



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Equalities and Human Rights Committee

**Thursday 11 June 2020**

**Session 5**



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**EQUALITIES AND HUMAN RIGHTS COMMITTEE**  
**10<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Ruth Maguire (Cunninghame South) (SNP)

**DEPUTY CONVENER**

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

**COMMITTEE MEMBERS**

\*Angela Constance (Almond Valley) (SNP)

Mary Fee (West Scotland) (Lab)

\*Maurice Golden (West Scotland) (Con)

\*Alison Harris (Central Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Pauline McNeill (Glasgow) (Lab) (Committee Substitute)

Shirley-Anne Somerville (Cabinet Secretary for Social Security and Older People)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Equalities and Human Rights Committee

Thursday 11 June 2020

[The Convener opened the meeting at 09:00]

### Civil Partnership (Scotland) Bill: Stage 2

**The Convener (Ruth Maguire):** Good morning, and welcome to the 10th meeting in 2020 of the Equalities and Human Rights Committee. The only item on our agenda is stage 2 consideration of the Civil Partnership (Scotland) Bill.

Joining the committee today are the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, and her officials. Welcome to you all.

This morning will work well if we all take it slow and steady. When I call you to speak, please pause before speaking, to allow your microphone to be switched on.

Everyone should have a copy of the bill as introduced; the marshalled list of amendments, which sets out the amendments in the order in which they will be disposed of; and the groupings.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. I remind members who have not lodged amendments in the group but who wish to speak that they should request to speak by typing "R" in the BlueJeans chat function. Please do that once I have called the relevant group, and please speak only when I call your name. I ask anyone speaking to be succinct and to make sure that your contributions are relevant to the amendment or amendments that are being debated.

The standing orders give any Scottish minister a right to speak on any amendment. I will, therefore, invite the cabinet secretary to contribute to the debate just before I move to the winding-up speech.

The debate on each group will be concluded by my inviting the member who moved the first amendment in the group to wind up. Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on that amendment.

If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do so. If any committee member objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when called, they should say, "Not moved." Members should please note that any other MSP may move the amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are eligible to vote, and voting will take place using the BlueJeans chat function. Once I have read out the result of the vote, if any member considers that their vote has been incorrectly recorded, they should please let me know as soon as possible. I will pause to provide time for that.

If we lose connection to any member or to the cabinet secretary, I will suspend the meeting until we reconnect.

Again, I strongly encourage short, succinct contributions from all those who speak today. We now begin stage 2 proceedings, working from the marshalled list of amendments.

*Sections 1 and 2 agreed to.*

*Schedule 1 agreed to.*

#### **Section 3—Interim recognition of different sex relationships formed outwith Scotland**

**The Convener:** Amendment 1, in the name of Alex Cole-Hamilton, is grouped with amendment 2.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** Amendment 1 deals with an issue that was raised at stage 1. Section 3 provides that, for an interim period, mixed-sex civil partnerships registered outwith Scotland will be temporarily treated in Scots law as if they were marriages. The purpose of that is to provide couples with legal protections between the commencement of section 3 and the commencement of the rest of the bill. Once the whole bill is commenced, those civil partnerships will be treated in law as civil partnerships, and they will continue to have legal protections under the expanded civil partnership law.

Martin Loat of the Equal Civil Partnerships campaign explained to the committee that that is problematic because people who have registered a civil partnership have specifically chosen to do that instead of marrying, after a campaign that was hard fought for and hard won. He urged that the provision be reconsidered or, at least, that the interim period for which section 3 operates be kept minimal. He cited the fact that people in his situation had campaigned for equal civil

partnership because of the baggage that is attached to marriage in many different ways.

Other witnesses at stage 1 felt that the provision impinged on people's personal choices. There was a concern that mixed-sex civil partners, if they came to Scotland during the interim period, would be told that they were, in fact, married here. The committee recognised that there is no immediate alternative to the general approach taken by section 3 if we want to provide such civil partners with legal protection as soon as possible.

