

Draft Regulations laid before the Scottish Parliament under section 219(7) of the Civil Partnership Act 2004, for approval by resolution of the Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2005 No.

CIVIL PARTNERSHIP

**The Civil Partnership (Jurisdiction and Recognition
of Judgments) (Scotland) Regulations 2005**

Made - - - - 2005

Coming into force - - 5th December 2005

The Scottish Ministers, in exercise of the powers conferred upon them by section 219(2), (3), (4) and (5) of the Civil Partnership Act 2004⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 219(7) of that Act, been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1. These Regulations may be cited as the Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005 and come into force on 5th December 2005.
2. These Regulations extend to Scotland only.

Application

3.—(1) These Regulations apply to proceedings for the dissolution or annulment of an overseas relationship entitled to be treated as a civil partnership, or for the separation of the parties to the same, as they apply to proceedings for the dissolution or annulment of a civil partnership or the separation of civil partners.

(2) Regulations 6 and 7, in respect of recognition and non recognition of a judgment, apply to all judgments even if the date of the judgment is earlier than the date on which section 219 of the Civil Partnership Act 2004 and these Regulations come into force.

PART 1

JURISDICTION

Jurisdiction

4. The courts in Scotland shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the separation of civil partners where—

- (a) both civil partners are habitually resident in Scotland;
- (b) both civil partners were last habitually resident in Scotland and one of the civil partners continues to reside there;
- (c) the defender is habitually resident in Scotland;
- (d) the pursuer is habitually resident in Scotland and has resided there for at least one year immediately preceding the date on which the action is begun; or
- (e) the pursuer is domiciled and habitually resident in Scotland and has resided there for at least six months immediately preceding the date on which the action is begun.

PART 2

RECOGNITION AND REFUSAL OF RECOGNITION OF JUDGMENTS

Definitions for Part 2

5.—(1) In this Part “judgment” means an order for the dissolution or annulment of a civil partnership or the separation of civil partners pronounced by a court of a member State, however termed by that State.

(2) A “court of a member State” referred to in paragraph (1) means all the authorities, whether judicial or administrative, in member States with jurisdiction in those matters falling within the scope of these Regulations.

(3) The “member States” referred to in paragraph 1 are any of the following States—

Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

Recognition of a judgment

6.—(1) Subject to regulation 7, where a judgment is (or has been) given in respect of a civil partnership, that judgment shall be recognised in Scotland.

(2) Any interested party may apply to the Court of Session for a declarator of recognition or non recognition of a judgment.

(3) Where the recognition of a judgment is raised as an incidental issue in proceedings before a court, that court may determine the issue.

Refusal of recognition of judgment

7.—(1) Recognition of the validity of a judgment may be refused in Scotland if the judgment was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the civil partnership—

- (a) previously given by a court of civil jurisdiction in Scotland; or

- (b) previously given by a court elsewhere and recognised or entitled to be recognised in Scotland.
- (2) Recognition of the validity of a judgment may be refused in Scotland if the judgment was obtained at a time when, according to the law of Scotland, there was no subsisting civil partnership.
- (3) Recognition of the validity of a judgment may be refused if—
 - (a) in the case of a judgment obtained by means of proceedings, it was obtained—
 - (i) without such steps having been taken for giving notice of the proceeding to a civil partner as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or
 - (ii) without a civil partner having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; or
 - (b) in the case of a judgment obtained otherwise than by means of proceedings—
 - (i) there is no official document certifying the judgment is effective under the law of the country in which it was obtained, or
 - (ii) where either civil partner was domiciled in another country at the relevant date, there is no official document certifying that the judgment is recognised as valid under the law of that other country; or
 - (c) in either case, recognition of the judgment would be manifestly contrary to public policy.
- (4) In this regulation—
 - “official”, in relation to a document certifying that a judgment is effective, or is recognised as valid, under the law of any country, means issued by a person or a body appointed or recognised for the purpose under that law; and
 - “the relevant date” means—
 - (a) in the case of a judgment obtained by means of proceedings, the date of commencement of proceedings; or
 - (b) in the case of a judgment obtained otherwise than by means of proceedings, the date on which it was obtained.

Jurisdiction and review

- 8. The court may not review the jurisdiction of the court which issued the judgment.
- 9. A judgment may not be reviewed as to its substance.

Differences in applicable law

- 10. The recognition of a judgment may not be refused because the law of Scotland would not allow dissolution, annulment or separation on the same facts.

Sist of proceedings

- 11. Where recognition is sought of a judgment given in a member State and an appeal against that judgment has been lodged in that member State, the court may sist the proceedings.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Civil Partnership (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2005 (revoked) No. 629

St Andrew's House,
Edinburgh
2005

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations apply to all civil partnerships including overseas relationships entitled to be treated as a civil partnership, by virtue of the Civil Partnership Act 2004.

Regulation 3(2) allows for the recognition and non recognition of judgments issued before the coming into force of these Regulations and the 2004 Act.

Regulation 4 sets out the criteria for accepting jurisdiction for dissolution, annulment or separation proceedings in respect of civil partners.

Regulations 6 and 7 set out the criteria for recognition and non recognition of a judgment.

Regulation 8 and 9 prevent the court from reviewing the jurisdiction of the court of the member State that made the original judgment and also prevents a court from reviewing the substance of that judgment.

Regulation 10 ensures that a judgment is recognised notwithstanding that there might well have been a different outcome on the facts if the law of Scotland been applied to the judgment.

Regulation 11 allows the court to sist proceedings for recognition of a judgment when there is an appeal outstanding against that judgment.

The Regulations make provision for civil partnerships corresponding, as far as is possible in domestic law to the jurisdiction and recognition elements of Council Regulation [\(EC\) 2201/2003](#) (O.J. No. L 338, 23.12.03, p.1) for matrimonial matters as regards the law of Scotland.