



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 1

#### INTRODUCTION

#### **1 Civil partnership**

- (1) A civil partnership is a relationship between two people of the same sex (“civil partners”)—
  - (a) which is formed when they register as civil partners of each other—
    - (i) in England or Wales (under Part 2),
    - (ii) in Scotland (under Part 3),
    - (iii) in Northern Ireland (under Part 4), or
    - (iv) outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 (registration at British consulates etc. or by armed forces personnel), or
  - (b) which they are treated under Chapter 2 of Part 5 as having formed (at the time determined under that Chapter) by virtue of having registered an overseas relationship.
- (2) Subsection (1) is subject to the provisions of this Act under or by virtue of which a civil partnership is void.
- (3) A civil partnership ends only on death, dissolution or annulment.
- (4) The references in subsection (3) to dissolution and annulment are to dissolution and annulment having effect under or recognised in accordance with this Act.
- (5) References in this Act to an overseas relationship are to be read in accordance with Chapter 2 of Part 5.

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## PART 2

### CIVIL PARTNERSHIP: ENGLAND AND WALES

#### CHAPTER 1

##### REGISTRATION

###### *Formation, eligibility and parental etc. consent*

### 2 Formation of civil partnership by registration

- (1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership document—
  - (a) at the invitation of, and in the presence of, a civil partnership registrar, and
  - (b) in the presence of each other and two witnesses.
- (2) Subsection (1) applies regardless of whether subsections (3) and (4) are complied with.
- (3) After the civil partnership document has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other, by—
  - (a) each of the two witnesses, and
  - (b) the civil partnership registrar.
- (4) After the witnesses and the civil partnership registrar have signed the civil partnership document, the relevant registration authority must ensure that—
  - (a) the fact that the two people have registered as civil partners of each other, and
  - (b) any other information prescribed by regulations,
 is recorded in the register as soon as is practicable.
- (5) No religious service is to be used while the civil partnership registrar is officiating at the signing of a civil partnership document.
- (6) “The civil partnership document” has the meaning given by section 7(1).
- (7) “The relevant registration authority” means the registration authority in whose area the registration takes place.

#### **Commencement Information**

- II** S. 2 wholly in force at 5.12.2005; s. 2 not in force at Royal Assent see s. 263; s. 2(4)(b) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1; s. 2(1)-(3), (4)(a), (5)-(7) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1

### 3 Eligibility

- (1) Two people are not eligible to register as civil partners of each other if—
  - (a) they are not of the same sex,
  - (b) either of them is already a civil partner or lawfully married,

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- (c) either of them is under 16, or
  - (d) they are within prohibited degrees of relationship.
- (2) Part 1 of Schedule 1 contains provisions for determining when two people are within prohibited degrees of relationship.

#### **4 Parental etc. consent where proposed civil partner under 18**

- (1) The consent of the appropriate persons is required before a child and another person may register as civil partners of each other.
- (2) Part 1 of Schedule 2 contains provisions for determining who are the appropriate persons for the purposes of this section.
- (3) The requirement of consent under subsection (1) does not apply if the child is a surviving civil partner.
- (4) Nothing in this section affects any need to obtain the consent of the High Court before a ward of court and another person may register as civil partners of each other.
- (5) In this Part “child”, except where used to express a relationship, means a person who is under 18.

#### *Registration procedure: general*

#### **5 Types of pre-registration procedure**

- (1) Two people may register as civil partners of each other under—
  - (a) the standard procedure;
  - (b) the procedure for house-bound persons;
  - (c) the procedure for detained persons;
  - (d) the special procedure (which is for cases where a person is seriously ill and not expected to recover).
- (2) The procedures referred to in subsection (1)(a) to (c) are subject to—
  - (a) section 20 (modified procedures for certain non-residents);
  - (b) Schedule 3 (former spouses one of whom has changed sex).
- (3) The procedures referred to in subsection (1) (including the procedures as modified by section 20 and Schedule 3) are subject to—
  - (a) Part 2 of Schedule 1 (provisions applicable in connection with prohibited degrees of relationship), and
  - (b) Parts 2 and 3 of Schedule 2 (provisions applicable where proposed civil partner is under 18).
- (4) This section is also subject to section 249 and Schedule 23 (immigration control and formation of civil partnerships).

#### **6 Place of registration**

- (1) The place at which two people may register as civil partners of each other—
  - (a) must be in England or Wales,

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- (b) <sup>F1</sup> .....
  - (c) must be specified in the notices, or notice, of proposed civil partnership required by this Chapter.
- (2) <sup>F2</sup> .....
- [<sup>F3</sup>(3) Subsections (3A) and (3B) apply in the case of registration under the standard procedure (including that procedure modified as mentioned in section 5).
- (3A) The place must be—
- (a) on approved premises, or
  - (b) in a register office.
- (3B) If it is in a register office, the place must be open to any person wishing to attend the registration.
- (3C) In this Chapter “register office” means a register office provided under section 10 of the Registration Service Act 1953.]
- (4) <sup>F4</sup> .....
- (5) <sup>F4</sup> .....

#### Textual Amendments

- F1** S. 6(1)(b) repealed (5.4.2011) by Equality Act 2010 (c. 15), ss. 202(2), 211(2), 216(3), **Sch. 27 Pt. 1** (as substituted by S.I. 2010/2279, art. 13, Sch. 2) (with ss. 6(4), 205); S.I. 2011/1066, **art. 2(h)**; S.I. 2011/2646, **art. 2**
- F2** S. 6(2) repealed (5.4.2011) by Equality Act 2010 (c. 33), ss. 202(2), 211(2), 216(3), **Sch. 27 Pt. 1** (as substituted by S.I. 2010/2279, art. 13, Sch. 2) (with ss. 6(4), 205; S.I. 2011/1066, **art. 2(h)**; S.I. 2011/2646, **art. 2**
- F3** S. 6(3)-(3C) substituted (5.12.2005) for s. 6(3) by The Civil Partnership (Amendments to Registration Provisions) Order 2005 (S.I. 2005/2000), art. 3, **Sch. para. 2(2)** (subject to art. 1(3))
- F4** S. 6(4)(5) omitted (5.12.2005) by virtue of The Civil Partnership (Amendments to Registration Provisions) Order 2005 (S.I. 2005/2000), art. 3, **Sch. para. 2(3)** (subject to art. 1(3))

#### [<sup>F5</sup>6A Power to approve premises

- (1) The [<sup>F6</sup>Secretary of State] may by regulations make provision for and in connection with the approval by registration authorities of premises for the purposes of section 6(3A)(a).
- (2) The matters dealt with by regulations may include—
- (a) the kind of premises in respect of which approvals may be granted;
  - (b) the procedure to be followed in relation to applications for approval;
  - (c) the considerations to be taken into account by a registration authority in determining whether to approve any premises;
  - (d) the duration and renewal of approvals;
  - (e) the conditions that must or may be imposed by a registration authority on granting or renewing an approval;
  - (f) the determination and charging by registration authorities of fees in respect of applications for the approval of premises and in respect of the renewal of approvals;

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- (g) the circumstances in which a registration authority must or may revoke an approval;
- (h) the review of any decision to refuse an approval or the renewal of an approval, to impose conditions on granting or renewing an approval or to revoke an approval;
- (i) the notification to the Registrar General of all approvals granted, renewed or revoked;
- (j) the keeping by registration authorities of registers of approved premises;
- (k) the issue by the Registrar General of guidance supplementing the provision made by the regulations.

[ Regulations under this section may provide that premises approved for the registration  
F7(2A) of civil partnerships may differ from those premises approved for the registration of civil marriages.

(2B) Provision by virtue of subsection (2)(b) may, in particular, provide that applications for approval of premises may only be made with the consent (whether general or specific) of a person specified, or a person of a description specified, in the provision.

(2C) The power conferred by section 258(2), in its application to the power conferred by this section, includes in particular—

- (a) power to make provision in relation to religious premises that differs from provision in relation to other premises;
- (b) power to make different provision for different kinds of religious premises.]

(3) Without prejudice to the width of subsection (2)(e), the [F8Secretary of State] must exercise his power to provide for the imposition of conditions as mentioned there so as to secure that members of the public are permitted to attend when two people sign the civil partnership schedule on approved premises in accordance with section 6(3A)(a).

[ For the avoidance of doubt, nothing in this Act places an obligation on religious  
F9(3A) organisations to host civil partnerships if they do not wish to do so.]

[ “Civil marriage” means marriage solemnised otherwise than according to the rites of  
F10(3B) the Church of England or any other religious usages.

(3C) “Religious premises” means premises which—

- (a) are used solely or mainly for religious purposes, or
- (b) have been so used and have not subsequently been used solely or mainly for other purposes.]]

#### Textual Amendments

- F5 S. 6A inserted (21.7.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, **Sch. para. 3**
- F6 Words in s. 6A(1) substituted (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 5(1), **Sch. 2 para. 14(a)** (with art. 4)
- F7 S. 6A(2A)-(2C) inserted (11.7.2011) by [Equality Act 2010 \(c. 33\)](#), **ss. 202(3)**, 216(3) (with ss. 6(4), 205); S.I. 2011/1636, **art. 2(c)**
- F8 Words in s. 6A(3) substituted (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 5(1), **Sch. 2 para. 14(a)** (with art. 4)
- F9 S. 6A(3A)-(3C) inserted (5.12.2011 so far as relating to the insertion of s. 6A(3A)) by [Equality Act 2010 \(c. 33\)](#), **ss. 202(4)**, 216(3) (with ss. 6(4), 205); S.I. 2011/2646, **art. 2**

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**F10** S. 6A(3A)-(3C) inserted (11.7.2011 so far as relating to the insertion of s. 6A(3B)(3C)) by [Equality Act 2010 \(c. 33\)](#), **ss. 202(4), 216(3)** (with [ss. 6\(4\), 205](#)); [S.I. 2011/1636](#), **art. 2(d)**

**Modifications etc. (not altering text)**

**C1** S. 6A(1): transfer of functions (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), **art. 3(1), Sch. 1 para. 14(a)** (with [art. 4](#))

## 7 The civil partnership document

- (1) In this Part “the civil partnership document” means—
- (a) in relation to the special procedure, a Registrar General’s licence, and
  - (b) in relation to any other procedure, a civil partnership schedule.
- (2) Before two people are entitled to register as civil partners of each other—
- (a) the civil partnership document must be delivered to the civil partnership registrar, and
  - (b) the civil partnership registrar may then ask them for any information required (under section 2(4)) to be recorded in the register.

### *The standard procedure*

## 8 Notice of proposed civil partnership and declaration

- [<sup>F11</sup>(1) For two people to register as civil partners of each other under the standard procedure a notice of proposed civil partnership must be given—
- (a) if the proposed civil partners have resided in the area of the same registration authority for the period of 7 days immediately before the giving of the notice, by each of them to that registration authority;
  - (b) if the proposed civil partners have not resided in the area of the same registration authority for that period, by each of them to the registration authority in whose area he or she has resided for that period.]
- (2) A notice of proposed civil partnership must contain such information as may be prescribed by regulations.
- (3) A notice of proposed civil partnership must also include the necessary declaration, made and signed by the person giving the notice—
- (a) at the time when the notice is given, and
  - (b) in the presence of an authorised person;
- and the authorised person must attest the declaration by adding his name, description and place of residence.
- (4) The necessary declaration is a solemn declaration in writing—
- (a) that the proposed civil partner believes that there is no impediment of kindred or affinity or other lawful hindrance to the formation of the civil partnership;
  - [<sup>F12</sup>(b) that the proposed civil partners have for the period of 7 days immediately before the giving of the notice had their usual places of residence in the area of the registration authority, or in the areas of the registration authorities, to which notice is given.]

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- (5) Where a notice of proposed civil partnership is given to a registration authority in accordance with this section, the registration authority must ensure that the following information is recorded in the register as soon as possible—
- (a) the fact that the notice has been given and the information in it;
  - (b) the fact that the authorised person has attested the declaration.
- (6) “Authorised person” means an employee or officer or other person provided by a registration authority who is authorised by that authority to attest notices of proposed civil partnership.
- (7) For the purposes of this Chapter, a notice of proposed civil partnership is recorded when subsection (5) is complied with.

#### Textual Amendments

- F11** S. 8(1) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 4(2)** (subject to art. 1(3))
- F12** S. 8(4)(b) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 4(3)** (subject to art. 1(3))

#### Commencement Information

- I2** S. 8 partly in force; s. 8 not in force at Royal Assent see s. 263; s. 8(2) in force for certain purposes at 15.4.2005 by [S.I. 2005/1112](#), art. 2, **Sch. 1** and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), art. 2(1), **Sch. 1**; s. 8(3) - (7) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), art. 2(1), **Sch. 1**; s. 8(1) never in force;

## 9 Power to require evidence of name etc.

- (1) The registration authority to which a notice of proposed civil partnership is given may require the person giving the notice to provide it with specified evidence—
- (a) relating to that person, or
  - (b) if the registration authority considers that the circumstances are exceptional, relating not only to that person but also to that person’s proposed civil partner.
- (2) Such a requirement may be imposed at any time before the registration authority issues the civil partnership schedule under section 14.
- (3) “Specified evidence”, in relation to a person, means such evidence as may be specified in guidance issued by the Registrar General—
- (a) of the person’s name and surname,
  - (b) of the person’s age,
  - (c) as to whether the person has previously formed a civil partnership or a marriage and, if so, as to the ending of the civil partnership or marriage, <sup>F13</sup>and]
  - (d) of the person’s nationality, <sup>F14</sup> . . .
  - (e) <sup>F14</sup> . . . . .

#### Textual Amendments

- F13** Word in s. 9(3)(c) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 5(2)** (subject to art. 1(3))

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**F14** S. 9(3)(e) and word omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 5(3)** (subject to art. 1(3))

## 10 Proposed civil partnership to be publicised

- (1) Where a notice of proposed civil partnership has been given to a registration authority, [<sup>F15</sup>the registration authority must keep the relevant information on public display during the waiting period.]
- (2) “The relevant information” means—
  - (a) the name of the person giving the notice,
  - (b) the name of that person’s proposed civil partner, and
  - (c) such other information [<sup>F16</sup>included in the notice of proposed civil partnership] as may be prescribed by regulations.

[<sup>F17</sup>(3) All information that a registration authority is required for the time being to keep on public display under subsection (1) must be kept on display by it at one register office provided for a district within its area.]

### Textual Amendments

- F15** Words in s. 10(1) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 6(2)** (subject to art. 1(3))
- F16** Words in s. 10(2)(c) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 6(3)** (subject to art. 1(3))
- F17** S. 10(3) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 6(4)** (subject to art. 1(3))

### Commencement Information

- I3** S. 10 wholly in force at 5.12.2005; s. 10 not in force at Royal Assent see s. 263; s. 10(2)(c) in force at 15.4.2005 for certain purposes by [S.I. 2005/1112](#), **art. 2**, **Sch. 1**; s. 10 in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), **art. 2(1)**, **Sch. 1**

## 11 Meaning of “the waiting period”

In this Chapter “the waiting period”, in relation to a notice of proposed civil partnership, means the period—

- (a) beginning the day after the notice is recorded, and
- (b) subject to section 12, ending at the end of the period of 15 days beginning with that day.

## 12 Power to shorten the waiting period

- (1) If the Registrar General, on an application being made to him, is satisfied that there are compelling reasons because of the exceptional circumstances of the case for shortening the period of 15 days mentioned in section 11(b), he may shorten it to such period as he considers appropriate.
- (2) Regulations may make provision with respect to the making, and granting, of applications under subsection (1).



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- (3) Regulations under subsection (2) may provide for—
- (a) the power conferred by subsection (1) to be exercised by a registration authority on behalf of the Registrar General in such classes of case as are prescribed by the regulations;
  - (b) the making of an appeal to the Registrar General against a decision taken by a registration authority in accordance with regulations made by virtue of paragraph (a).