The cabinet secretary reassured the committee that such couples who came to Scotland could still say that they were in a civil partnership. She committed to explore ways to improve the language of section 3, and I am grateful to her for working with me on that. She also committed to look at what could be done to speed up the necessary secondary legislation and commencement of the whole bill, so that the interim period is as short as possible. It would be good to hear an update on that work from the cabinet secretary.

Amendment 1 addresses some of the concerns that have been raised. It makes it clear that, although legal protections are provided during the interim period by treating the civil partnership as if it were a marriage in law, that does not prevent the partners from presenting themselves as civil partners and not married.

I think that amendment 1 will make the provisions as good as we can make them. If a couple had to complete an application form—for insurance, for example—that asked for their relationship status, they would put “civil partnership” as their answer. The amendment gives reassurance to people in that situation that they will not find themselves required to incorrectly define or describe themselves as married if they come to Scotland during the interim period.

Amendment 2 is a technical consequential amendment.

I reiterate my thanks to Tim Hopkins of the Equality Network for working with me on these amendments, and the cabinet secretary, who I think is of a mind with me on the issue. I am grateful for her support.

**The Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville):** I am pleased to support Alex Cole-Hamilton's amendments 1 and 2. They are quite simple, but, as the committee is well aware, they address a very serious point.

As Alex Cole-Hamilton said, Martin Loat from Equal Civil Partnerships gave evidence to the committee on the bill and expressed serious

concerns about recognition of mixed-sex civil partnerships as marriage.

In its stage 1 report, the committee concluded that

“there is no immediate alternative to the current approach.”

However, you encouraged me and the Government to work with members to explore whether the language could be changed.

As the committee may be aware, the demands of Covid-19 work ultimately prevented me from meeting Alex Cole-Hamilton to discuss the issue, but it certainly has not stopped the work that we have been taking forward. I welcome the amendments from him and I am pleased to support them. In line with the conclusions in the stage 1 report, the amendments strike the right balance between addressing the concerns that have been raised and leaving the substance of the interim scheme of recognition intact.

As the committee knows, recognition of marriage is about access to the full body of law that establishes rights, responsibilities and benefits for marriage. There is no equivalent body of law in place yet for mixed-sex civil partnership, so there would be a risk of loss or disadvantage if couples were to be recognised as having a civil partnership before everything that is needed is in place. However, I absolutely recognise that couples will want to call themselves civil partners in day-to-day conversation, and the amendments reflect that.

I absolutely recognise that Alex Cole-Hamilton and other committee members have said that we need to implement the bill as quickly as possible. Of course, we still need to do a lot of work to do that, and that will be impacted by the work that we need to do to tackle Covid-19. I assure the committee that it remains the Scottish Government's priority to move these issues forward and ensure that the interim period is as short as possible. I take this opportunity to reiterate my commitment to introducing the necessary secondary legislation as soon as possible.

I will work closely with the United Kingdom Government on an order under section 104 of the Scotland Act 1998 on changes to reserved and UK legislation, and with National Records of Scotland on changes to information technology, public-facing guidance and training for registrars.

I support amendments 1 and 2.

*Amendment 1 agreed to.*

*Amendment 2 moved—[Alex Cole-Hamilton]—and agreed to.*

*Section 3, as amended, agreed to.*

### After section 3

**The Convener:** Amendment 10, in the name of the cabinet secretary, is grouped with amendment 11.

**Shirley-Anne Somerville:** Amendment 10 responds to the committee's statement of support, in its stage 1 report, for the principle of married couples being able to change their relationship to a civil partnership if they wish. The amendment would provide the Scottish ministers with the power to make regulations on changing marriages to civil partnerships. That reflects what has been done in England and Wales, and in Northern Ireland, where similar powers are in place for the secretary of state, albeit that they are yet to be used. We will introduce regulations in Scotland to allow couples to change their marriages to civil partnerships as part of the suite of secondary legislation that will be needed to implement the bill, if it is enacted.

