and the Registrar General have worked closely together on the preparation of this Order and the related Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 2022.

The Scottish Trans Alliance have been consulted on the detail of the provisions contained in this Order and the related Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 2022.

Impact assessments

The Scottish Government prepared and published a range of Impact Assessments for the Bill which preceded the 2020 Act:

- [Business and Regulatory Impact Assessment](#)
- [Child Rights and Wellbeing Impact Assessment](#)
- [Equality Impact Assessment](#)

Financial effects

No significant costs are expected to arise as a consequence of this Order.

⁸ [Registration of Births, Deaths and Marriages \(Scotland\) Act 1965 \(legislation.gov.uk\)](#)

⁹ [Civil Partnership \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

¹⁰ [Civil Partnership \(Scotland\) Bill Policy Memorandum \(parliament.scot\)](#)