#### Commencement Information

- I4** S. 12 wholly in force at 5.12.2005; s. 12 not in force at Royal Assent see s. 263; s. 12(2) in force at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#); s. 12(1)(3) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

### 13 Objection to proposed civil partnership

- (1) Any person may object to the issue of a civil partnership schedule under section 14 by giving any registration authority notice of his objection.
- (2) A notice of objection must—
  - (a) state the objector’s place of residence and the ground of objection, and
  - (b) be signed by or on behalf of the objector.
- (3) If a notice of objection is given to a registration authority, it must ensure that the fact that it has been given and the information in it are recorded in the register as soon as possible.

### 14 Issue of civil partnership schedule

- (1) As soon as the waiting period in relation to each notice of proposed civil partnership has expired, the registration authority in whose area it is proposed that the registration take place is under a duty, at the request of one or both of the proposed civil partners, to issue a document to be known as a “civil partnership schedule”.
- (2) Regulations may make provision as to the contents of a civil partnership schedule.
- (3) The duty in subsection (1) does not apply if the registration authority is not satisfied that there is no lawful impediment to the formation of the civil partnership.
- (4) If an objection to the issue of the civil partnership schedule has been recorded in the register, no civil partnership schedule is to be issued until—
  - (a) the relevant registration authority has investigated the objection and is satisfied that the objection ought not to obstruct the issue of the civil partnership schedule, or
  - (b) the objection has been withdrawn by the person who made it.
- (5) “The relevant registration authority” means the authority which first records that a notice of proposed civil partnership has been given by one of the proposed civil partners.

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### Commencement Information

- 15** S. 14 wholly in force at 5.12.2005; s. 14 not in force at Royal Assent see s. 263; s. 14(2) in force at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#); s. 14(1)(3)-(5) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

## 15 Appeal against refusal to issue civil partnership schedule

- (1) If the registration authority refuses to issue a civil partnership schedule—
  - (a) because an objection to its issue has been made under section 13, or
  - (b) in reliance on section 14(3),
 either of the proposed civil partners may appeal to the Registrar General.
- (2) On an appeal under this section the Registrar General must either confirm the refusal or direct that a civil partnership schedule be issued.

## 16 Frivolous objections and representations: liability for costs etc.

- (1) Subsection (3) applies if—
  - (a) a person objects to the issue of a civil partnership schedule, but
  - (b) the Registrar General declares that the grounds on which the objection is made are frivolous and ought not to obstruct the issue of the civil partnership schedule.
- (2) Subsection (3) also applies if—
  - (a) in reliance on section 14(3), the registration authority refuses to issue a civil partnership schedule as a result of a representation made to it, and
  - (b) on an appeal under section 15 against the refusal, the Registrar General declares that the representation is frivolous and ought not to obstruct the issue of the civil partnership schedule.
- (3) The person who made the objection or representation is liable for—
  - (a) the costs of the proceedings before the Registrar General, and
  - (b) damages recoverable by the proposed civil partner to whom the objection or representation relates.
- (4) For the purpose of enabling any person to recover any such costs and damages, a copy of a declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has made the declaration.

## 17 Period during which registration may take place

- (1) The proposed civil partners may not register as civil partners of each other on the production of the civil partnership schedule until the waiting period in relation to each notice of proposed civil partnership has expired.
- (2) Subject to subsection (1), under the standard procedure, they may register as civil partners by signing the civil partnership schedule [<sup>F18</sup>[<sup>F19</sup>at any time during] the applicable period <sup>F20</sup>...].

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- (3) If they do not register as civil partners by signing the civil partnership schedule before the end of the applicable period—
  - (a) the notices of proposed civil partnership and the civil partnership schedule are void, and
  - (b) no civil partnership registrar may officiate at the signing of the civil partnership schedule by them.
- (4) The applicable period, in relation to two people registering as civil partners of each other, is the period of 12 months beginning with—
  - (a) the day on which the notices of proposed civil partnership are recorded, or
  - (b) if the notices are not recorded on the same day, the earlier of those days.

#### Textual Amendments

- F18** Words in s. 17(2) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 7** (subject to art. 1(3))
- F19** Words in s. 17(2) substituted (1.10.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), **ss. 114(3)(a)**, 120 (with s. 97); [S.I. 2012/2234](#), art. 3(m)
- F20** Words in s. 17(2) repealed (1.10.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), **ss. 114(3)(b)**, 120, **Sch. 10 Pt. 11** (with s. 97); [S.I. 2012/2234](#), art. 3(m)

### *The procedures for house-bound and detained persons*

## 18 House-bound persons

- (1) This section applies if two people wish to register as civil partners of each other at the place where one of them is house-bound.
- (2) A person is house-bound at any place if, in relation to that person, a statement is made by a registered medical practitioner that, in his opinion—
  - (a) because of illness or disability, that person ought not to move or be moved from the place where he is at the time when the statement is made, and
  - (b) it is likely to be the case for at least the following 3 months that because of the illness or disability that person ought not to move or be moved from that place.
- (3) The procedure under which the two people concerned may register as civil partners of each other is the same as the standard procedure, except that—
  - (a) each notice of proposed civil partnership must be accompanied by a statement under subsection (2) (“a medical statement”), which must have been made not more than 14 days before the day on which the notice is recorded,
  - (b) the fact that the registration authority to whom the notice is given has received the medical statement must be recorded in the register, and
  - (c) the applicable period (for the purposes of section 17) is the period of 3 months beginning with—
    - (i) the day on which the notices of proposed civil partnership are recorded, or
    - (ii) if the notices are not recorded on the same day, the earlier of those days.

*Status: Point in time view as at 05/12/2012. This version of this Act contains provisions that are prospective.*

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- (4) A medical statement must contain such information and must be made in such manner as may be prescribed by regulations.
- (5) A medical statement may not be made in relation to a person who is detained as described in section 19(2).
- (6) For the purposes of this Chapter, a person in relation to whom a medical statement is made is to be treated, if he would not otherwise be so treated, as resident and usually resident at the place where he is for the time being.

#### Commencement Information

- I6** S. 18 wholly in force at 5.12.2005; s. 18 not in force at Royal Assent see s. 263; s. 18(4) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1; s. 18(1)-(3)(5)(6) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1

## 19 Detained persons

- (1) This section applies if two people wish to register as civil partners of each other at the place where one of them is detained.
- (2) “Detained” means detained—
  - (a) as a patient in a hospital (but otherwise than by virtue of section 2, 4, 5, 35, 36 or 136 of the Mental Health Act 1983 (c. 20) (short term detentions)), or
  - (b) in a prison or other place to which the Prison Act 1952 (c. 52) applies.
- (3) The procedure under which the two people concerned may register as civil partners of each other is the same as the standard procedure, except that—
  - (a) each notice of proposed civil partnership must be accompanied by a supporting statement, which must have been made not more than 21 days before the day on which the notice is recorded,
  - (b) the fact that the registration authority to whom the notice is given has received the supporting statement must be recorded in the register, and
  - (c) the applicable period (for the purposes of section 17) is the period of 3 months beginning with—
    - (i) the day on which the notices of proposed civil partnership are recorded, or
    - (ii) if the notices are not recorded on the same day, the earlier of those days.
- (4) A supporting statement, in relation to a detained person, is a statement made by the responsible authority which—
  - (a) identifies the establishment where the person is detained, and
  - (b) states that the responsible authority has no objection to that establishment being specified in a notice of proposed civil partnership as the place at which the person is to register as a civil partner.
- (5) A supporting statement must contain such information and must be made in such manner as may be prescribed by regulations.
- (6) “The responsible authority” means—

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- (a) if the person is detained in a hospital, the hospital’s managers;
  - (b) if the person is detained in a prison or other place to which the 1952 Act applies, the governor or other officer for the time being in charge of that prison or other place.
- (7) “Patient” and “hospital” have the same meaning as in Part 2 of the 1983 Act and “managers”, in relation to a hospital, has the same meaning as in section 145(1) of the 1983 Act.
- (8) For the purposes of this Chapter, a detained person is to be treated, if he would not otherwise be so treated, as resident and usually resident at the place where he is for the time being.

#### Commencement Information

- I7** S. 19 wholly in force at 5.12.2005; s. 19 not in force at Royal Assent see s. 263; s. 19(5) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1; s. 19(1)-(4)(6)-(8) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1

### *Modified procedures for certain non-residents*

## **20 Modified procedures for certain non-residents**

- (1) Subsection (5) applies in the following [<sup>F21</sup>two] cases.
- (2) The first is where—
- (a) two people wish to register as civil partners of each other in England and Wales, and
  - (b) one of them (“A”) resides in Scotland and the other (“B”) resides in England or Wales.
- (3) <sup>F22</sup>.....
- (4) The [<sup>F23</sup>second] is where—
- (a) two people wish to register as civil partners of each other in England and Wales, and
  - (b) one of them (“A”) is [<sup>F24</sup>an officer, seaman or marine borne on the books of one of Her Majesty’s ships at sea.] and the other (“B”) resides in England or Wales.
- (5) For the purposes of the standard procedure, the procedure for house-bound persons and the procedure for detained persons—
- (a) A is not required to give a notice of proposed civil partnership under this Chapter;
  - [<sup>F25</sup>(b) B may make the necessary declaration without reference to A’s usual place of residence for any period;]
  - (c) the waiting period is calculated by reference to the day on which B’s notice is recorded;
  - (d) the civil partnership schedule is not to be issued by a registration authority unless A or B produces to that registration authority a certificate of no impediment issued to A under the relevant provision;

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- (e) the applicable period is calculated by reference to the day on which B’s notice is recorded and, where the standard procedure is used in the [F26first case], is the period of 3 months beginning with that day;
  - (f) section 31 applies as if in subsections (1)(a) and (2)(c) for “each notice” there were substituted “ B’s notice ”.
- (6) “The relevant provision” means—
- (a) if A resides in Scotland, section 97;
  - (b) F27 .....
  - (c) if A is [F28an officer, seaman or marine borne on the books of one of Her Majesty's ships at sea], section 239.
- (7) F29 .....

#### Textual Amendments

- F21 Word in s. 20(1) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(2)** (subject to art. 1(3))
- F22 S. 20(3) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(3)** (subject to art. 1(3))
- F23 Word in s. 20(4) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(4)(a)** (subject to art. 1(3))
- F24 Words in s. 20(4) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(4)(b)** (subject to art. 1(3))
- F25 S. 20(5)(b) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(5)(a)** (subject to art. 1(3))
- F26 Words in s. 20(5)(e) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(5)(b)** (subject to art. 1(3))
- F27 S. 20(6)(b) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(6)(a)** (subject to art. 1(3))
- F28 Words in s. 20(6)(c) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(6)(b)** (subject to art. 1(3))
- F29 S. 20(7) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 8(7)** (subject to art. 1(3))

### *The special procedure*

## 21 Notice of proposed civil partnership

- (1) For two people to register as civil partners of each other under the special procedure, one of them must—
  - (a) give a notice of proposed civil partnership to the registration authority for the area in which it is proposed that the registration take place, and
  - (b) comply with any requirement made under section 22.
- (2) The notice must contain such information as may be prescribed by regulations.
- (3) Subsections (3) to (6) of section 8 (necessary declaration etc.), apart from paragraph (b) of subsection (4), apply for the purposes of this section as they apply for the purposes of that section.

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### Commencement Information

- 18** S. 21 wholly in force at 5.12.2005; s. 21 not in force at Royal Assent see s. 263; s. 21(2) in force for certain purposes at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1; s. 21(1)(3) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1

## 22 Evidence to be produced

- (1) The person giving a notice of proposed civil partnership to a registration authority under the special procedure must produce to the authority such evidence as the Registrar General may require to satisfy him—
- that there is no lawful impediment to the formation of the civil partnership,
  - that the conditions in subsection (2) are met, and
  - that there is sufficient reason why a licence should be granted.
- [<sup>F30</sup>(2) The conditions are that one of the proposed civil partners—
- is seriously ill and not expected to recover,
  - cannot be moved to a place where they could be registered as civil partners of each other under the standard procedure, and
  - understands the nature and purport of signing a Registrar General's licence.]

(3) The certificate of a registered medical practitioner is sufficient evidence of any or all of the matters referred to in subsection (2).

### Textual Amendments

- F30** S. 22(2) substituted (5.12.2005) by The Civil Partnership (Amendments to Registration Provisions) Order 2005 (S.I. 2005/2000), art. 3, Sch. para. 9 (subject to art. 1(3))

## 23 Application to be reported to Registrar General

- On receiving a notice of proposed civil partnership under section 21 and any evidence under section 22, the registration authority must—
- inform the Registrar General, and
  - comply with any directions the Registrar General may give for verifying the evidence given.

## 24 Objection to issue of Registrar General's licence

- (1) Any person may object to the Registrar General giving authority for the issue of his licence by giving the Registrar General or any registration authority notice of his objection.
- (2) A notice of objection must—
- state the objector's place of residence and the ground of objection, and
  - be signed by or on behalf of the objector.

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- (3) If a notice of objection is given to a registration authority, it must ensure that the fact that it has been given and the information in it are recorded in the register as soon as possible.

## 25 Issue of Registrar General's licence

- (1) This section applies where a notice of proposed civil partnership is given to a registration authority under section 21.
- (2) The registration authority may issue a Registrar General's licence if, and only if, given authority to do so by the Registrar General.
- (3) The Registrar General—
- (a) may not give his authority unless he is satisfied that one of the proposed civil partners is seriously ill and not expected to recover, but
  - (b) if so satisfied, must give his authority unless a lawful impediment to the issue of his licence has been shown to his satisfaction to exist.
- (4) A licence under this section must state that it is issued on the authority of the Registrar General.
- (5) Regulations may (subject to subsection (4)) make provision as to the contents of a licence under this section.
- (6) If an objection has been made to the Registrar General giving authority for the issue of his licence, he is not to give that authority until—
- (a) he has investigated the objection and decided whether it ought to obstruct the issue of his licence, or
  - (b) the objection has been withdrawn by the person who made it.
- (7) Any decision of the Registrar General under subsection (6)(a) is final.

### Commencement Information

**19** S. 25 wholly in force at 5.12.2005; s. 25 not in force at Royal Assent see s. 263; s. 25(5) in force at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1; s. 25(1)-(4)(6)(7) in force at 5.12.2005 by S.I. 2005/3175, art. 2(1), Sch. 1

## 26 Frivolous objections: liability for costs

- (1) This section applies if—
- (a) a person objects to the Registrar General giving authority for the issue of his licence, but
  - (b) the Registrar General declares that the grounds on which the objection is made are frivolous and ought not to obstruct the issue of his licence.
- (2) The person who made the objection is liable for—
- (a) the costs of the proceedings before the Registrar General, and
  - (b) damages recoverable by the proposed civil partner to whom the objection relates.



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- (3) For the purpose of enabling any person to recover any such costs and damages, a copy of a declaration of the Registrar General purporting to be sealed with the seal of the General Register Office is evidence that the Registrar General has made the declaration.

## 27 Period during which registration may take place

- (1) If a Registrar General’s licence has been issued under section 25, the proposed civil partners may register as civil partners by signing it at any time within 1 month from the day on which the notice of proposed civil partnership was given.
- (2) If they do not register as civil partners by signing the licence within the 1 month period—
- (a) the notice of proposed civil partnership and the licence are void, and
  - (b) no civil partnership registrar may officiate at the signing of the licence by them.

### *Supplementary*

## 28 Registration authorities

In this Chapter “registration authority” means—

- (a) in relation to England, a county council, the council of any district comprised in an area for which there is no county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or a county borough council.