Our thinking is very much based on the existing arrangements that allow civil partners to change their relationship to marriage if they wish. In those cases, civil partners can choose whether to change their relationship by having a marriage ceremony—in much the same way as any other couple having a marriage ceremony—or by using an administrative route that is run by local authority registrars. We intend the same options to be available for couples who want to change their marriage to a civil partnership, so couples would be able to register their civil partnership through the usual registration process or could use an administrative route.

There are a number of reasons why a regulation-making power is appropriate in that regard. First, the regulations will lay down the details of how the administrative route will work. Secondly, the regulations will make provision on the effect of changing a marriage to a civil partnership. As the committee knows, some complex issues arise in changing marriages to civil partnerships.

Our general intention is that, when a marriage changes to a civil partnership, the civil partnership will be treated as having been entered into when the marriage was entered into. However, marriage pre-dates civil partnership in law, so we will need to be careful. Detailed provisions will be made on the treatment of marriages that are to change to civil partnerships for any period prior to the existence in law of civil partnership. That could be relevant if, for example, the couple should dissolve their relationship in identifying the property that is to be shared in the financial settlement. The use of regulations is appropriate when making highly technical provisions of that nature.

Thirdly, the use of a regulation-making power will provide an opportunity to consult, as appropriate, on provisions in this area. The powers require ministers to consult the registrar general, which reflects that the registrar general has operational functions in relation to the registration of civil partnerships and marriages. That will also allow us to take the views of local registrars about practical matters.

Our intention is that the administrative route will be open to couples whose marriages were solemnised and registered in Scotland, in line with the existing arrangements for changing civil partnerships to marriages through the administrative route. That reflects the fact that, when details of the marriage are held on the registration system in Scotland, it is straightforward for those details to be used when the relationship is changed. When the marriage was solemnised elsewhere, it will not have been recorded in Scotland. As a result, our intention is that couples in a non-Scottish marriage who wish to change their relationship in Scotland will be able to use the registration route. Again, that is in line with the existing approach to changing civil partnerships to marriages.

09:15

The regulations also allow provision to be made on fees for changing marriages to civil partnerships. Our current thinking—again, it is in line with changing civil partnerships to marriages—is that the fees for the registration route will be the same as the fees that are normally payable on registering a civil partnership and that the fee for the administrative route will be the same as the fee for submitting one notice of intention to enter a civil partnership. In both cases, there will also be charges for what are known as extracts—civil partnership certificates. In short, we intend that the scheme for changing marriages to civil partnerships will be clear, fully considered and effective and will not have unintended adverse consequences for a couple.

Amendment 11 is about recognising as civil partnerships in Scotland marriages that convert to civil partnerships in England and Wales and in Northern Ireland. The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 and the Northern Ireland (Executive Formation etc) Act 2019 provide the secretary of state with the power to make regulations on converting marriages to civil partnerships for England and Wales and for Northern Ireland. Neither set of regulations has been taken forward, which means that we do not yet know how conversions in those two jurisdictions will work.

However, we know that we want the conversions to be recognised in Scotland. For the

purposes of recognition in Scots law, two key aspects have to be taken into account: recognition of the relationships generally and backdating. Amendment 11 reflects that by specifying two particular areas in relation to which the regulations can make provisions.

The first area relates to registration. The Civil Partnership Act 2004 makes provision on what a civil partnership is. The effect of section 1(1) is that a relationship that is formed in England and Wales or Northern Ireland is recognised as a civil partnership in Scotland when the couple register as civil partners of each other under part 2 or part 4 of the 2004 act. However, we do not know whether the conversion schemes for the other parts of the UK will actually involve the couples registering as civil partners in line with section 1. Amendment 11 specifically allows the Scottish ministers to make regulations that will ensure that converted relationships from other parts of the UK can be treated as registered under the 2004 act. That means that they will be treated as civil partnerships in Scotland.

