POLICY NOTE

THE CIVIL PARTNERSHIP BETWEEN PERSONS OF DIFFERENT SEXES (PRESCRIBED BODIES) (SCOTLAND) REGULATIONS 2021

SSI 2021/24

The above instrument was made in exercise of the powers conferred by section 94A(2A)(a)(i) of the Civil Partnership Act 2004. The instrument is subject to negative procedure.

The instrument prescribes religious and belief bodies for the purpose of registering civil partnerships between mixed sex couples. This will enable all the celebrants of these bodies to register mixed sex civil partnerships.

Policy Objectives

The Civil Partnership (Scotland) Act 2020 ("the 2020 Act") will make civil partnership available to mixed sex couples. It is primarily a piece of amending legislation that makes changes to the Civil Partnership Act 2004 ("the 2004 Act") and other primary legislation. The 2004 Act introduced civil partnership for same sex couples in the United Kingdom.

Work is currently underway to implement the 2020 Act. This includes SSIs; an Order at Westminster under section 104 of the Scotland Act 1998 on consequential provision on reserved and cross-border matters following the 2020 Act; changes to IT (for example, registration systems); training and guidance for registrars; and the preparation of public-facing information and guidance for couples considering entering into a mixed sex civil partnership in Scotland.

Under the 2020 Act, mixed sex civil partnerships are to be created by registration. Under section 94A(2A) of the 2004 Act (as amended by the 2020 Act) it will be possible for mixed sex civil partnership registrations to be carried out by:

- A celebrant of a religious or belief body prescribed in regulations made by the Scottish Ministers, or an individual recognised by a prescribed body as entitled to register mixed sex civil partnerships on its behalf
- A person nominated by a religious or belief body to the Registrar General for the purposes of registering mixed sex civil partnership
- A member of a religious or belief body temporarily authorised by the Registrar General to register mixed sex civil partnership. Such temporary authorisation may be for a specific registration or registrations or may be for a period of time
- A civil registrar

This is in line with the current position for the registration of same sex civil partnerships. However, the authorisation of celebrants for mixed sex civil partnership will be carried out separately to the authorisation of celebrants for same sex civil partnership. This reflects that religious and belief bodies and celebrants may wish to register one type of relationship but not the other. The systems for authorising celebrants to solemnise mixed sex marriage and same sex marriage are along similar lines but, again, each are separate systems.

The policy objective of these Regulations relates to the first set of individuals listed above who will be authorised to register mixed sex civil partnerships: a celebrant of a religious or belief body prescribed by the Scottish Ministers, or an individual recognised by a prescribed body as entitled to register mixed sex civil partnerships on its behalf.

Regulation 2 provides that the bodies prescribed for the purposes of registering mixed sex civil partnership are those as set out in the schedule.

The schedule lists the two bodies to be prescribed: Humanist Society Scotland (HSS) and The Scottish Unitarian Association (SUA). The Scottish Ministers are satisfied that both bodies are "religious or belief bodies" as defined in section 135(1) of the 2004 Act.

Under section 94A(2B)(a) of the 2004 Act (as amended by the 2020 Act), the Scottish Ministers may only prescribe a religious or belief body for the purposes of registering mixed sex civil partnership if that body has requested to be prescribed. Both bodies have requested the Scottish Ministers to prescribe them for those purposes.

The 2020 Act also provides for section 94A to be amended by the insertion of section 94A(2B)(b) under which a religious or belief body can only be prescribed where the Scottish Ministers are satisfied that it meets the qualifying requirements. The reference to qualifying requirements falls to be read in conjunction with section 24(13) of the Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act") which provides for section 94A to include provisions authorising the Scottish Ministers to make regulations setting out qualifying requirements for religious and belief bodies.

Neither the applicable provisions of the 2014 Act nor the provision of the 2020 Act inserting section 94A(2B)(b) has yet been brought into force. The Scottish Ministers will consult with religious and belief bodies and other interested parties before bringing those provisions into force and laying down qualifying requirements.

In the absence of qualifying requirements, the Scottish Ministers have, in exercising their discretion, taken account of the same factors they took into account on the last occasion on which they were required to consider whether or not to prescribe a religious or belief body for the purpose of the registration of same sex civil partnerships. Those factors are set out in the Policy Note[1] to the Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage (Prescribed Bodies) (Scotland) Regulations 2016 (SSI 2016/427). The factors are:

i. The track record of the body in fulfilling existing requirements in relation to marriage ceremonies and civil partnership registrations in Scotland
ii. Whether in relation to the relationship in question all celebrants of the body are prepared to take part
iii. Whether the body is able to self-police
iv. Celebrants must not for the purpose of profit or gain carry on a business of solemnising marriage or registering civil partnership
v. Celebrants of a prescribed body must be properly trained to solemnise marriage and register civil partnership
vi. There are no other barriers to being prescribed

[1] https://www.legislation.gov.uk/ssi/2016/427/policy-note/contents

On factor (i), the Scottish Ministers have taken into account the proven track record of HSS and SUA in fulfilling existing requirements in relation to the solemnisation of mixed sex and same sex marriages, and the registration of same sex civil partnerships in Scotland.

On factor (ii), HSS and SUA have confirmed that all their celebrants are prepared to take part in the registration of mixed sex civil partnerships.

On factor (iii), the Scottish Ministers consider that HSS and SUA are able to self-police.

On factor (iv), the Scottish Ministers have no reason to believe that celebrants of either body carry on a business of solemnising marriages or registering civil partnerships for profit or gain.

On factor (v), the Scottish Ministers consider that this is closely linked to factor (i). They have no concerns about the efficacy of celebrants' training by either HSS or SUA.

On factor (vi), the Scottish Ministers are not aware of any other barriers to either body being prescribed.

Consultation

The policy objectives of the 2020 Act were subject to parliamentary scrutiny as part of the parliamentary process for the Act[2]. The Policy Memorandum[3] for the Bill that preceded the 2020 Act outlined the results of the public consultation exercise conducted on the future of civil partnership held in 2018. As these Regulations give effect to the policy intentions of the 2020 Act – insofar as they relate to the religious and belief registration of mixed sex civil partnership – no further consultation has been carried out.

The decision on whether or not to prescribe religious or belief bodies is for the Scottish Ministers so long as the bodies themselves have requested to be prescribed. Wider consultation is not appropriate as the key issue is whether or not the bodies meet the factors outlined above.

Impact Assessments

An Equality Impact Assessment has been completed on the draft SSI and is attached. The Scottish Government also published an Equality Impact Assessment[4] when the Bill which became the 2020 Act was introduced.

No other Impact Assessments have been produced. However, the Scottish Government published the following additional Impact Assessments when the Bill was introduced:

- A Business and Regulatory Impact Assessment (BRIA)[5]
- A Child Rights and Wellbeing Impact Assessment (CRWIA)[6].

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[2] https://beta.parliament.scot/bills/civil-partnership-scotland-bill

[3] https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/policy-memorandum-civil-partnership-scotland-bill.pdf

[4] https://www.gov.scot/publications/civil-partnership-scotland-bill-equality-impact-assessment/

[5] https://www.gov.scot/publications/civil-partnership-scotland-bill-business-regulatory-impact-assessment/

[6] https://www.gov.scot/publications/civil-partnership-scotland-bill-child-rights-wellbeing-impact-assessment/

Financial Effects
As outlined above, a BRIA was published when the Bill was introduced. No significant financial effects are expected as a consequence of these Regulations.

Scottish Government
Justice Directorate

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