## 29 Civil partnership registrars

- (1) A civil partnership registrar is an individual who is designated by a registration authority as a civil partnership registrar for its area.
- (2) It is the duty of each registration authority to ensure that there is a sufficient number of civil partnership registrars for its area to carry out in that area the functions of civil partnership registrars.
- (3) Each registration authority must inform the Registrar General as soon as is practicable—
- (a) of any designation it has made of a person as a civil partnership registrar, and
  - (b) of the ending of any such designation.
- (4) <sup>F31</sup> .....

### **Textual Amendments**

**F31** S. 29(4) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 10** (subject to art. 1(3))

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### 30 The Registrar General and the register

- (1) In this Chapter “the Registrar General” means the Registrar General for England and Wales.
- (2) The Registrar General must provide a system for keeping any records that relate to civil partnerships and are required by this Chapter to be made.
- (3) The system may, in particular, enable those records to be kept together with other records kept by the Registrar General.
- (4) In this Chapter “the register” means the system for keeping records provided under subsection (2).

### 31 Offences relating to civil partnership schedule

- (1) A person commits an offence if he issues a civil partnership schedule knowing that he does so—
  - (a) before the waiting period in relation to each notice of proposed civil partnership has expired,
  - (b) after the end of the applicable period, or
  - (c) at a time when its issue has been forbidden under Schedule 2 by a person entitled to forbid its issue.
- (2) A person commits an offence if, in his actual or purported capacity as a civil partnership registrar, he officiates at the signing of a civil partnership schedule by proposed civil partners knowing that he does so—
  - (a) at a place other than the place specified in the notices of proposed civil partnership and the civil partnership schedule,
  - [<sup>F32</sup>(aa) on premises that are not approved premises although the signing is purportedly in accordance with section 6(3A)(a),
  - <sup>F33</sup>(ab) . . . . .]
  - (b) in the absence of a civil partnership registrar,
  - (c) before the waiting period in relation to each notice of proposed civil partnership has expired, or
  - (d) even though the civil partnership is void under section 49(b) or (c).
- (3) A person guilty of an offence under subsection (1) or [<sup>F34</sup>(2)(a), (aa), (b), (c) or (d)] is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine (or both).
- [<sup>F35</sup>(3A) A person guilty of an offence under subsection (2)(ab) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine or both.]
- (4) A prosecution under this section may not be commenced more than 3 years after the commission of the offence.

#### Textual Amendments

**F32** S. 31(2)(aa)(ab) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 11(2)** (subject to art. 1(3))

**F33** S. 31(2)(ab) repealed (1.10.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), ss. 114(4), 120, **Sch. 10 Pt. 11** (with s. 97); [S.I. 2012/2234](#), art. 3(m)

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- F34** Words in s. 31(3) substituted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 11(3)** (subject to art. 1(3))
- F35** S. 31(3A) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 11(4)** (subject to art. 1(3))

## 32 Offences relating to Registrar General's licence

- (1) A person commits an offence if—
- he gives information by way of evidence in response to a requirement under section 22(1), knowing that the information is false;
  - he gives a certificate as provided for by section 22(3), knowing that the certificate is false.
- (2) A person commits an offence if, in his actual or purported capacity as a civil partnership registrar, he officiates at the signing of a Registrar General's licence by proposed civil partners knowing that he does so—
- at a place other than the place specified in the licence,
  - in the absence of a civil partnership registrar,
  - after the end of 1 month from the day on which the notice of proposed civil partnership was given, or
  - even though the civil partnership is void under section 49(b) or (c).
- (3) A person guilty of an offence under subsection (1) or (2) is liable—
- on conviction on indictment, to imprisonment not exceeding 3 years or to a fine (or both);
  - on summary conviction, to a fine not exceeding the statutory maximum.
- (4) A prosecution under this section may not be commenced more than 3 years after the commission of the offence.

## 33 Offences relating to the recording of civil partnerships

- (1) A civil partnership registrar commits an offence if he refuses or fails to comply with the provisions of this Chapter or of any regulations made under section 36.
- (2) A civil partnership registrar guilty of an offence under subsection (1) is liable—
- on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
  - on summary conviction, to a fine not exceeding the statutory maximum;
- and on conviction shall cease to be a civil partnership registrar.
- (3) A person commits an offence if—
- under arrangements made by a registration authority for the purposes of section 2(4), he is under a duty to record information required to be recorded under section 2(4), but
  - he refuses or without reasonable cause omits to do so.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (5) A person commits an offence if he records in the register information relating to the formation of a civil partnership by the signing of a civil partnership schedule, knowing that the civil partnership is void under section 49(b) or (c).
- (6) A person guilty of an offence under subsection (5) is liable on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both).
- (7) A person commits an offence if he records in the register information relating to the formation of a civil partnership by the signing of a Registrar General's licence, knowing that the civil partnership is void under section 49(b) or (c).
- (8) A person guilty of an offence under subsection (7) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine (or both);
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (9) A prosecution under subsection (5) or (7) may not be commenced more than 3 years after the commission of the offence.

### 34 Fees

- (1) The [<sup>F36</sup>Secretary of State] may by order provide for fees, of such amounts as may be specified in the order, to be payable to such persons as may be prescribed by the order in respect of—
  - (a) the giving of a notice of proposed civil partnership and the attestation of the necessary declaration;
  - (b) the making of an application under section 12(1) (application to reduce waiting period);
  - (c) the issue of a Registrar General's licence;
  - (d) the attendance of the civil partnership registrar when two people sign the civil partnership document;
  - (e) such other services provided in connection with civil partnerships either by registration authorities or by or on behalf of the Registrar General as may be prescribed by the order.
- (2) The Registrar General may remit the fee for the issue of his licence in whole or in part in any case where it appears to him that the payment of the fee would cause hardship to the proposed civil partners.
- [<sup>F37</sup>(3) Where a civil partnership registrar for any area attends when two people sign the civil partnership schedule on approved premises, in accordance with section 6(3A)(a)—
  - (a) subsection (1)(d) does not apply, but
  - (b) the registration authority for that area is entitled from those people a fee of an amount determined by the authority in accordance with regulations under section 6A.]

#### Textual Amendments

**F36** Words in s. 34(1) substituted (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 5(1), **Sch. 2 para. 14(b)** (with art. 4)

**F37** S. 34(3) inserted (21.7.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, **Sch. para. 12**

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#### Modifications etc. (not altering text)

- C2** S. 34(1): transfer of functions (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 3(1), [Sch. 1 para. 14\(b\)](#) (with art. 4)

#### Commencement Information

- I10** S. 34 wholly in force at 5.12.2005; s. 34 not in force at Royal Assent see s. 263; s. 34(1) in force at 15.4.2005 by [S.I. 2005/1112](#), art. 2, Sch. 1; s. 34(2) in force at 5.12.2005 by [S.I. 2005/3175](#), art. 2(1), Sch. 1

### 35 Power to assimilate provisions relating to civil registration

- (1) The <sup>F38</sup>Secretary of State] may by order make—
- such amendments of this Act as appear to him appropriate for the purpose of assimilating any provision connected with the formation or recording of civil partnerships in England and Wales to any provision made <sup>F39</sup>. . . in relation to civil marriage in England and Wales, and
  - such amendments of other enactments and of subordinate legislation as appear to him appropriate in consequence of any amendments made under paragraph (a).
- (2) “Civil marriage” means marriage solemnised otherwise than according to the rites of the Church of England or any other religious usages.
- (3) “Amendment” includes repeal or revocation.
- (4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

#### Textual Amendments

- F38** Words in s. 35(1) substituted (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 5(1), [Sch. 2 para. 14\(c\)](#) (with art. 4)
- F39** Words in s. 35(1)(a) repealed (8.1.2007) by [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), ss. 30, 33, [Sch.](#) (with s. 30(2)-(5))

#### Modifications etc. (not altering text)

- C3** S. 35(1): transfer of functions (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 3(1), [Sch. 1 para. 14\(c\)](#) (with art. 4)

### 36 Regulations and orders

- (1) Regulations may make provision supplementing the provisions of this Chapter.
- (2) Regulations may in particular make provision—
- relating to the use of Welsh in documents and records relating to civil partnerships;
  - with respect to the retention of documents relating to civil partnerships;
  - prescribing the duties of civil partnership registrars;
  - prescribing the duties of persons in whose presence any declaration is made for the purposes of this Chapter;

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- (e) for the issue by the Registrar General of guidance supplementing any provision made by the regulations.
  - (f) for the issue by registration authorities or the Registrar General of certified copies of entries in the register and for such copies to be received in evidence.
- (3) In this Chapter [<sup>F40</sup>, except in section 6A,]“regulations” means regulations made by the Registrar General with the approval of the [<sup>F41</sup>Secretary of State].
- (4) Any power to make regulations or an order under this Chapter is exercisable by statutory instrument.
- (5) A statutory instrument containing [<sup>F42</sup>regulations under section 6A or] an order under section 34 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) No order may be made under section 35 unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.

#### **Textual Amendments**

**F40** Words in s. 36(3) inserted (21.7.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, **Sch. para. 13(2)**

**F41** Words in s. 36(3) substituted (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 5(1), **Sch. 2 para. 14(d)** (with art. 4)

**F42** Words in s. 36(5) inserted (21.7.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, **Sch. para. 13(3)**

#### **Modifications etc. (not altering text)**

**C4** S. 36(3): transfer of functions (3.4.2008) by [The Transfer of Functions \(Registration\) Order 2008 \(S.I. 2008/678\)](#), art. 3(1), **Sch. 1 para. 14(d)** (with art. 4)

## **CHAPTER 2**

### DISSOLUTION, NULLITY AND OTHER PROCEEDINGS

#### *Introduction*

#### **37 Powers to make orders and effect of orders**

- (1) The court may, in accordance with this Chapter—
- (a) make an order (a “dissolution order”) which dissolves a civil partnership on the ground that it has broken down irretrievably;
  - (b) make an order (a “nullity order”) which annuls a civil partnership which is void or voidable;
  - (c) make an order (a “presumption of death order”) which dissolves a civil partnership on the ground that one of the civil partners is presumed to be dead;
  - (d) make an order (a “separation order”) which provides for the separation of the civil partners.
- (2) Every dissolution, nullity or presumption of death order—

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- (a) is, in the first instance, a conditional order, and
  - (b) may not be made final before the end of the prescribed period (see section 38); and any reference in this Chapter to a conditional order is to be read accordingly.
- (3) A nullity order made where a civil partnership is voidable annuls the civil partnership only as respects any time after the order has been made final, and the civil partnership is to be treated (despite the order) as if it had existed up to that time.
- (4) In this Chapter, other than in sections 58 to 61, “the court” means—
- (a) the High Court, or
  - (b) if a county court has jurisdiction by virtue of Part 5 of the Matrimonial and Family Proceedings Act 1984 (c. 42), a county court.
- (5) This Chapter is subject to sections 219 to 224 (jurisdiction of the court).

### **38 The period before conditional orders may be made final**

- (1) Subject to subsections (2) to (4), the prescribed period for the purposes of section 37(2) (b) is—
- (a) 6 weeks from the making of the conditional order, or
  - (b) if the 6 week period would end on a day on which the office or registry of the court dealing with the case is closed, the period of 6 weeks extended to the end of the first day on which the office or registry is next open.
- (2) The Lord Chancellor may by order amend this section so as to substitute a different definition of the prescribed period for the purposes of section 37(2)(b).
- (3) But the Lord Chancellor may not under subsection (2) provide for a period longer than 6 months to be the prescribed period.
- (4) In a particular case the court dealing with the case may by order shorten the prescribed period.
- (5) The power to make an order under subsection (2) is exercisable by statutory instrument.
- (6) An instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament.

### **39 Intervention of the Queen’s Proctor**

- (1) This section applies if an application has been made for a dissolution, nullity or presumption of death order.
- (2) The court may, if it thinks fit, direct that all necessary papers in the matter are to be sent to the Queen’s Proctor who must under the directions of the Attorney General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued.
- (3) If any person at any time—
- (a) during the progress of the proceedings, or
  - (b) before the conditional order is made final,

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gives information to the Queen's Proctor on any matter material to the due decision of the case, the Queen's Proctor may take such steps as the Attorney General considers necessary or expedient.

- (4) If the Queen's Proctor intervenes or shows cause against the making of the conditional order in any proceedings relating to its making, the court may make such order as may be just as to—
- (a) the payment by other parties to the proceedings of the costs incurred by him in doing so, or
  - (b) the payment by the Queen's Proctor of any costs incurred by any of those parties because of his doing so.
- (5) The Queen's Proctor is entitled to charge as part of the expenses of his office—
- (a) the costs of any proceedings under subsection (2);
  - (b) if his reasonable costs of intervening or showing cause as mentioned in subsection (4) are not fully satisfied by an order under subsection (4)(a), the amount of the difference;
  - (c) if the Treasury so directs, any costs which he pays to any parties under an order made under subsection (4)(b).

#### **40 Proceedings before order has been made final**

- (1) This section applies if—
- (a) a conditional order has been made, and
  - (b) the Queen's Proctor, or any person who has not been a party to proceedings in which the order was made, shows cause why the order should not be made final on the ground that material facts have not been brought before the court.
- (2) This section also applies if—
- (a) a conditional order has been made,
  - (b) 3 months have elapsed since the earliest date on which an application could have been made for the order to be made final,
  - (c) no such application has been made by the civil partner who applied for the conditional order, and
  - (d) the other civil partner makes an application to the court under this subsection.
- (3) The court may—
- (a) make the order final,
  - (b) rescind the order,
  - (c) require further inquiry, or
  - (d) otherwise deal with the case as it thinks fit.
- (4) Subsection (3)(a)—
- (a) applies despite section 37(2) (period before conditional orders may be made final), but
  - (b) is subject to section 48(4) (protection for respondent in separation cases) and section 63 (restrictions on making of orders affecting children).



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#### 41 Time bar on applications for dissolution orders

- (1) No application for a dissolution order may be made to the court before the end of the period of 1 year from the date of the formation of the civil partnership.
- (2) Nothing in this section prevents the making of an application based on matters which occurred before the end of the 1 year period.

##### Modifications etc. (not altering text)

- C5 S. 41 applied (with modifications) (5.12.2005) by [The Civil Partnership \(Treatment of Overseas Relationships\) Order 2005 \(S.I. 2005/3042\)](#), [art. 3\(1\)](#)

#### 42 Attempts at reconciliation of civil partners

- (1) This section applies in relation to cases where an application is made for a dissolution or separation order.
- (2) Rules of court must make provision for requiring the [<sup>F43</sup>legal representative] acting for the applicant to certify whether he has—
  - (a) discussed with the applicant the possibility of a reconciliation with the other civil partner, and
  - (b) given the applicant the names and addresses of persons qualified to help effect a reconciliation between civil partners who have become estranged.
- (3) If at any stage of proceedings for the order it appears to the court that there is a reasonable possibility of a reconciliation between the civil partners, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation between them.
- (4) The power to adjourn under subsection (3) is additional to any other power of adjournment.

##### Textual Amendments

- F43 Words in [s. 42\(2\)](#) substituted (1.1.2010) by [Legal Services Act 2007 \(c. 20\)](#), ss. 208, 211, [Sch. 21 para. 150](#) (with ss. 29, 192, 193); [S.I. 2009/3250](#), [art. 2\(h\)](#) (with arts. 6, 9)

##### Commencement Information

- I11 [S. 42](#) wholly in force at 5.12.2005; [s. 42](#) not in force at Royal Assent see [s. 263](#); [s. 42\(1\)](#) in force at 15.4.2005 for certain purposes by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#) and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#); [s. 42\(2\)](#) in force at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#); [s. 42\(3\)\(4\)](#) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

#### 43 Consideration by the court of certain agreements or arrangements

- (1) This section applies in relation to cases where—
  - (a) proceedings for a dissolution or separation order are contemplated or have begun, and
  - (b) an agreement or arrangement is made or proposed to be made between the civil partners which relates to, arises out of, or is connected with, the proceedings.