The second area is backdating. By backdating, I am referring to the date that we treat the relationship, in its converted form, as having been created on. Again, it is not clear what conversion schemes for other parts of the UK may do in this area, but we need to be able to make provision on backdating these relationships for the purposes of Scots law. Amendment 11 will achieve that.

More generally, it is important that we have flexibility around provisions on recognising converted relationships. Being prescriptive in the bill could prevent such relationships from being recognised in Scotland in their converted form. Taking a power to make regulations will provide the tools that we need to legislate effectively in Scots law in response to the final forms of conversion schemes for other parts of the UK.

I move amendment 10.

**Alex Cole-Hamilton:** I thank the cabinet secretary for lodging amendments 10 and 11, which have a similar effect to amendments that I had offered instructions to the clerks to draft in my name. I am very happy to support them.

At stage 1, several witnesses expressed concern that the bill lacks a provision that would enable couples who are married to change their marriage to a civil partnership. Provision for change the other way already exists in the Marriage and Civil Partnership (Scotland) Act 2014. It is clear that there are some mixed-sex couples who have married but who would have preferred a civil partnership had it been available to them at the time. Similarly, there may be mixed-sex couples who have become estranged from the faith under which they were originally married and

who wish to distance themselves from that institution.

Same-sex couples who registered a civil partnership before marriage was available to them can change their civil partnership to a marriage without losing the continuity of the relationship and the legal protections. It is only right that mixed-sex couples who married before civil partnership became available to them should also be able to change the relationship. Given that a couple's preference for marriage or civil partnership is an intensely personal one, and given that preferences differ, it would be discriminatory to allow change in one direction but not the other.

Amendment 10 is therefore very welcome. It enables the Government, by regulations, to provide for marriages to become civil partnerships. It is also welcome that the amendment allows that to be done in two ways, just as with changes in the other direction: by the couple registering a civil partnership in the usual way or by an administrative process, which I presume will be available only to those whose marriage is registered in Scotland.

People's needs can change. For example, a couple in a mixed-sex civil partnership may join a religion that does not recognise civil partnership and so wish to change their civil partnership to a marriage. Equally, a couple in a same-sex marriage who join a religion that does not recognise same-sex marriage but that recognises same-sex civil partnership may wish to change their marriage to a civil partnership. That could happen at any time in the future. It is therefore crucial that change in either direction—marriage to civil partnership or civil partnership to marriage—is available to both mixed-sex and same-sex couples, and without time limit. It would be helpful if the cabinet secretary could confirm that that is the intention of the Government in relation to time limits.

The issue has been raised of whether there should be a limit on the number of changes that can be made to one relationship. The Equality Network has argued that, if a limit is applied, it should at least allow a couple to make two changes. For example, a mixed-sex couple may change their marriage to a civil partnership after the bill comes into effect because that is what they have always wanted. Years later, they may move to a country that does not recognise civil partnership and find that they need to change it back to a marriage so that their family relationships are recognised in that country. It would be good to hear from the cabinet secretary what the expected timetable is for the making of regulations under amendment 10.

Amendment 11 deals with civil partnerships that have been created by conversion from marriage in other parts of the UK. It is therefore welcome.

I do not have any more to add, except to thank the cabinet secretary for lodging amendments 10 and 11, which I support.

**Shirley-Anne Somerville:** I do not have much to say in winding up. We are not seeking to impose a time limit on the conversion, meaning that it would have to happen within, for example, a year. There will be no time limit on that. I can also confirm that there is no limit on the number of changes. I recognise that a couple's life together will involve evolving circumstances—changes in belief and changes in social and family pressures—that might lead them to change their status more than once.

Ultimately, the regulations will be informed by the principles underpinning the bill: equality and freedom of choice, including access to the best relationship for any given couple. As Mr Cole-Hamilton says, that is a private matter for the couple, and the state should support them to make the choice that is right for them.

