

2021 No. 23 (C. 1)

CIVIL PARTNERSHIP

**The Civil Partnership (Scotland) Act 2020 (Commencement
No. 3, Saving and Transitional Provision) Regulations 2021**

Made - - - - at 1.40 p.m. on 18th January 2021

Laid before the Scottish Parliament at 4.30 p.m. on 18th January 2021

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 3(5)(b), 15 and 16(2) of the Civil Partnership (Scotland) Act 2020(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021.

(2) With the exception of those provisions mentioned in paragraph (3), these Regulations come into force on 1 February 2021.

(3) Regulations 2 and 3 and the schedule come into force on 1 June 2021.

(4) In these Regulations—

(a) unless otherwise stated, a reference to a numbered provision is to the provision so numbered in the Civil Partnership (Scotland) Act 2020,

(b) “the 2004 Act” means the Civil Partnership Act 2004(b).

Provisions coming into force on 1 June 2021

2.—(1) 1 June 2021 is the day appointed for the coming into force of the provisions of the Civil Partnership (Scotland) Act 2020 specified in column 1 of the table in the schedule of these Regulations, the subject matter of which is described in column 2 of the table.

(2) Where a purpose is specified in column 3 of the table in relation to any provision, the provision comes into force on 1 June 2021 for that purpose only.

(a) 2020 asp 15. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the negative procedure by virtue of section 33(4) of that Act.

(b) 2004 c.33.

Saving and transitional provision: end of interim recognition of different sex relationships

3.—(1) The cessation of the interim treatment of different sex relationships formed outwith Scotland by section 3(4) does not affect—

- (a) anything done prior to 1 June 2021 by one or both of the deemed spouses—
 - (i) in relation to a deemed marriage, or
 - (ii) otherwise as a deemed spouse or as deemed spouses,
- (b) anything done prior to 1 June 2021 by any other person in relation to—
 - (i) a deemed marriage, or
 - (ii) one or both of the deemed spouses (as a deemed spouse or as deemed spouses), or
- (c) any relevant court proceedings which have concluded prior to 1 June 2021.

(2) Anything done prior to 1 June 2021 by a person as a deemed spouse is to be treated on or after 1 June 2021 as if it had been done by that person as a civil partner.

(3) Anything done prior to 1 June 2021 by any other person in relation to a deemed marriage, or in relation to one or both of the deemed spouses (as a deemed spouse or as deemed spouses), is to be treated on or after 1 June 2021 as if it had been done by the other person in relation to a civil partnership, or in relation to that person or those persons as a civil partner or as civil partners.

(4) Paragraph (5) has effect, subject to paragraph (6), in relation to any relevant court proceedings which have not concluded prior to 1 June 2021.

(5) In the proceedings—

- (a) a reference to a deemed marriage has effect on or after 1 June 2021 as, or as including, a reference to a civil partnership between the same parties, and
- (b) a reference to a person as a deemed spouse has effect on or after 1 June 2021 as, or as including, a reference to that person as a civil partner.

(6) Where, before 1 June 2021, section 3(2) applies to the determination of an application for an ancillary order, by virtue of regulation 3(2) and (3) of the Civil Partnership (Scotland) Act 2020 (Commencement No. 1 and Interim Recognition of Different Sex Relationships) Regulations 2020(a), section 3(4) does not affect the continued treatment of the parties to the deemed marriage as spouses for the purpose of the determination of the application.

(7) Unless the contrary intention appears, in any document executed prior to 1 June 2021—

- (a) a reference to a deemed marriage has effect on or after 1 June 2021 as, or as including, a reference to a civil partnership between the same parties, and
- (b) a reference to a person as a deemed spouse has effect on or after 1 June 2021 as, or as including, a reference to that person as a civil partner.

(8) In this regulation—

- (a) “ancillary order” means an order relating to children, aliment, financial provision or the regulation of occupancy rights in an action for—
 - (i) the dissolution of a civil partnership,
 - (ii) the separation of civil partners, or
 - (iii) declarator of nullity of a civil partnership,
- (b) “deemed marriage” means a relationship treated as a marriage in accordance with section 3(2), and “deemed spouse” is to be construed accordingly,

(a) S.S.I. 2020/414.

- (c) “relevant court proceedings” means any proceedings in a court or tribunal commenced prior to 1 June 2021 to which either or both of the following is or are relevant for any purpose—
 - (i) a deemed marriage, or
 - (ii) the status of one or both of the deemed spouses as a deemed spouse or as deemed spouses,
- (d) a reference to anything done includes a reference to anything not done.

Transitional provision: overseas relationships

4.—(1) Section 212 of the 2004 Act (meaning of “overseas relationship”)(a) applies for the purpose of determining whether a relationship between persons of different sexes entered into before 1 February 2021(b) is an overseas relationship as though for subsection (1)(b)(ii) there were substituted—

- “(ii) neither of whom was already a civil partner or lawfully married on the date the relationship concerned was entered into, and
- (iii) neither of whom was a civil partner or lawfully married—
 - (aa) immediately before 1 February 2021, or
 - (bb) in the case of a relationship that was dissolved or annulled before that date, immediately before the date of dissolution or annulment.”.