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- (2) Rules of court may make provision for enabling—
- (a) the civil partners, or either of them, to refer the agreement or arrangement to the court, and
  - (b) the court—
    - (i) to express an opinion, if it thinks it desirable to do so, as to the reasonableness of the agreement or arrangement, and
    - (ii) to give such directions, if any, in the matter as it thinks fit.

### *Dissolution of civil partnership*

#### **44 Dissolution of civil partnership which has broken down irretrievably**

- (1) Subject to section 41, an application for a dissolution order may be made to the court by either civil partner on the ground that the civil partnership has broken down irretrievably.
- (2) On an application for a dissolution order the court must inquire, so far as it reasonably can, into—
  - (a) the facts alleged by the applicant, and
  - (b) any facts alleged by the respondent.
- (3) The court hearing an application for a dissolution order must not hold that the civil partnership has broken down irretrievably unless the applicant satisfies the court of one or more of the facts described in subsection (5)(a), (b), (c) or (d).
- (4) But if the court is satisfied of any of those facts, it must make a dissolution order unless it is satisfied on all the evidence that the civil partnership has not broken down irretrievably.
- (5) The facts referred to in subsections (3) and (4) are—
  - (a) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
  - (b) that—
    - (i) the applicant and the respondent have lived apart for a continuous period of at least 2 years immediately preceding the making of the application (“2 years' separation”), and
    - (ii) the respondent consents to a dissolution order being made;
  - (c) that the applicant and the respondent have lived apart for a continuous period of at least 5 years immediately preceding the making of the application (“5 years' separation”);
  - (d) that the respondent has deserted the applicant for a continuous period of at least 2 years immediately preceding the making of the application.

#### **45 Supplemental provisions as to facts raising presumption of breakdown**

- (1) Subsection (2) applies if—
  - (a) in any proceedings for a dissolution order the applicant alleges, in reliance on section 44(5)(a), that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, but

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- (b) after the date of the occurrence of the final incident relied on by the applicant and held by the court to support his allegation, the applicant and the respondent have lived together for a period (or periods) which does not, or which taken together do not, exceed 6 months.
- (2) The fact that the applicant and respondent have lived together as mentioned in subsection (1)(b) must be disregarded in determining, for the purposes of section 44(5)(a), whether the applicant cannot reasonably be expected to live with the respondent.
  - (3) Subsection (4) applies in relation to cases where the applicant alleges, in reliance on section 44(5)(b), that the respondent consents to a dissolution order being made.
  - (4) Rules of court must make provision for the purpose of ensuring that the respondent has been given such information as will enable him to understand—
    - (a) the consequences to him of consenting to the making of the order, and
    - (b) the steps which he must take to indicate his consent.
  - (5) For the purposes of section 44(5)(d) the court may treat a period of desertion as having continued at a time when the deserting civil partner was incapable of continuing the necessary intention, if the evidence before the court is such that, had he not been so incapable, the court would have inferred that the desertion continued at that time.
  - (6) In considering for the purposes of section 44(5) whether the period for which the civil partners have lived apart or the period for which the respondent has deserted the applicant has been continuous, no account is to be taken of—
    - (a) any one period not exceeding 6 months, or
    - (b) any two or more periods not exceeding 6 months in all,during which the civil partners resumed living with each other.
  - (7) But no period during which the civil partners have lived with each other counts as part of the period during which the civil partners have lived apart or as part of the period of desertion.
  - (8) For the purposes of section 44(5)(b) and (c) and this section civil partners are to be treated as living apart unless they are living with each other in the same household, and references in this section to civil partners living with each other are to be read as references to their living with each other in the same household.

#### Commencement Information

**I12** S. 45 wholly in force at 5.12.2005; s. 45 not in force at Royal Assent see s. 263; s. 45(3)(4) in force at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1; s. 45(1)(2)(5)-(8) in force at 5.12.2005 by S.I. 2005/3175, art. 2(1), Sch. 1

#### 46 Dissolution order not precluded by previous separation order etc.

- (1) Subsections (2) and (3) apply if any of the following orders has been made in relation to a civil partnership—
  - (a) a separation order;
  - (b) an order under Schedule 6 (financial relief in magistrates' courts etc.);
  - (c) an order under section 33 of the Family Law Act 1996 (c. 27) (occupation orders);

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- (d) an order under section 37 of the 1996 Act (orders where neither civil partner entitled to occupy the home).
- (2) Nothing prevents—
- (a) either civil partner from applying for a dissolution order, or
  - (b) the court from making a dissolution order,
- on the same facts, or substantially the same facts, as those proved in support of the making of the order referred to in subsection (1).
- (3) On the application for the dissolution order, the court—
- (a) may treat the order referred to in subsection (1) as sufficient proof of any desertion or other fact by reference to which it was made, but
  - (b) must not make the dissolution order without receiving evidence from the applicant.
- (4) If—
- (a) the application for the dissolution order follows a separation order or any order requiring the civil partners to live apart,
  - (b) there was a period of desertion immediately preceding the institution of the proceedings for the separation order, and
  - (c) the civil partners have not resumed living together and the separation order has been continuously in force since it was made,
- the period of desertion is to be treated for the purposes of the application for the dissolution order as if it had immediately preceded the making of the application.
- (5) For the purposes of section 44(5)(d) the court may treat as a period during which the respondent has deserted the applicant any period during which there is in force—
- (a) an injunction granted by the High Court or a county court which excludes the respondent from the civil partnership home, or
  - (b) an order under section 33 or 37 of the 1996 Act which prohibits the respondent from occupying a dwelling-house in which the applicant and the respondent have, or at any time have had, a civil partnership home.

#### **47 Refusal of dissolution in 5 year separation cases on ground of grave hardship**

- (1) The respondent to an application for a dissolution order in which the applicant alleges 5 years' separation may oppose the making of an order on the ground that—
- (a) the dissolution of the civil partnership will result in grave financial or other hardship to him, and
  - (b) it would in all the circumstances be wrong to dissolve the civil partnership.
- (2) Subsection (3) applies if—
- (a) the making of a dissolution order is opposed under this section,
  - (b) the court finds that the applicant is entitled to rely in support of his application on the fact of 5 years' separation and makes no such finding as to any other fact mentioned in section 44(5), and
  - (c) apart from this section, the court would make a dissolution order.
- (3) The court must—

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- (a) consider all the circumstances, including the conduct of the civil partners and the interests of the civil partners and of any children or other persons concerned, and
  - (b) if it is of the opinion that the ground mentioned in subsection (1) is made out, dismiss the application for the dissolution order.
- (4) “Hardship” includes the loss of the chance of acquiring any benefit which the respondent might acquire if the civil partnership were not dissolved.

#### **48 Proceedings before order made final: protection for respondent in separation cases**

- (1) The court may, on an application made by the respondent, rescind a conditional dissolution order if—
- (a) it made the order on the basis of a finding that the applicant was entitled to rely on the fact of 2 years' separation coupled with the respondent's consent to a dissolution order being made,
  - (b) it made no such finding as to any other fact mentioned in section 44(5), and
  - (c) it is satisfied that the applicant misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.
- (2) Subsections (3) to (5) apply if—
- (a) the respondent to an application for a dissolution order in which the applicant alleged—
    - (i) 2 years' separation coupled with the respondent's consent to a dissolution order being made, or
    - (ii) 5 years' separation,has applied to the court for consideration under subsection (3) of his financial position after the dissolution of the civil partnership, and
  - (b) the court—
    - (i) has made a conditional dissolution order on the basis of a finding that the applicant was entitled to rely in support of his application on the fact of 2 years' or 5 years' separation, and
    - (ii) has made no such finding as to any other fact mentioned in section 44(5).
- (3) The court hearing an application by the respondent under subsection (2) must consider all the circumstances, including—
- (a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and
  - (b) the financial position of the respondent as, having regard to the dissolution, it is likely to be after the death of the applicant should the applicant die first.
- (4) Subject to subsection (5), the court must not make the order final unless it is satisfied that—
- (a) the applicant should not be required to make any financial provision for the respondent, or
  - (b) the financial provision made by the applicant for the respondent is—
    - (i) reasonable and fair, or
    - (ii) the best that can be made in the circumstances.

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- (5) The court may if it thinks fit make the order final if—
- (a) it appears that there are circumstances making it desirable that the order should be made final without delay, and
  - (b) it has obtained a satisfactory undertaking from the applicant that he will make such financial provision for the respondent as it may approve.

### *Nullity*

## 49 Grounds on which civil partnership is void

Where two people register as civil partners of each other in England and Wales, the civil partnership is void if—

- (a) at the time when they do so, they are not eligible to register as civil partners of each other under Chapter 1 (see section 3),
- (b) at the time when they do so they both know—
  - (i) that due notice of proposed civil partnership has not been given,
  - (ii) that the civil partnership document has not been duly issued,
  - (iii) that the civil partnership document is void under section 17(3) or 27(2) (registration after end of time allowed for registering),
  - (iv) that the place of registration is a place other than that specified in the notices (or notice) of proposed civil partnership and the civil partnership document,<sup>F44</sup> . . .
  - (v) that a civil partnership registrar is not present, or
  - [<sup>F45</sup>(vi) that the place of registration is on premises that are not approved premises although the registration is purportedly in accordance with section 6(3A)(a), or]
- (c) the civil partnership document is void under paragraph 6(5) of Schedule 2 (civil partnership between child and another person forbidden).

#### Textual Amendments

- F44** Word in s. 49(b)(iv) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 14(2)** (subject to art. 1(3))
- F45** S. 49(b)(vi) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 14(3)** (subject to art. 1(3))

## 50 Grounds on which civil partnership is voidable

- (1) Where two people register as civil partners of each other in England and Wales, the civil partnership is voidable if—
- (a) either of them did not validly consent to its formation (whether as a result of duress, mistake, unsoundness of mind or otherwise);
  - (b) at the time of its formation either of them, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder of such a kind or to such an extent as to be unfitted for civil partnership;
  - (c) at the time of its formation, the respondent was pregnant by some person other than the applicant;

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- (d) an interim gender recognition certificate under the Gender Recognition Act 2004 (c. 7) has, after the time of its formation, been issued to either civil partner;
  - (e) the respondent is a person whose gender at the time of its formation had become the acquired gender under the 2004 Act.
- (2) In this section and section 51 “mental disorder” has the same meaning as in the Mental Health Act 1983 (c. 20).

## **51 Bars to relief where civil partnership is voidable**

- (1) The court must not make a nullity order on the ground that a civil partnership is voidable if the respondent satisfies the court—
- (a) that the applicant, with knowledge that it was open to him to obtain a nullity order, conducted himself in relation to the respondent in such a way as to lead the respondent reasonably to believe that he would not seek to do so, and
  - (b) that it would be unjust to the respondent to make the order.
- (2) Without prejudice to subsection (1), the court must not make a nullity order by virtue of section 50(1)(a), (b), (c) or (e) unless—
- (a) it is satisfied that proceedings were instituted within 3 years from the date of the formation of the civil partnership, or
  - (b) leave for the institution of proceedings after the end of that 3 year period has been granted under subsection (3).
- (3) A judge of the court may, on an application made to him, grant leave for the institution of proceedings if he—
- (a) is satisfied that the applicant has at some time during the 3 year period suffered from mental disorder, and
  - (b) considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.
- (4) An application for leave under subsection (3) may be made after the end of the 3 year period.
- (5) Without prejudice to subsection (1), the court must not make a nullity order by virtue of section 50(1)(d) unless it is satisfied that proceedings were instituted within the period of 6 months from the date of issue of the interim gender recognition certificate.
- (6) Without prejudice to subsections (1) and (2), the court must not make a nullity order by virtue of section 50(1)(c) or (e) unless it is satisfied that the applicant was at the time of the formation of the civil partnership ignorant of the facts alleged.

## **52 Proof of certain matters not necessary to validity of civil partnership**

- (1) Where two people have registered as civil partners of each other in England and Wales, it is not necessary in support of the civil partnership to give any proof—
- (a) that any person whose consent to the civil partnership was required by section 4 (parental etc. consent) had given his consent, or
  - [<sup>F46</sup>(aa) that before the registration either of the civil partners resided, or resided for any period, in the area stated in the notices of proposed civil partnership to be the area of that person's place of residence;]
  - (b) <sup>F47</sup> .....

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and no evidence is to be given to prove the contrary in any proceedings touching the validity of the civil partnership.

(2) Subsection (1)(a) is subject to section 49(c) (civil partnership void if forbidden).

#### Textual Amendments

- F46** S. 52(1)(aa) inserted (5.12.2005) by [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 15(2)** (subject to art. 1(3))
- F47** S. 52(1)(b) omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), art. 3, **Sch. para. 15(3)** (subject to art. 1(3))

### 53 Power to validate civil partnership

- (1) Where two people have registered as civil partners of each other in England and Wales, the Lord Chancellor may by order validate the civil partnership if it appears to him that it is or may be void under section 49(b).
- (2) An order under subsection (1) may include provisions for relieving a person from any liability under section 31(2), 32(2) or 33(5) or (7).
- (3) The draft of an order under subsection (1) must be advertised, in such manner as the Lord Chancellor thinks fit, not less than one month before the order is made.
- (4) The Lord Chancellor must—
  - (a) consider all objections to the order sent to him in writing during that month, and
  - (b) if it appears to him necessary, direct a local inquiry into the validity of any such objections.
- (5) An order under subsection (1) is subject to special parliamentary procedure.

### 54 Validity of civil partnerships registered outside England and Wales

- (1) Where two people register as civil partners of each other in Scotland, the civil partnership is—
  - (a) void, if it would be void in Scotland under section 123, and
  - (b) voidable, if the circumstances fall within section 50(1)(d).
- (2) Where two people register as civil partners of each other in Northern Ireland, the civil partnership is—
  - (a) void, if it would be void in Northern Ireland under section 173, and
  - (b) voidable, if the circumstances fall within any paragraph of section 50(1).
- (3) Subsection (4) applies where two people register as civil partners of each other under an Order in Council under—
  - (a) section 210 (registration at British consulates etc.), or
  - (b) section 211 (registration by armed forces personnel),
 (“the relevant section”).
- (4) The civil partnership is—
  - (a) void, if—



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- (i) the condition in subsection (2)(a) or (b) of the relevant section is not met, or
  - (ii) a requirement prescribed for the purposes of this paragraph by an Order in Council under the relevant section is not complied with, and
- (b) voidable, if—
  - (i) the appropriate part of the United Kingdom is England and Wales or Northern Ireland and the circumstances fall within any paragraph of section 50(1), or
  - (ii) the appropriate part of the United Kingdom is Scotland and the circumstances fall within section 50(1)(d).
- (5) The appropriate part of the United Kingdom is the part by reference to which the condition in subsection (2)(b) of the relevant section is met.
- (6) Subsections (7) and (8) apply where two people have registered an apparent or alleged overseas relationship.
- (7) The civil partnership is void if—
  - (a) the relationship is not an overseas relationship, or
  - (b) (even though the relationship is an overseas relationship) the parties are not treated under Chapter 2 of Part 5 as having formed a civil partnership.
- (8) The civil partnership is voidable if—
  - (a) the overseas relationship is voidable under the relevant law,
  - (b) the circumstances fall within section 50(1)(d), or
  - (c) where either of the parties was domiciled in England and Wales or Northern Ireland at the time when the overseas relationship was registered, the circumstances fall within section 50(1)(a), (b), (c) or (e).
- (9) Section 51 applies for the purposes of—
  - (a) subsections (1)(b), (2)(b) and (4)(b),
  - (b) subsection (8)(a), in so far as applicable in accordance with the relevant law, and
  - (c) subsection (8)(b) and (c).
- (10) In subsections (8)(a) and (9)(b) “the relevant law” means the law of the country or territory where the overseas relationship was registered (including its rules of private international law).
- (11) For the purposes of subsections (8) and (9)(b) and (c), references in sections 50 and 51 to the formation of the civil partnership are to be read as references to the registration of the overseas relationship.