*Amendment 10 agreed to.*

*Amendment 11 moved—[Shirley-Anne Somerville]—and agreed to.*

09:23

*Meeting suspended.*

09:26

*On resuming—*

**The Convener:** We resume consideration of the bill.

*Sections 4 to 12 agreed to.*

### **Schedule 2—Consequential modifications**

**The Convener:** Amendment 3, in the name of the cabinet secretary, is grouped with amendments 7 to 9.

**Shirley-Anne Somerville:** There are a number of technical amendments in the group. I hope that the committee will bear with me as I go through them.

Amendment 3 addresses a point that was made in written evidence on the bill that was submitted to the committee by the Faculty of Advocates. Section 3 of the Children (Scotland) Act 1995 presently provides that the mother of a child has parental responsibilities and rights whether or not she is married to the father of that child. The bill already makes some amendments to the Children (Scotland) Act 1995, including to section 3, to

reflect that civil partnership will be available to mixed-sex couples. In particular, fathers currently obtain parental responsibilities and rights if they are married to the mother. The bill extends that to cases in which the father obtains PRRs if he is in a civil partnership with the mother.

The Faculty of Advocates suggested a further amendment to section 3 of the 1995 act. It stated:

“there should, for consistency, also be added the words ‘or entered into civil partnership with’ before ‘his father’. Alternatively, the words ‘whether or not she is or has been married to his father’ could simply be deleted.”

After consideration, we concluded that the addition of language would indeed provide helpful consistency. It will also provide clarity and put it beyond doubt in the legislation that the mother of a child has parental responsibilities and rights whether or not she is married to, or is in a civil partnership with, the father. The bill will extend that to cover cases in which the father is in a civil partnership with the mother.

The Scottish Government believes that, generally, children benefit from both parents being involved in their life. However, there are some cases in which the father is disinterested or there has been domestic abuse or violence. Provision to ensure that most fathers gain PRRs but a small minority do not reflects the realities that we face.

Amendment 7 ensures parity of treatment for marriages and civil partnerships when it comes to the registration of court decrees that bring a relationship to an end. For marriages, section 28A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 provides for decrees of dissolution and declarators of nullity to be registered in the register of divorces that is kept by the registrar general. However, the equivalent provision for civil partnerships—which is to be found in section 122 of the Civil Partnership Act 2004—provides only for decrees of dissolution to be registered in the register of dissolutions. There is no provision for the registration of declarators of nullity.

Declarators of nullity are rare. The justice statistics show that there are no more than two a year in relation to marriage and civil partnership. However, they can be issued when one of the parties was, or both of the parties were, not eligible to enter the relationship; when the parties were eligible but one or both of them did not consent to the formation of the relationship; or when one of the parties who was capable of consenting to the relationship being formed did so only because of error or duress.

Our view is that declarators of nullity in relation to marriage and civil partnership should be treated in the same way. Amendment 7 will achieve that parity of treatment in relation to registration by

amending section 122 of the 2004 act so that the register of dissolutions maintained by the registrar general also covers declarators of nullity of civil partnership.

09:30

Amendment 8 makes provision on the jurisdiction of the sheriff court in relation to declarators of nullity of civil partnership. At present, only the Court of Session has jurisdiction to deal with court action for declarators of nullity of civil partnership. The relevant provisions were put in place in 2004, when civil partnership was established. At that time, that was also the position for declarators of nullity of marriage. However, things have now moved on in relation to declarators of nullity of marriage, in relation to which either the Court of Session or the sheriff court can now have jurisdiction. Amendment 8 extends jurisdiction for hearing declarators of nullity of civil partnership to the sheriff court, in line with the position in relation to marriage.