(2) Paragraph (1) has effect in place of article 3 of the Civil Partnership (Overseas Relationships) (Scotland) Order 2005(c) in relation to any case where a relationship referred to in that paragraph was entered into before 5 December 2005.

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew’s House,
Edinburgh
At 1.40 p.m. on 18th January 2021

(a) Section 212 is amended by section 2(2) of the Civil Partnership (Scotland) Act 2020 and is modified in its application to overseas relationships entered into before 5 December 2005 by S.S.I. 2005/573.
(b) 1 February 2021 is the date on which section 3 of the Civil Partnership (Scotland) Act 2020 comes into force, in accordance with regulation 2 of S.S.I. 2020/414.
(c) S.S.I. 2005/573.

SCHEDULE

Regulation 2

<i>Column 1</i> <i>Provision</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purpose</i>
Section 1	Different sex civil partnerships	For all remaining purposes
Section 2 and schedule 1	Recognition of overseas different sex relationships	For all remaining purposes
Section 4	Power to enable marriages to become civil partnerships	
Section 5	Recognition of marriages converted to civil partnerships outwith Scotland	
Section 6	Eligibility of persons of different sexes to enter into a civil partnership	
Section 7(1) and (2)(a), (c), (d) and (f)	Persons who may register civil partnerships between persons of different sexes	For all remaining purposes
Section 7(2)(b)	Persons who may register civil partnerships between persons of different sexes	For the purpose of inserting and bringing into force for all remaining purposes section 94A(2A) and (2B)(a) of the 2004 Act
Section 8	Registration and removal of celebrants	
Section 9	Temporary authorisation of celebrants	
Section 11	Postponement of decree of dissolution where religious impediment to marry exists	For all remaining purposes
Section 12	Marriage between civil partners in a qualifying civil partnership: celebrants	
Section 14 and schedule 2	Consequential modification	For the purpose of bringing into force the modifications of enactments provided for in schedule 2, other than those provided for in paragraphs 5, 6(2) and (3), and 7

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force certain provisions of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”) and make saving and transitional provision relating to the introduction of civil partnership between persons of different sexes.

Regulation 2 brings the provisions of the 2020 Act listed in the schedule of the Regulations into force on 1 June 2021. With the exception of section 7 and schedule 2, the provisions listed are brought into force for all purposes, or for all remaining purposes. Section 7 and schedule 2 are brought into force to the extent, or for the purposes stated.

The provisions brought into force include amendments to the Civil Partnership Act 2004 (“the 2004 Act”) that enable different sex couples to enter into civil partnerships in Scotland, that make provision regarding the persons authorised to register such civil partnerships, and that provide for certain different sex relationships formed outside Scotland to be treated as civil partnerships in Scotland. Other provisions brought into force include consequential amendments to family law and the law concerning the registration of births, and provisions conferring power to make regulations enabling marriages to be changed into civil partnerships, and concerning the treatment in Scotland of marriages changed into civil partnerships elsewhere in the United Kingdom.

From 1 February 2021 (when section 3(2) of the 2020 Act comes into force) until the coming into force of section 6 of the 2020 Act on 1 June 2021, civil partnerships entered into outside Scotland between persons of different sexes will, on an interim basis, be treated as marriages in accordance with section 3(2). By virtue of section 3(4), the bringing into force of section 6 results in section 3(2) ceasing to have effect. Regulation 3, which also comes into force on 1 June 2021, makes saving and transitional provision in connection with section 3(2) ceasing to have effect.

Regulation 4, which comes into force on 1 February 2021, makes transitional provision in relation to the treatment of different sex relationships which have been entered into outside the UK prior to 1 February 2021.

Regulation 4(1) provides for section 212 of the 2004 Act to apply subject to modification in relation to such relationships so that a relationship does not qualify as an ‘overseas relationship’ where either party was a civil partner or lawfully married immediately before 1 February 2021 (or in the case of a relationship that has previously been dissolved or annulled, immediately prior to the dissolution or annulment). The relationship in question does not count for this purpose as it would not have been either a civil partnership or a marriage under the law of Scotland at the time specified.

The provision ensures that a pre-existing different sex relationship cannot be treated as a civil partnership if doing so would result in a person being a party to more than one formal relationship under the law of Scotland.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 1 (partially)	1 February 2021	2020/414
Section 2(1), (3)(f) and (4)(b) (partially)	18 January 2021	2020/457
Section 2 (partially)	1 February 2021	2020/414
Section 3	1 February 2021	2020/414
Section 7(1), (2)(b) and (2)(f) (partially)	18 January 2021	2020/457
Section 11 (partially)	1 February 2021	2020/414
Section 14 (partially)	18 January 2021	2020/457
Schedule 1 (partially)	1 February 2021	2020/414

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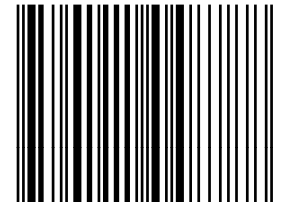
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen's Printer for Scotland.

£6.90

S202101181003 01/2021 19585

<http://www.legislation.gov.uk/id/ssi/2021/23>

ISBN 978-0-11-104878-8



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