### *Presumption of death orders*

## **55 Presumption of death orders**

- (1) The court may, on an application made by a civil partner, make a presumption of death order if it is satisfied that reasonable grounds exist for supposing that the other civil partner is dead.
- (2) In any proceedings under this section the fact that—

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- (a) for a period of 7 years or more the other civil partner has been continually absent from the applicant, and
  - (b) the applicant has no reason to believe that the other civil partner has been living within that time,
- is evidence that the other civil partner is dead until the contrary is proved.

### *Separation orders*

## **56 Separation orders**

- (1) An application for a separation order may be made to the court by either civil partner on the ground that any such fact as is mentioned in section 44(5)(a), (b), (c) or (d) exists.
- (2) On an application for a separation order the court must inquire, so far as it reasonably can, into—
  - (a) the facts alleged by the applicant, and
  - (b) any facts alleged by the respondent,
 but whether the civil partnership has broken down irretrievably is irrelevant.
- (3) If the court is satisfied on the evidence of any such fact as is mentioned in section 44(5) (a), (b), (c) or (d) it must, subject to section 63, make a separation order.
- (4) Section 45 (supplemental provisions as to facts raising presumption of breakdown) applies for the purposes of an application for a separation order alleging any such fact as it applies in relation to an application for a dissolution order alleging that fact.

## **57 Effect of separation order**

If either civil partner dies intestate as respects all or any of his or her real or personal property while—

- (a) a separation order is in force, and
- (b) the separation is continuing,

the property as respects which he or she died intestate devolves as if the other civil partner had then been dead.

### *Declarations*

## **58 Declarations**

- (1) Any person may apply to the High Court or a county court for one or more of the following declarations in relation to a civil partnership specified in the application—
  - (a) a declaration that the civil partnership was at its inception a valid civil partnership;
  - (b) a declaration that the civil partnership subsisted on a date specified in the application;
  - (c) a declaration that the civil partnership did not subsist on a date so specified;
  - (d) a declaration that the validity of a dissolution, annulment or legal separation obtained outside England and Wales in respect of the civil partnership is entitled to recognition in England and Wales;

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- (e) a declaration that the validity of a dissolution, annulment or legal separation so obtained in respect of the civil partnership is not entitled to recognition in England and Wales.
- (2) Where an application under subsection (1) is made to a court by a person other than a civil partner in the civil partnership to which the application relates, the court must refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

## **59 General provisions as to making and effect of declarations**

- (1) Where on an application for a declaration under section 58 the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the declaration unless to do so would be manifestly contrary to public policy.
- (2) Any declaration under section 58 binds Her Majesty and all other persons.
- (3) The court, on the dismissal of an application for a declaration under section 58, may not make any declaration for which an application has not been made.
- (4) No declaration which may be applied for under section 58 may be made otherwise than under section 58 by any court.
- (5) No declaration may be made by any court, whether under section 58 or otherwise, that a civil partnership was at its inception void.
- (6) Nothing in this section affects the powers of any court to make a nullity order in respect of a civil partnership.

## **60 The Attorney General and proceedings for declarations**

- (1) On an application for a declaration under section 58 the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney General.
- (2) The Attorney General, whether or not he is sent papers in relation to an application for a declaration under section 58, may—
- (a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and
  - (b) argue before the court dealing with the application any question in relation to the application which the court considers it necessary to have fully argued.
- (3) Where any costs are incurred by the Attorney General in connection with any application for a declaration under section 58, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

## **61 Supplementary provisions as to declarations**

- (1) Any declaration made under section 58, and any application for such a declaration, must be in the form prescribed by rules of court.
- (2) Rules of court may make provision—
- (a) as to the information required to be given by any applicant for a declaration under section 58;

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- (b) requiring notice of an application under section 58 to be served on the Attorney General and on persons who may be affected by any declaration applied for.
- (3) No proceedings under section 58 affect any final judgment or order already pronounced or made by any court of competent jurisdiction.
- (4) The court hearing an application under section 58 may direct that the whole or any part of the proceedings must be heard in private.
- (5) An application for a direction under subsection (4) must be heard in private unless the court otherwise directs.

#### **Commencement Information**

**I13** S. 61 wholly in force at 5.12.2005; s. 61 not in force at Royal Assent see s. 263; s. 61(1) in force at 15.4.2005 for certain purposes by S.I. 2005/1112, art. 2, Sch. 1 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1; s. 61(2) in force at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1

### *General provisions*

#### **62 Relief for respondent in dissolution proceedings**

- (1) If in any proceedings for a dissolution order the respondent alleges and proves any such fact as is mentioned in section 44(5)(a), (b), (c) or (d) the court may give to the respondent the relief to which he would have been entitled if he had made an application seeking that relief.
- (2) When applying subsection (1), treat—
  - (a) the respondent as the applicant, and
  - (b) the applicant as the respondent,
 for the purposes of section 44(5).

#### **63 Restrictions on making of orders affecting children**

- (1) In any proceedings for a dissolution, nullity or separation order, the court must consider—
  - (a) whether there are any children of the family to whom this section applies, and
  - (b) if there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children Act 1989 (c. 41) with respect to any of them.
- (2) If, in the case of any child to whom this section applies, it appears to the court that—
  - (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the 1989 Act with respect to any such child,
  - (b) it is not in a position to exercise the power or (as the case may be) those powers without giving further consideration to the case, and
  - (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,

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it may direct that the order is not to be made final, or (in the case of a separation order) is not to be made, until the court orders otherwise.

- (3) This section applies to—
- (a) any child of the family who has not reached 16 at the date when the court considers the case in accordance with the requirements of this section, and
  - (b) any child of the family who has reached 16 at that date and in relation to whom the court directs that this section shall apply.

## 64 Parties to proceedings under this Chapter

- (1) Rules of court may make provision with respect to—
- (a) the joinder as parties to proceedings under sections 37 to 56 of persons involved in allegations of improper conduct made in those proceedings,
  - (b) the dismissal from such proceedings of any parties so joined, and
  - (c) the persons who are to be parties to proceedings on an application under section 58.
- (2) Rules of court made under this section may make different provision for different cases.
- (3) In every case in which the court considers, in the interest of a person not already a party to the proceedings, that the person should be made a party, the court may if it thinks fit allow the person to intervene upon such terms, if any, as the court thinks just.

### Commencement Information

**I14** S. 64 wholly in force at 5.12.2005; s. 64 not in force at Royal Assent see s. 263; s. 64(1)(2) in force at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 1; s. 64(3) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 2(1), Sch. 1

## CHAPTER 3

### PROPERTY AND FINANCIAL ARRANGEMENTS

## 65 Contribution by civil partner to property improvement

- (1) This section applies if—
- (a) a civil partner contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of the civil partners has or have a beneficial interest, and
  - (b) the contribution is of a substantial nature.
- (2) The contributing partner is to be treated as having acquired by virtue of the contribution a share or an enlarged share (as the case may be) in the beneficial interest of such an extent—
- (a) as may have been then agreed, or
  - (b) in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial

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interest of either of the civil partners arises (whether in proceedings between them or in any other proceedings).

- (3) Subsection (2) is subject to any agreement (express or implied) between the civil partners to the contrary.

**Modifications etc. (not altering text)**

- C6** S. 65 applied (with modifications) (5.12.2005) by [The Civil Partnership \(Treatment of Overseas Relationships\) Order 2005 \(S.I. 2005/3042\)](#), [art. 3\(2\)](#)

**66 Disputes between civil partners about property**

- (1) In any question between the civil partners in a civil partnership as to title to or possession of property, either civil partner may apply to—
- (a) the High Court, or
  - (b) such county court as may be prescribed by rules of court.
- (2) On such an application, the court may make such order with respect to the property as it thinks fit (including an order for the sale of the property).
- (3) Rules of court made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute.

**Commencement Information**

- I15** S. 66 wholly in force at 5.12.2005; s. 66 not in force at Royal Assent see [s. 263](#); [s. 66\(1\)\(b\)](#) in force at 15.4.2005 for certain purposes by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#) and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#); [s. 66\(3\)](#) in force at 15.4.2005 by [S.I. 2005/1112](#), [art. 2](#), [Sch. 1](#); [s. 66\(1\)\(a\)](#) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#); [s. 66\(2\)](#) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3175](#), [art. 2\(1\)](#), [Sch. 1](#)

**67 Applications under section 66 where property not in possession etc.**

- (1) The right of a civil partner (“A”) to make an application under section 66 includes the right to make such an application where A claims that the other civil partner (“B”) has had in his possession or under his control—
- (a) money to which, or to a share of which, A was beneficially entitled, or
  - (b) property (other than money) to which, or to an interest in which, A was beneficially entitled,
- and that either the money or other property has ceased to be in B’s possession or under B’s control or that A does not know whether it is still in B’s possession or under B’s control.
- (2) For the purposes of subsection (1)(a) it does not matter whether A is beneficially entitled to the money or share—
- (a) because it represents the proceeds of property to which, or to an interest in which, A was beneficially entitled, or
  - (b) for any other reason.

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- (3) Subsections (4) and (5) apply if, on such an application being made, the court is satisfied that B—
- (a) has had in his possession or under his control money or other property as mentioned in subsection (1)(a) or (b), and
  - (b) has not made to A, in respect of that money or other property, such payment or disposition as would have been appropriate in the circumstances.
- (4) The power of the court to make orders under section 66 includes power to order B to pay to A—
- (a) in a case falling within subsection (1)(a), such sum in respect of the money to which the application relates, or A's s share of it, as the court considers appropriate, or
  - (b) in a case falling within subsection (1)(b), such sum in respect of the value of the property to which the application relates, or A's interest in it, as the court considers appropriate.
- (5) If it appears to the court that there is any property which—
- (a) represents the whole or part of the money or property, and
  - (b) is property in respect of which an order could (apart from this section) have been made under section 66,
- the court may (either instead of or as well as making an order in accordance with subsection (4)) make any order which it could (apart from this section) have made under section 66.
- (6) Any power of the court which is exercisable on an application under section 66 is exercisable in relation to an application made under that section as extended by this section.

## **68 Applications under section 66 by former civil partners**

- (1) This section applies where a civil partnership has been dissolved or annulled.
- (2) Subject to subsection (3), an application may be made under section 66 (including that section as extended by section 67) by either former civil partner despite the dissolution or annulment (and references in those sections to a civil partner are to be read accordingly).
- (3) The application must be made within the period of 3 years beginning with the date of the dissolution or annulment.

## **69 Actions in tort between civil partners**

- (1) This section applies if an action in tort is brought by one civil partner against the other during the subsistence of the civil partnership.
- (2) The court may stay the proceedings if it appears—
- (a) that no substantial benefit would accrue to either civil partner from the continuation of the proceedings, or
  - (b) that the question or questions in issue could more conveniently be disposed of on an application under section 66.
- (3) Without prejudice to subsection (2)(b), the court may in such an action—

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- (a) exercise any power which could be exercised on an application under section 66, or
- (b) give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

## 70 Assurance policy by civil partner for benefit of other civil partner etc.

Section 11 of the Married Women’s Property Act 1882 (c. 75) (money payable under policy of assurance not to form part of the estate of the insured) applies in relation to a policy of assurance—

- (a) effected by a civil partner on his own life, and
- (b) expressed to be for the benefit of his civil partner, or of his children, or of his civil partner and children, or any of them,

as it applies in relation to a policy of assurance effected by a husband and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or of any of them.

PROSPECTIVE

### [<sup>F48</sup>70A Money and property derived from housekeeping allowance

Section 1 of the Matrimonial Property Act 1964 (money and property derived from housekeeping allowance to be treated as belonging to husband and wife in equal shares) applies in relation to—

- (a) money derived from any allowance made by a civil partner for the expenses of the civil partnership home or for similar purposes, and
- (b) any property acquired out of such money,

as it applies in relation to money derived from any allowance made by a husband or wife for the expenses of the matrimonial home or for similar purposes, and any property acquired out of such money.]

#### Textual Amendments

**F48** S. 70A inserted (prosp.) by Equality Act 2010 (c. 33), ss. 201, 216(3) (with ss. 6(4), 205)

## 71 Wills, administration of estates and family provision

Schedule 4 amends enactments relating to wills, administration of estates and family provision so that they apply in relation to civil partnerships as they apply in relation to marriage.

## 72 Financial relief for civil partners and children of family

- (1) Schedule 5 makes provision for financial relief in connection with civil partnerships that corresponds to provision made for financial relief in connection with marriages by Part 2 of the Matrimonial Causes Act 1973 (c. 18).
- (2) Any rule of law under which any provision of Part 2 of the 1973 Act is interpreted as applying to dissolution of a marriage on the ground of presumed death is to be



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treated as applying (with any necessary modifications) in relation to the corresponding provision of Schedule 5.

- (3) Schedule 6 makes provision for financial relief in connection with civil partnerships that corresponds to provision made for financial relief in connection with marriages by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).
- (4) Schedule 7 makes provision for financial relief in England and Wales after a civil partnership has been dissolved or annulled, or civil partners have been legally separated, in a country outside the British Islands.

## CHAPTER 4

### CIVIL PARTNERSHIP AGREEMENTS

#### 73 Civil partnership agreements unenforceable

- (1) A civil partnership agreement does not under the law of England and Wales have effect as a contract giving rise to legal rights.
- (2) No action lies in England and Wales for breach of a civil partnership agreement, whatever the law applicable to the agreement.
- (3) In this section and section 74 “civil partnership agreement” means an agreement between two people—
  - (a) to register as civil partners of each other—
    - (i) in England and Wales (under this Part),
    - (ii) in Scotland (under Part 3),
    - (iii) in Northern Ireland (under Part 4), or
    - (iv) outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 (registration at British consulates etc. or by armed forces personnel), or
  - (b) to enter into an overseas relationship.
- (4) This section applies in relation to civil partnership agreements whether entered into before or after this section comes into force, but does not affect any action commenced before it comes into force.

#### 74 Property where civil partnership agreement is terminated

- (1) This section applies if a civil partnership agreement is terminated.
- (2) Section 65 (contributions by civil partner to property improvement) applies, in relation to any property in which either or both of the parties to the agreement had a beneficial interest while the agreement was in force, as it applies in relation to property in which a civil partner has a beneficial interest.
- (3) Sections 66 and 67 (disputes between civil partners about property) apply to any dispute between or claim by one of the parties in relation to property in which either or both had a beneficial interest while the agreement was in force, as if the parties were civil partners of each other.

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- (4) An application made under section 66 or 67 by virtue of subsection (3) must be made within 3 years of the termination of the agreement.
- (5) A party to a civil partnership agreement who makes a gift of property to the other party on the condition (express or implied) that it is to be returned if the agreement is terminated is not prevented from recovering the property merely because of his having terminated the agreement.

## CHAPTER 5

### CHILDREN

#### 75 Parental responsibility, children of the family and relatives

- (1) Amend the Children Act 1989 (c. 41) (“the 1989 Act”) as follows.
- (2) In section 4A(1) (acquisition of parental responsibility by step-parent) after “is married to” insert “, or a civil partner of,”.
- (3) In section 105(1) (interpretation), for the definition of “child of the family” (in relation to the parties to a marriage) substitute—
 

““child of the family”, in relation to parties to a marriage, or to two people who are civil partners of each other, means—

  - (a) a child of both of them, and
  - (b) any other child, other than a child placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family.”
- (4) In the definition of “relative” in section 105(1), for “by affinity)” substitute “ by marriage or civil partnership) ”.