Amendment 9, which is the final amendment in the group, changes a reference to “same sex” in the Civil Partnership Act 2004 to reflect the fact that mixed-sex civil partnerships will be introduced in Scotland. Section 237 of the 2004 act contains supplementary provisions on the recognition of overseas dissolutions. More specifically, it provides the Scottish ministers with the power to make regulations that modify the normal rules on recognition of overseas dissolutions in the situation in which a civil partner is domiciled in a jurisdiction that does not recognise legal relationships between two persons of the same sex.

The same issue is liable to arise with mixed-sex civil partnerships. A civil partner in a mixed-sex relationship might not be able to obtain a dissolution where they are domiciled, because the law of that country does not recognise mixed-sex relationships other than marriage. Accordingly, section 237 of the 2004 act requires amendment to make it possible for regulations to provide for a corresponding modification of the normal rules in that situation. That will provide parity of treatment between same-sex and mixed-sex civil partners.

I move amendment 3.

*Amendment 3 agreed to.*

**The Convener:** Amendment 4, in the name of the cabinet secretary, is grouped with amendments 5 and 6.

**Shirley-Anne Somerville:** Amendments 4 to 6 seek to replicate for the law of Scotland what was put in place for England and Wales at the end of last year and for Northern Ireland at the beginning of this year. The amendments make provision in

Scots law about the continuity of civil partnerships from elsewhere after one of the partners has obtained gender recognition.

I stress that, as is the case for the existing provisions in the bill that touch on gender recognition, the amendments do not constitute a change in policy on gender recognition. Rather, they reflect that civil partnership is no longer solely a same-sex relationship elsewhere and that it is appropriate for provision to be made in Scots law that reflects that in the context of gender recognition.

At present, section 11D of the Gender Recognition Act 2004—the GRA—provides for the continuity of a Scottish civil partnership where both parties to the relationship acquire a legal change of gender on the same day. The reference to “both parties” reflects that civil partnership is currently a same-sex relationship and there is no recognition of a mixed-sex partnership. As a consequence of the introduction of mixed-sex civil partnership, paragraph 5(14) of schedule 2 of the bill makes provision on the continuity of a civil partnership formed in Scotland where just one party to the relationship acquires a legal change of gender.

Paragraph 97 of the committee’s stage 1 report says:

“The Committee welcomes the provision in Schedule 2, paragraph 5 of the Bill to the extent that it benefits transgender people who wish to remain in the formalised relationships they entered into prior to transition.”

Section 11B of the GRA makes provision on the continuity of civil partnerships from elsewhere in the UK and from Northern Ireland. That section has already been amended by UK legislation to reflect the introduction of mixed-sex civil partnerships elsewhere in the UK, but the amendments by UK legislation do not extend to Scotland. Therefore, amendment 4 provides that civil partnerships from other parts of the UK and civil partnerships formed elsewhere that are recognised in Scotland can continue in Scots law if one party to the relationship obtains a legal change of gender.

Amendments 5 and 6 are consequential. Amendment 6 adds a definition of “protected civil partnership” into the GRA. That is defined as meaning

“a civil partnership under the law of England and Wales or under the law of Northern Ireland, or ... an overseas relationship that is treated as a civil partnership”.

Amendment 6 also adds a definition of “protected overseas relationship” to the GRA. That is a “protected civil partnership” from overseas. Both terms are used in amendment 4. Amendment 5 is simply a formatting change that is linked to amendment 6.

I move amendment 4.

*Amendment 4 agreed to.*

*Meeting closed at 09:37.*

*Amendments 5 to 9 moved—[Shirley-Anne Somerville]—and agreed to.*

*Schedule 2, as amended, agreed to.*

*Sections 13 to 15 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the Civil Partnership (Scotland) Bill. I thank the cabinet secretary and her officials, and I remind members that stage 3 of the bill is scheduled to take place on Tuesday 23 June. The deadline for amendments to the bill is Tuesday 16 June.

The committee will next meet on Thursday 18 June, when it will hear further evidence in our inquiry into the impact of Covid-19 on equalities and human rights.



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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