#### Commencement Information

**I16** S. 75 wholly in force at 5.12.2005; s. 75 not in force at Royal Assent see s. 263; s. 75(1)(3)(4) in force at 5.12.2005 by S.I. 2005/3175, art. 2(1) Sch. 1; s. 75(2) in force at 30.12.2005 by S.I. 2005/3175, art. 2(9), Sch. 1

#### 76 Guardianship

In section 6 of the 1989 Act (guardians: revocation and disclaimer) after subsection (3A) insert—

- “(3B) An appointment under section 5(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person appointed is the civil partner of the person who made the appointment and either—
- (a) an order of a court of civil jurisdiction in England and Wales dissolves or annuls the civil partnership, or
  - (b) the civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004,

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unless a contrary intention appears by the appointment.”

## 77 Entitlement to apply for residence or contact order

In section 10(5) of the 1989 Act (persons entitled to apply for residence or contact order) after paragraph (a) insert—

“(aa) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child is a child of the family;”.

## 78 Financial provision for children

(1) Amend Schedule 1 to the 1989 Act (financial provision for children) as follows.

(2) In paragraph 2(6) (meaning of “periodical payments order”) after paragraph (d) insert—

“(e) Part 1 or 9 of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.);

(f) Schedule 6 to the 2004 Act (financial relief in the magistrates' courts etc.),”.

(3) In paragraph 15(2) (person with whom a child lives or is to live) after “husband or wife” insert “ or civil partner ”.

(4) For paragraph 16(2) (extended meaning of “parent”) substitute—

“(2) In this Schedule, except paragraphs 2 and 15, “parent” includes—

(a) any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family, and

(b) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family;

and for this purpose any reference to either parent or both parents shall be read as a reference to any parent of his and to all of his parents.”

## 79 Adoption

(1) Amend the Adoption and Children Act 2002 (c. 38) as follows.

(2) In section 21 (placement orders), in subsection (4)(c), after “child marries” insert “ , forms a civil partnership ”.

(3) In section 47 (conditions for making adoption orders), after subsection (8) insert—

“(8A) An adoption order may not be made in relation to a person who is or has been a civil partner.”

(4) In section 51 (adoption by one person), in subsection (1), after “is not married” insert “ or a civil partner ”.

(5) After section 51(3) insert—

“(3A) An adoption order may be made on the application of one person who has attained the age of 21 years and is a civil partner if the court is satisfied that—

(a) the person’s civil partner cannot be found,

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- (b) the civil partners have separated and are living apart, and the separation is likely to be permanent, or
  - (c) the person’s civil partner is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.”
- (6) In section 64 (other provision to be made by regulations), in subsection (5) for “or marriage” substitute “, marriage or civil partnership ”.
- (7) In section 74(1) (enactments for whose purposes section 67 does not apply), for paragraph (a) substitute—
- “(a) section 1 of and Schedule 1 to the Marriage Act 1949 or Schedule 1 to the Civil Partnership Act 2004 (prohibited degrees of kindred and affinity),”.
- (8) In section 79 (connections between the register and birth records), in subsection (7)—
- (a) in paragraph (b), after “intends to be married” insert “ or form a civil partnership ”, and
  - (b) for “the person whom the applicant intends to marry” substitute “ the intended spouse or civil partner ”.
- (9) In section 81 (Adoption Contact Register: supplementary), in subsection (2) for “or marriage” substitute “, marriage or civil partnership ”.
- (10) In section 98 (pre-commencement adoptions: information), in subsection (7), in the definition of “relative” for “or marriage” substitute “, marriage or civil partnership ”.
- (11) In section 144 (interpretation), in the definition of “relative” in subsection (1), after “by marriage” insert “ or civil partnership ”.
- (12) In section 144(4) (meaning of “couple”), after paragraph (a) insert—
- “(aa) two people who are civil partners of each other, or”.

## CHAPTER 6

### MISCELLANEOUS

#### **80 False statements etc. with reference to civil partnerships**

- (1) A person commits an offence if—
- (a) for the purpose of procuring the formation of a civil partnership, or a document mentioned in subsection (2), he—
    - (i) makes or signs a declaration required under this Part or Part 5, or
    - (ii) gives a notice or certificate so required,
 knowing that the declaration, notice or certificate is false,
  - (b) for the purpose of a record being made in any register relating to civil partnerships, he—
    - (i) makes a statement as to any information which is required to be registered under this Part or Part 5, or
    - (ii) causes such a statement to be made,
 knowing that the statement is false,

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- (c) he forbids the issue of a document mentioned in subsection (2)(a) or (b) by representing himself to be a person whose consent to a civil partnership between a child and another person is required under this Part or Part 5, knowing the representation to be false, or
  - (d) with respect to a declaration made under paragraph 5(1) of Schedule 1 he makes a statement mentioned in paragraph 6 of that Schedule which he knows to be false in a material particular.
- (2) The documents are—
- (a) a civil partnership schedule or a Registrar General’s licence under Chapter 1;
  - (b) a document required by an Order in Council under section 210 or 211 as an authority for two people to register as civil partners of each other;
  - (c) a certificate of no impediment under section 240.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine (or both);
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (4) The Perjury Act 1911 (c. 6) has effect as if this section were contained in it.

## **81 Housing and tenancies**

Schedule 8 amends certain enactments relating to housing and tenancies.

## **82 Family homes and domestic violence**

Schedule 9 amends Part 4 of the Family Law Act 1996 (c. 27) and related enactments so that they apply in relation to civil partnerships as they apply in relation to marriages.

## **83 Fatal accidents claims**

- (1) Amend the Fatal Accidents Act 1976 (c. 30) as follows.
- (2) In section 1(3) (meaning of “dependant” for purposes of right of action for wrongful act causing death), after paragraph (a) insert—
- “(aa) the civil partner or former civil partner of the deceased;”.
- (3) In paragraph (b)(iii) of section 1(3), after “wife” insert “ or civil partner ”.
- (4) After paragraph (f) of section 1(3) insert—
- “(fa) any person (not being a child of the deceased) who, in the case of any civil partnership in which the deceased was at any time a civil partner, was treated by the deceased as a child of the family in relation to that civil partnership;”.
- (5) After section 1(4) insert—
- “(4A) The reference to the former civil partner of the deceased in subsection (3) (aa) above includes a reference to a person whose civil partnership with the deceased has been annulled as well as a person whose civil partnership with the deceased has been dissolved.”
- (6) In section 1(5)(a), for “by affinity” substitute “ by marriage or civil partnership ”.

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- (7) In section 1A(2) (persons for whose benefit claim for bereavement damages may be made)—
- (a) in paragraph (a), after “wife or husband” insert “ or civil partner ”, and
  - (b) in paragraph (b), after “was never married” insert “ or a civil partner ”.
- (8) In section 3 (assessment of damages), in subsection (4), after “wife” insert “ or civil partner ”.

## 84 Evidence

- (1) Any enactment or rule of law relating to the giving of evidence by a spouse applies in relation to a civil partner as it applies in relation to the spouse.
- (2) Subsection (1) is subject to any specific amendment made by or under this Act which relates to the giving of evidence by a civil partner.
- (3) For the avoidance of doubt, in any such amendment, references to a person’s civil partner do not include a former civil partner.
- (4) References in subsections (1) and (2) to giving evidence are to giving evidence in any way (whether by supplying information, making discovery, producing documents or otherwise).
- (5) Any rule of law—
  - (a) which is preserved by section 7(3) of the Civil Evidence Act 1995 (c. 38) or section 118(1) of the Criminal Justice Act 2003 (c. 44), and
  - (b) under which in any proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of a marriage,
 is to be treated as applying in an equivalent way for the purpose of proving or disproving the existence of a civil partnership.

## PART 3

### CIVIL PARTNERSHIP: SCOTLAND

## CHAPTER 1

### FORMATION AND ELIGIBILITY

## 85 Formation of civil partnership by registration

- (1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule, in the presence of—
  - (a) each other,
  - (b) two witnesses both of whom have attained the age of 16, and
  - (c) the authorised registrar,
 (all being present at a registration office or at a place agreed under section 93).

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- (2) But the two people must be eligible to be so registered.
- (3) Subsection (1) applies regardless of whether subsection (4) is complied with.
- (4) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other by—
  - (a) each of the two witnesses, and
  - (b) the authorised registrar.

## 86 Eligibility

- (1) Two people are not eligible to register in Scotland as civil partners of each other if—
  - (a) they are not of the same sex,
  - (b) they are related in a forbidden degree,
  - (c) either has not attained the age of 16,
  - (d) either is married or already in civil partnership, or
  - (e) either is incapable of—
    - (i) understanding the nature of civil partnership, or
    - (ii) validly consenting to its formation.
- (2) Subject to <sup>F49</sup>subsection (3)], a man is related in a forbidden degree to another man if related to him in a degree specified in column 1 of Schedule 10 and a woman is related in a forbidden degree to another woman if related to her in a degree specified in column 2 of that Schedule.
- (3) A man and any man related to him in a degree specified in column 1 of paragraph 2 of Schedule 10, or a woman and any woman related to her in a degree specified in column 2 of that paragraph, are not related in a forbidden degree if—
  - (a) both persons have attained the age of 21, and
  - (b) the younger has not at any time before attaining the age of 18 lived in the same household as the elder and been treated by the elder as a child of the elder’s family.
- <sup>F50</sup>(4) Paragraph 2 of Schedule 10 has effect subject to the modifications specified in subsection (5) in the case of a person (here the “relevant person”) whose gender has become the acquired gender under the Gender Recognition Act 2004 (c. 7).
- (5) The reference in that paragraph to—
  - (a) a former wife of the relevant person includes any former husband of the relevant person, and
  - (b) a former husband of the relevant person includes any former wife of the relevant person.]
- <sup>F51</sup>(5A) This section and Schedule 10 have effect as if any reference in that Schedule to a mother within any of the degrees of relationship specified in either column included a woman who is a parent of a child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008 (c. 22).]
- (6) <sup>F52</sup> .....
- (7) <sup>F53</sup> .....

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- (8) References in this section and in Schedule 10 to relationships and degrees of relationship are to be construed in accordance with section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9).
- (9) For the purposes of this section, a degree of relationship specified in paragraph 1 of Schedule 10 exists whether it is of the full blood or the half blood.
- (10) Amend section 41(1) of the Adoption (Scotland) Act 1978 (c. 28) (application to determination of forbidden degrees of provisions of that Act relating to the status conferred by adoption) as follows—
- (a) after first “marriage” insert “, to the eligibility of persons to register as civil partners of each other”, and
  - (b) for “and incest” substitute “, to such eligibility and to incest”.

#### Textual Amendments

- F49** Words in s. 86(2) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), { Sch. 1 para. 2(a)}; S.S.I. 2006/212, art. 2 (subject to art. 3-13)
- F50** S. 86(4)(5) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), { Sch. 1 para. 2(b)}; S.S.I. 2006/212, art. 2 (subject to art. 3-13)
- F51** S. 86(5A) inserted (1.9.2009) by The Human Fertilisation and Embryology (Consequential Amendments and Transitional and Saving Provisions) Order 2009 (S.I. 2009/1892), art. 2, **Sch. 1 para. 4**
- F52** S. 86(6) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), { Sch. 3}; S.S.I. 2006/212, art. 2 (subject to art. 3-13)
- F53** S. 86(7) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), { Sch. 3}; S.S.I. 2006/212, art. 2 (subject to art. 3-13)

## CHAPTER 2

### REGISTRATION

#### 87 Appointment of authorised registrars

For the purpose of affording reasonable facilities throughout Scotland for registration as civil partners, the Registrar General—

- (a) is to appoint such number of district registrars as he thinks necessary, and
- (b) may, in respect of any district for which he has made an appointment under paragraph (a), appoint one or more assistant registrars,

as persons who may carry out such registration (in this Part referred to as “authorised registrars”).

#### 88 Notice of proposed civil partnership

- (1) In order to register as civil partners, each of the intended civil partners must submit to the district registrar a notice, in the prescribed form <sup>F54</sup> . . . , of intention to enter civil partnership (in this Part referred to as a “notice of proposed civil partnership”).
- (2) [<sup>F55</sup> Each of the intended civil partners must also pay the prescribed fee and submit the following documents—



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- (a) that person's birth certificate,]
  - (b) if that person has previously been married or in civil partnership and—
    - (i) the marriage or civil partnership has been dissolved, a copy of the decree of divorce or dissolution, or
    - (ii) the other party to that marriage or civil partnership has died, the death certificate of that other party, and
  - (c) if that person has previously ostensibly been married or in civil partnership but decree of annulment has been obtained, a copy of that decree.
- (3) If a person is unable to submit a certificate or decree required by subsection (2) he may instead make a declaration to that effect, stating what the reasons are; and he must provide the district registrar with such—
- (a) information in respect of the matters to which the certificate or document would have related, and
  - (b) documentary evidence in support of that information,
- as the district registrar may require.
- (4) If a document submitted under subsection (2) or (3) is in a language other than English, the person submitting it must attach to the document a translation of it in English, certified by the translator as a correct translation.
- (5) A person submitting a notice under subsection (1) must make and [<sup>F56</sup>attest in the prescribed manner] the necessary declaration (the form for which must be included in any form prescribed for the notice).
- [<sup>F57</sup>(5A) Regulations prescribing the form of the notice of proposed civil partnership may make provision for the notice to be electronic rather than paper-based.]
- (6) The necessary declaration is a declaration that the person submitting the notice believes that the intended civil partners are eligible to be in civil partnership with each other.

#### Textual Amendments

- F54** Words in s. 88(1) omitted (1.10.2006 for certain purposes and otherwise 1.1.2007) by virtue of [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), ss. {52(2)(a)}, 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2
- F55** Words in s. 88(2) substituted (1.10.2006 for certain purposes and otherwise 1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(2\)\(b\)](#), 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2
- F56** Words in s. 88(5) substituted (1.10.2006 for certain purposes and otherwise 1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(2\)\(c\)](#), 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2
- F57** S. 88(5A) inserted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(2\)\(d\)](#), 63(2); S.S.I. 2006/469, [art. 2](#), Sch. 1

#### Commencement Information

- I17** S. 88 wholly in force at 5.12.2005; s. 88 not in force at Royal Assent see s. 263; s. 88(1)(5) in force at 14.9.2005 for certain purposes by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#); s. 88(2)-(4)(6) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

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## 89 Civil partnership notice book

- (1) On receipt of a notice of proposed civil partnership, the district registrar is to enter in a book (to be known as “the civil partnership book”) supplied to him for that purpose by the Registrar General such particulars, extracted from the notice, as may be prescribed and the date of receipt by him of that notice.
- (2) The form and content of any page of that book is to be prescribed.

### Commencement Information

**I18** S. 89 wholly in force at 5.12.2005; s. 89 not in force at Royal Assent see s. 263; s. 89(1) in force at 14.9.2005 for certain purposes by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#); s. 89(2) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#)

## 90 Publicisation

- (1) Where notices of a proposed civil partnership are [<sup>F58</sup>received by] a district registrar, he must, as soon as practicable after [<sup>F59</sup>such receipt](or, if the two documents are not [<sup>F60</sup>received] on the same day, after [<sup>F61</sup>the first is received]), publicise the relevant information and send it to the Registrar General who must also publicise it.
- (2) “The relevant information” means—
  - (a) the names of the intended civil partners, and
  - (b) the date on which it is intended to register them as civil partners of each other, being a date more than 14 days after publicisation by the district registrar under subsection (1).
- (3) Paragraph (b) of subsection (2) is subject to section 91.
- (4) The manner in which and means by which relevant information is to be publicised are to be prescribed.

### Textual Amendments

- F58** Words in s. 90(1) substituted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(3\)\(a\)](#), 63(2); [S.S.I. 2006/469](#), [art. 2](#), [Sch. 1](#)
- F59** Words in s. 90(1) substituted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(3\)\(b\)](#), 63(2); [S.S.I. 2006/469](#), [art. 2](#), [Sch. 1](#)
- F60** Word in s. 90(1) substituted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(3\)\(c\)](#), 63(2); [S.S.I. 2006/469](#), [art. 2](#), [Sch. 1](#)
- F61** Words in s. 90(1) substituted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(3\)\(d\)](#), 63(2); [S.S.I. 2006/469](#), [art. 2](#), [Sch. 1](#)

### Commencement Information

**I19** S. 90 wholly in force at 5.12.2005; s. 90 not in force at Royal Assent see s. 263; s. 90(4) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#); s. 90(1)-(3) in force at 5.12.2005 by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

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## 91 Early registration

An authorised registrar who receives a request in writing from one or both of two intended civil partners that they should be registered as civil partners of each other on a date specified in the request (being a date 14 days or fewer after publication by the district registrar under subsection (1) of section 90) may, provided that he is authorised to do so by the Registrar General, fix that date as the date for registration; and if a date is so fixed, paragraph (b) of subsection (2) of that section is to be construed as if it were a reference to that date.

## 92 Objections to registration

(1) Any person may at any time before the registration in Scotland of two people as civil partners of each other submit in writing an objection to such registration to the district registrar.

[<sup>F62</sup>(1A) For the purpose of subsection (1), an objection which is submitted to the registrar by electronic means is to be treated as in writing if it is received in a form which is legible and capable of being used for subsequent reference.]

(2) But where the objection is that the intended civil partners are not eligible to be in civil partnership with each other because either is incapable of—

- (a) understanding the nature of civil partnership, or
- (b) validly consenting to its formation,

it shall [<sup>F63</sup>not be treated as submitted until there has also been produced to the registrar] a supporting certificate [<sup>F64</sup>attested in the prescribed manner] by a registered medical practitioner.

(3) A person claiming that he may have reason to submit such an objection may, free of charge and at any time when the registration office at which a notice of proposed civil partnership to which the objection would relate is open for public business, inspect any relevant entry in the civil partnership book.

(4) Where the district registrar receives an objection in accordance with subsection (1) he must—

- (a) in any case where he is satisfied that the objection relates to no more than a misdescription or inaccuracy in a notice submitted under section 88(1)—
  - (i) notify the intended civil partners of the nature of the objection and make such enquiries into the matter mentioned in it as he thinks fit, and
  - (ii) subject to the approval of the Registrar General, make any necessary correction to any document relating to the proposed civil partnership, or
- (b) in any other case—
  - (i) at once notify the Registrar General of the objection, and
  - (ii) pending consideration of the objection by the Registrar General, suspend the completion or issue of the civil partnership schedule in respect of the proposed civil partnership.

(5) If the Registrar General is satisfied, on consideration of an objection of which he has received notification under subsection (4)(b)(i) that—

- (a) there is a legal impediment to registration, he must direct the district registrar not to register the intended civil partners and to notify them accordingly, or

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- (b) there is no such impediment, he must inform the district registrar to that effect.
- (6) For the purposes of this section and section 94, there is a legal impediment to registration where the intended civil partners are not eligible to be in civil partnership with each other.

#### Textual Amendments

- F62** S. 92(1A) inserted (1.10.2006 for certain purposes and otherwise 1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 52\(4\)\(a\)](#), 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2
- F63** Words in s. 92(2) substituted (1.10.2006 for certain purposes and otherwise 1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 52\(4\)\(b\)\(i\)](#), 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2
- F64** Words in s. 92(2) substituted (1.10.2006 for certain purposes and otherwise 1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 52\(4\)\(b\)\(ii\)](#), 63(2); S.S.I. 2006/469, [arts. 2, 3](#), Schs. 1, 2

### 93 Place of registration

- (1) Two people may be registered as civil partners of each other at a registration office or any other place which they and the local registration authority agree is to be the place of registration.
- (2) The place of registration may, if the approval of the Registrar General is obtained, be
- [<sup>F65</sup>(a) in a registration district other than that of the authorised registrar carrying out the registration, or
  - (b) in or on Scottish Waters.]
- (3) But the place must not be in religious premises, that is to say premises which—
- (a) are used solely or mainly for religious purposes, or
  - (b) have been so used and have not subsequently been used solely or mainly for other purposes.
- (4) “Local registration authority” has the meaning given by section 5(3) of the 1965 Act.
- [<sup>F66</sup>(5) “Scottish Waters” has the meaning given by section 26(2) of the Marriage (Scotland) Act 1977 (c. 15).]

#### Textual Amendments

- F65** Words in s. 93(2) substituted (1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 51\(a\)](#), 63(2); S.S.I. 2006/469, [art. 3](#), Sch. 2 (with art. 4)
- F66** S. 93(5) inserted (1.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 51\(b\)](#), 63(2); S.S.I. 2006/469, [art. 3](#), Sch. 2 (with art. 4)

### 94 The civil partnership schedule

Where—

- (a) the district registrar has received a notice of proposed civil partnership in respect of each of the intended civil partners and—

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- (i) is satisfied that there is no legal impediment to their registration as civil partners of each other, or
  - (ii) as the case may be, is informed under section 92(5)(b) that there is no such impediment,
- (b) the 14 days mentioned in paragraph (b) of section 90(2) have expired (or as the case may be the date which, by virtue of section 91, that paragraph is to be construed as a reference to has been reached), and
- (c) the period which has elapsed since the day of receipt of the notices by him (or, if the two notices were not received on the same day, since the day of receipt of the later) does not exceed 3 months,
- he is to complete a civil partnership schedule in the prescribed form.

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**Commencement Information**

**I20** S. 94 wholly in force at 5.12.2005; s. 94 not in force at Royal Assent see s. 263; s. 94 in force at 14.9.2005 for certain purposes by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

## 95 Further provision as to registration

- (1) Before the persons present sign in accordance with section 85 the authorised registrar is to require the intended civil partners to confirm that (to the best of their knowledge) the particulars set out in the civil partnership schedule are correct.
- (2) As soon as practicable after the civil partnership schedule has been signed, the authorised registrar must cause those particulars to be entered in a register (to be known as the “civil partnership register”) supplied to him for that purpose by the Registrar General.
- (3) The form and content of any page of that register is to be prescribed.
- (4) A fee payable by the intended civil partners for their registration as civil partners of each other is to be prescribed.

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**Commencement Information**

**I21** S. 95 wholly in force at 5.12.2005; s. 95 not in force at Royal Assent see s. 263; s. 95(3)(4) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#); s. 95(1)(2) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

### [<sup>F67</sup>95A Validity following entry in civil partnership register

- (1) Subsection (2) applies where the particulars set out in a civil partnership schedule signed in accordance with section 85 are entered in the civil partnership register in pursuance of section 95(2).
- (2) The validity of the registration as civil partners to which the schedule relates is not to be questioned in any legal proceedings on the ground of failure to comply with a requirement or restriction imposed by or under this Part.
- (3) Subsection (2)—

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- (a) is subject to section 85(2), and
- (b) does not prejudice section 100.]

#### Textual Amendments

**F67** S. 95A inserted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(5\)](#), [63\(2\)](#); [S.S.I. 2006/469](#), [art. 2](#), [Sch. 1](#)

### 96 Civil partnership with former spouse

- (1) Where an intended civil partner has a full gender recognition certificate issued under section 5(1) of the Gender Recognition Act 2004 (c. 7) and the other intended civil partner was the other party in the proceedings in which the certificate was issued, the procedures for their registration as civil partners of each other may—
  - (a) if they so elect, and
  - (b) if each of them submits a notice under section 88(1) within 30 days after the certificate is issued,
 be expedited as follows.
- (2) The registration may take place on any of the 30 days immediately following—
  - (a) that on which the notices are submitted, or
  - (b) (if the two notices are not submitted on the same day) that on which the later is submitted.
- (3) And accordingly there are to be disregarded—
  - (a) in section 90—
    - (i) in subsection (2)(b), the words from “being” to the end, and
    - (ii) subsection (3),
  - (b) section 91, and
  - (c) in section 94, paragraph (b).

### 97 Certificates of no impediment for Part 2 purposes

- (1) This section applies where—
  - (a) two people propose to register as civil partners of each other under Chapter 1 of Part 2, and
  - (b) one of them (“A”) resides in Scotland but the other (“B”) resides in England or Wales.
- (2) A may submit a notice of intention to register under section 88 as if A and B intended to register as civil partners in the district in which A resides.
- (3) If the district registrar is satisfied (after consultation, if he considers it necessary, with the Registrar General) that there is no impediment (in terms of section 92(6)) to A registering as B’s civil partner, he must issue a certificate to A in the prescribed form that there is not known to be any such impediment.
- (4) But the certificate may not be issued to A earlier than 14 days after the receipt (as entered in the civil partnership notice book) of the notice under subsection (2) unless—
  - (a) the circumstances are as mentioned in section 96(1), and
  - (b) A makes an election for the certificate to be issued as soon as possible.

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- (5) Any person may, at any time before a certificate is issued under subsection (3), submit to the district registrar an objection in writing to its issue.
- (6) Any objection made under subsection (5) must be taken into account by the district registrar in deciding whether he is satisfied that there is no legal impediment to A registering as B's civil partner.

#### Commencement Information

**I22** S. 97 wholly in force at 5.12.2005; s. 97 not in force at Royal Assent see s. 263; s. 97(3) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#); s. 97(1)(2)(4)-(6) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

### [<sup>F68</sup>98 Application of certain provisions to civil partnerships

- (1) The following sections of the 1965 Act apply in relation to the civil partnership register as they apply in relation to the registers of births, marriages and deaths—
  - (a) section 34 (examination and transmission of registers),
  - (b) section 38(1) and (2) (search of indexes kept by Registrar General),
  - (c) section 39C (provision of information to district registrars), and
  - (d) section 44 (Register of Corrections Etc.).
- (2) Section 39A of the 1965 Act (notice of registration events to third parties) applies in relation to a civil partnership as it applies in relation to a marriage.
- (3) In that application, the reference in section 39A(2)(c) to the marriage having been registered in accordance with section 15 or 19 of the Marriage (Scotland) Act 1977 (c. 15) is to be read as a reference to the particulars of the formation of the civil partnership having been entered in the civil partnership register under section 95(2) of this Act.]

#### Textual Amendments

**F68** S. 98 substituted (1.10.2006 for certain purposes and 1.1.2007 for further certain purposes and otherwise prosp.) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006](#) (asp 14), [ss. 52\(6\)](#), [63\(2\)](#); [S.S.I. 2006/469](#), [arts. 2, 3](#), [Sch. 1](#), [Sch. 2](#)

### 99 Correction of errors in civil partnership register

- (1) No alteration is to be made in the civil partnership register except as authorised by or under this or any other Act (“Act” including an Act of the Scottish Parliament).
- (2) Any clerical error in the register or error in it of a kind prescribed may be corrected by the district registrar.
- (3) The Registrar General may authorise district examiners (“district examiner” having the meaning given by section 2(1) of the 1965 Act) to correct any error in the register of a type specified by him which they discover during an examination under section 34 of the 1965 Act.

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### Commencement Information

**I23** S. 99 wholly in force at 5.12.2005; s. 99 not in force at Royal Assent see s. 263; s. 99(2) in force at 14.9.2005 for certain purposes by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#); s. 99(1)(3) in force at 5.12.2005 by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

## 100 Offences

- (1) A person (“A”) commits an offence who registers in Scotland as the civil partner of another person (“B”) knowing that either or both—
  - (a) A is already married to or in civil partnership with a person other than B, or
  - (b) B is already married to or in civil partnership with a person other than A.
- (2) A person commits an offence who knowingly—
  - (a) falsifies or forges any civil partnership document (that is to say, any document issued or made, or purporting to be issued or made, or required, under this Part),
  - (b) uses, or gives or sends to any person as genuine, any false or forged civil partnership document,
  - (c) being an authorised registrar, purports to register two people as civil partners of each other before any civil partnership schedule available to him at the time of registration has been duly completed,
  - (d) not being an authorised registrar, conducts himself in such a way as to lead intended civil partners to believe that he is authorised to register them as civil partners of each other,
  - (e) being an authorised registrar, purports to register two people as civil partners of each other without both of them being present, or
  - (f) being an authorised registrar, purports to register two people as civil partners of each other in a place other than a registration office or a place agreed under section 93.
- (3) A person guilty of an offence under subsection (1) or (2) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale (or both).
- (4) Summary proceedings for an offence under subsection (1) or (2) may be commenced at any time within 3 months after evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge or within 12 months after the offence is committed (whichever period last expires).
- (5) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (time limits) has effect for the purposes of this section as it has for the purposes of that section.



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## CHAPTER 3

### OCCUPANCY RIGHTS AND TENANCIES

#### *Occupancy rights*

#### 101 Occupancy rights

- (1) Where, apart from the provisions of this Chapter, one civil partner in a civil partnership is entitled, or permitted by a third party, to occupy a family home of the civil partnership (that civil partner being referred in this Chapter as an “entitled partner”) and the other civil partner is not so entitled or permitted (a “non-entitled partner”), the non-entitled partner has, subject to the provisions of this Chapter, the following rights—
    - (a) if in occupation, a right to continue to occupy the family home;
    - (b) if not in occupation, a right to enter into and occupy the family home.
  - (2) The rights conferred by subsection (1) to continue to occupy or, as the case may be, to enter and occupy the family home include, without prejudice to their generality, the right to do so together with any child of the family.
  - (3) In subsection (1), an “entitled partner” includes a civil partner who is entitled, or permitted by a third party, to occupy the family home along with an individual who is not the other civil partner only if that individual has waived a right of occupation in favour of the civil partner so entitled or permitted.
  - (4) If the entitled partner refuses to allow the non-entitled partner to exercise the right conferred by subsection (1)(b), the non-entitled partner may exercise that right only with the leave of the Court of Session or the sheriff under section 103(3) or (4).
  - (5) A non-entitled partner may renounce in writing the rights mentioned in paragraphs (a) and (b) of subsection (1) only—
    - (a) in a particular family home, or
    - (b) in a particular property which it is intended by the civil partners will become their family home.
  - (6) A renunciation under subsection (5) has effect only if, at the time of making the renunciation, the non-entitled partner swears or affirms before a notary public that it is made freely and without coercion of any kind.
- [<sup>F69</sup>(6A) Subject to subsection (5), if—
- (a) there has been no cohabitation between an entitled partner and a non-entitled partner during a continuous period of two years, and
  - (b) during that period the non-entitled partner has not occupied the family home, the non-entitled partner shall, on the expiry of that period, cease to have occupancy rights in the family home.
- (6B) A non-entitled partner who has ceased to have occupancy rights by virtue of subsection (6A) may not apply to the court for an order under section 103(1).]
- (7) In this Part—
- “child of the family” means [<sup>F70</sup>any child or grandchild of either civil partner, and any person who has been brought up or treated by either civil partner as

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if the person were a child of that partner, whatever the age of such a child, grandchild or person], and

“family” means the civil partners in the civil partnership, together with any child [<sup>F71</sup>, grandchild or person so treated] by them.

- (8) In subsection (6), “notary public” includes any person duly authorised, by the law of the country other than Scotland in which the swearing or affirmation takes place, to administer oaths or receive affirmations in that other country.

#### Textual Amendments

- F69** S. 101(6A)(6B) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F70** Words in s. 101(7) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(b)(i)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F71** Words in s. 101(7) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(b)(ii)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

## 102 Occupancy: subsidiary and consequential rights

- (1) For the purpose of securing the occupancy rights of a non-entitled partner, that partner is, in relation to a family home, entitled without the consent of the entitled partner—
- (a) to make any payment due by the entitled partner in respect of rent, rates, secured loan instalments, interest or other outgoings (not being outgoings on repairs or improvements);
  - (b) to perform any other obligation incumbent on the entitled partner (not being an obligation in respect of non-essential repairs or improvements);
  - (c) to enforce performance of an obligation by a third party which that third party has undertaken to the entitled partner to the extent that the entitled partner may enforce such performance;
  - (d) to carry out such essential repairs as the entitled partner may carry out;
  - (e) to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the entitled partner may carry out and which the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
  - (f) to take such other steps, for the purpose of protecting the occupancy rights of the non-entitled partner, as the entitled partner may take to protect the occupancy rights of the entitled partner.
- (2) Any payment made under subsection (1)(a) or any obligation performed under subsection (1)(b) has effect in relation to the rights of a third party as if the payment were made or the obligation were performed by the entitled partner; and the performance of an obligation which has been enforced under subsection (1)(c) has effect as if it had been enforced by the entitled partner.
- (3) Where there is an entitled and a non-entitled partner, the court, on the application of either of them, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner—
- (a) without the consent of the other partner, on any of the items mentioned in paragraphs (a) and (d) of subsection (1);

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- (b) with the consent of the other partner, on anything relating to a family home.
- (4) Where both partners are entitled, or permitted by a third party, to occupy a family home—
  - (a) either partner is entitled, without the consent of the other partner, to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
  - (b) the court, on the application of either partner, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner, with or without the consent of the other partner, on anything relating to the family home.
- (5) Where one partner (“A”) owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a family home—
  - (a) the other partner may, without the consent of A—
    - (i) make any payment due by A which is necessary, or take any other step which A is entitled to take, to secure the possession or use of any such furniture and plenishings (and any such payment is to have effect in relation to the rights of a third party as if it were made by A), or
    - (ii) carry out such essential repairs to the furniture and plenishings as A is entitled to carry out;
  - (b) the court, on the application of either partner, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner—
    - (i) without the consent of the other partner, in making payments under a hire, hire-purchase or conditional sale agreement, or in paying interest charges in respect of the furniture and plenishings, or in carrying out essential repairs to the furniture and plenishings, or
    - (ii) with the consent of the other partner, on anything relating to the furniture or plenishings.
- (6) An order under subsection (3), (4)(b) or (5)(b) may require one partner to make a payment to the other partner in implementation of the apportionment.
- (7) Any application under subsection (3), (4)(b) or (5)(b) is to be made within 5 years after the date on which any payment in respect of such incurred expenditure was made.
- (8) Where—
  - (a) the entitled partner is a tenant of a family home,
  - (b) possession of it is necessary in order to continue the tenancy, and
  - (c) the entitled partner abandons such possession,the tenancy is continued by such possession by the non-entitled partner.
- (9) In this section “improvements” includes alterations and enlargement.

### **103 Regulation by court of rights of occupancy of family home**

- (1) [<sup>F72</sup>Subject to section 101(6A),] Where there is an entitled and a non-entitled partner, or where both partners are entitled, or permitted by a third party, to occupy a family home, either partner may apply to the court for an order—

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- (a) declaring the occupancy rights of the applicant partner;
  - (b) enforcing the occupancy rights of the applicant partner;
  - (c) restricting the occupancy rights of the non-applicant partner;
  - (d) regulating the exercise by either partner of his or her occupancy rights;
  - (e) protecting the occupancy rights of the applicant partner in relation to the other partner.
- (2) Where one partner owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a family home and the other partner has occupancy rights in that home, that other person may apply to the court for an order granting to the applicant the possession or use in the family home of any such furniture and plenishings; but, subject to section 102, an order under this subsection does not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.
- (3) The court is to grant an application under subsection (1)(a) if it appears to the court that the application relates to a family home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2), the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—
  - (a) the conduct of the partners, whether in relation to each other or otherwise,
  - (b) the respective needs and financial resources of the partners,
  - (c) the needs of any child of the family,
  - (d) the extent (if any) to which—
    - (i) the family home, and
    - (ii) in relation only to an order under subsection (2), any item of furniture and plenishings referred to in that subsection, is used in connection with a trade, business or profession of either partner, and
  - (e) whether the entitled partner offers or has offered to make available to the non-entitled partner any suitable alternative accommodation.
- (4) Pending the making of an order under subsection (3), the court, on the application of either partner, may make such interim order as it considers necessary or expedient in relation to—
  - (a) the residence of either partner in the home to which the application relates,
  - (b) the personal effects of either partner or of any child of the family, or
  - (c) the furniture and plenishings,
 but an interim order may be made only if the non-applicant partner has been afforded an opportunity of being heard by or represented before the court.
- (5) The court is not to make an order under subsection (3) or (4) if it appears that the effect of the order would be to exclude the non-applicant partner from the family home.
- (6) If the court makes an order under subsection (3) or (4) which requires the delivery to one partner of anything which has been left in or removed from the family home, it may also grant a warrant authorising a messenger-at-arms or sheriff officer to enter the family home or other premises occupied by the other partner and to search for and take possession of the thing required to be delivered, (if need be by opening shut and lockfast places) and to deliver the thing in accordance with the order.
- (7) A warrant granted under subsection (6) is to be executed only after expiry of such period as the court is to specify in the order for delivery.

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- (8) Where it appears to the court—
- (a) on the application of a non-entitled partner, that the applicant has suffered a loss of occupancy rights or that the quality of the applicant’s occupation of a family home has been impaired, or
  - (b) on the application of a partner who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3), that the applicant has suffered a loss of such possession or use or that the quality of the applicant’s possession or use of the furniture and plenishings has been impaired,
- in consequence of any act or default on the part of the other partner which was intended to result in such loss or impairment, it may order that other partner to pay to the applicant such compensation as it considers just and reasonable in respect of that loss or impairment.
- (9) A partner may renounce in writing the right to apply under subsection (2) for the possession or use of any item of furniture and plenishings.

**Textual Amendments**

**F72** Words in s. 103(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 4; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

**104 Exclusion orders**

- (1) Where there is an entitled and non-entitled partner, or where both partners are entitled, or permitted by a third party, to occupy a family home, either partner, whether or not that partner is in occupation at the time of the application, may apply to the court for an order (in this Chapter referred to as “an exclusion order”) suspending the occupancy rights of the other partner (“the non-applicant partner”) in a family home.
- (2) Subject to subsection (3), the court is to make an exclusion order if it appears to it that to do so is necessary for the protection of the applicant or any child of the family from any conduct, or threatened or reasonably apprehended conduct, of the non-applicant partner which is or would be injurious to the physical or mental health of the applicant or child.
- (3) The court is not to make an exclusion order if it appears to it that to do so would be unjustified or unreasonable—
- (a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3), and
  - (b) where the family home—
    - (i) is, or is part of, an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991 (c. 55), or
    - (ii) is let, or is a home in respect of which possession is given, to the non-applicant partner or to both partners by an employer as an incident of employment,having regard to any requirement that the non-applicant partner, or, as the case may be, both partners must reside in the family home and to the likely consequences of the exclusion of the non-applicant partner from the family home.

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- (4) In making an exclusion order the court is, on the application of the applicant partner—
- (a) to grant a warrant for the summary ejection of the non-applicant partner from the family home unless the non-applicant partner satisfies the court that it is unnecessary for it to grant such a remedy,
  - (b) to grant an interdict prohibiting the non-applicant partner from entering the family home without the express permission of the applicant, and
  - (c) to grant an interdict prohibiting the removal by the non-applicant partner, except with the written consent of the applicant or by a further order of the court, of any furniture and plenishings in the family home unless the non-applicant partner satisfies the court that it is unnecessary for it to grant such a remedy.
- (5) In making an exclusion order the court may—
- (a) grant an interdict prohibiting the non-applicant partner from entering or remaining in a specified area in the vicinity of the family home;
  - (b) where the warrant for the summary ejection of the non-applicant partner has been granted in that partner's absence, give directions as to the preservation of that partner's goods and effects which remain in the family home;
  - (c) on the application of either partner, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe;
  - (d) on the application of either partner, make such other order as it considers necessary for the proper enforcement of an order made under subsection (4) or paragraph (a), (b) or (c).
- (6) Pending the making of an exclusion order, the court may, on the application of the applicant partner, make an interim order suspending the occupancy rights of the non-applicant partner in the family home to which the application for the exclusion order relates; and subsections (4) and (5) apply to such an interim order as they apply to an exclusion order.
- (7) But an interim order may be made only if the non-applicant partner has been afforded an opportunity of being heard by or represented before the court.
- (8) Without prejudice to subsections (1) and (6), where both partners are entitled, or permitted by a third party, to occupy a family home, it is incompetent for one partner to bring an action of ejection from the family home against the other partner.

## **105 Duration of orders under sections 103 and 104**

- (1) The court may, on the application of either partner, vary or recall any order made by it under section 103 or 104.
- (2) Subject to subsection (3), any such order, unless previously so varied or recalled, ceases to have effect—
  - (a) on the dissolution of the civil partnership,
  - (b) subject to section 106(1), where there is an entitled and non-entitled partner, on the entitled partner ceasing to be an entitled partner in respect of the family home to which the order relates, or
  - (c) where both partners are entitled, or permitted by a third party, to occupy the family home, on both partners ceasing to be so entitled or permitted.

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- (3) Without prejudice to the generality of subsection (2), an order under section 103(3) or (4) which grants the possession or use of furniture and plenishings ceases to have effect if the furniture and plenishings cease to be permitted by a third party to be retained in the family home.

## 106 Continued exercise of occupancy rights after dealing

- (1) Subject to subsection (3)—

- (a) the continued exercise of the rights conferred on a non-entitled partner by the provisions of this Chapter in respect of a family home are not prejudiced by reason only of any dealing of the entitled partner relating to that home, and
- (b) a third party is not by reason only of such a dealing entitled to occupy that home or any part of it.

[<sup>F73</sup>(1A) The occupancy rights of a non-entitled partner in relation to a family home shall not be exercisable in relation to the home where, following a dealing of the entitled partner relating to the home—

- (a) a person acquires the home, or an interest in it, in good faith and for value from a person other than the person who is or, as the case may be, was the entitled partner, or
- (b) a person derives title to the home from a person who acquired title as mentioned in paragraph (a).]

- (2) In this section and section 107—

“dealing” includes the grant of a heritable security and the creation of a trust but does not include a conveyance under section 80 of the Lands Clauses Consolidation Act 1845 (c. 18);

“entitled partner” does not include a civil partner who, apart from the provisions of this Chapter—

- (a) is permitted by a third party to occupy a family home, or
- (b) is entitled to occupy a family home along with an individual who is not the other civil partner whether or not that individual has waived a right of occupation in favour of the civil partner so entitled,

(“non-entitled partner” being construed accordingly).

- (3) This section does not apply in any case where—

- (a) the non-entitled partner in writing either—
  - (i) consents or has consented to the dealing (any consent being in such form as the Scottish Ministers may, by regulations made by statutory instrument, prescribe), or
  - (ii) renounces or has renounced occupancy rights in relation to the family home or property to which the dealing relates,
- (b) the court has made an order under section 107 dispensing with the consent of the non-entitled partner to the dealing,
- (c) the dealing occurred, or implements a binding obligation entered into by the entitled partner, before the registration of the civil partnership,
- (d) the dealing occurred, or implements a binding obligation entered into, before the commencement of this section,
- (e) the dealing comprises a [<sup>F74</sup>transfer for value] to a third party who has acted in good faith, if there is produced to the third party by the [<sup>F75</sup>transferor—

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- (i) a written declaration signed by the transferor, or a person acting on behalf of the transferor under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)), that the subjects of the transfer are not, or were not at the time of the dealing, a family home in relation to which a civil partner of the transferor has or had occupancy rights, or
  - (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled partner or a person acting on behalf of the non-entitled partner under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).]
- (f) the entitled partner has permanently ceased to be entitled to occupy the family home, and at any time after that a continuous period of [<sup>F76</sup>2] years has elapsed during which the non-entitled partner has not occupied the family home.
- (4) For the purposes of subsection (3)(e), the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.

#### Textual Amendments

- F73** S. 106(1A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 5(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F74** Words in s. 106(3)(e) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 5(b)(i)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F75** Words in s. 106(3)(e) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 5(b)(ii)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F76** Word in s. 106(3)(f) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 5(b)(iii)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

### 107 Dispensation with civil partner's consent to dealing

- (1) [<sup>F77</sup>Subject to subsections (1A) and (1C),] The court may, on the application of an entitled partner or any other person having an interest, make an order dispensing with the consent of a non-entitled partner to a dealing which has taken place or a proposed dealing, if—
- (a) such consent is unreasonably withheld,
  - (b) such consent cannot be given by reason of physical or mental disability, or
  - (c) the non-entitled partner cannot be found after reasonable steps have been taken to trace that partner.
- [<sup>F78</sup>(1A) Subsection (1B) applies if, in relation to a proposed sale—
- (a) negotiations with a third party have not begun, or
  - (b) negotiations have begun but a price has not been agreed.
- (1B) An order under subsection (1) dispensing with consent may be made only if—
- (a) the price agreed for the sale is no less than such amount as the court specifies in the order, and
  - (b) the contract for the sale is concluded before the expiry of such period as may be so specified.



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- (1C) Subsection (1D) applies if the proposed dealing is the grant of a heritable security.
- (1D) An order under subsection (1) dispensing with consent may be made only if—
- (a) the heritable security is granted for a loan of no more than such amount as the court specifies in the order, and
  - (b) the security is executed before the expiry of such period as may be so specified.]
- (2) For the purposes of subsection (1)(a), a non-entitled partner has unreasonably withheld consent to a dealing which has taken place or a proposed dealing, where it appears to the court either—
- (a) that the non-entitled partner—
    - (i) has led the entitled partner to believe that the non-entitled partner would consent to the dealing, and
    - (ii) would not be prejudiced by any change in the circumstances of the case since the conduct which gave rise to that belief occurred, or
  - (b) that the entitled partner has, having taken all reasonable steps to do so, been unable to obtain an answer to a request for consent.
- (3) The court, in considering whether to make an order under subsection (1), is to have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3).
- [<sup>F79</sup>(3A) If the court refuses an application for an order under subsection (1), it may make an order requiring a non-entitled partner who is or becomes the occupier of the family home—
- (a) to make such payments to the owner of the home in respect of that partner's occupation of it as may be specified in the order,
  - (b) to comply with such other conditions relating to that partner's occupation of the family home as may be so specified.]
- (4) Where—
- (a) an application is made for an order under this section, and
  - (b) an action is or has been raised by a non-entitled partner to enforce occupancy rights,
- the action is to be sisted until the conclusion of the proceedings on the application.

#### Textual Amendments

- F77** Words in s. 107(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 6(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F78** S. 107(1A)-(1D) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 6(b)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F79** S. 107(3A) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 6(c)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

## 108 Interests of heritable creditors

- (1) The rights of a third party with an interest in the family home as a creditor under a secured loan in relation to the non-performance of any obligation under the loan are

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not prejudiced by reason only of the occupancy rights of the non-entitled partner; but where a non-entitled partner has or obtains occupation of a family home and—

- (a) the entitled partner is not in occupation, and
- (b) there is a third party with such an interest in the family home,

the court may, on the application of the third party, make an order requiring the non-entitled partner to make any payment due by the entitled partner in respect of the loan.

- (2) This section does not apply to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) unless the third party in granting the secured loan acted in good faith and there was produced to the third party by the entitled partner—
  - (a) [<sup>F80</sup>a written declaration signed] by the entitled partner declaring that there is no non-entitled partner, or
  - (b) a renunciation of occupancy rights or consent to the taking of the loan which bears to have been properly made or given by the non-entitled partner.
- (3) This section does not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) unless the third party in granting the secured loan acted in good faith and there was produced to the third party by the grantor—
  - (a) [<sup>F81</sup>a written declaration signed] by the grantor declaring that the security subjects are not or were not at the time of the granting of the security a family home in relation to which a civil partner of the grantor has or had occupancy rights, or
  - (b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been properly made or given by the non-entitled partner.
- (4) For the purposes of subsections (2) and (3), the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.

#### Textual Amendments

**F80** Words in s. 108(2)(a) substituted (30.6.2006) by [The Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), [art. 9](#)

**F81** Words in s. 108(3)(a) substituted (30.6.2006) by [The Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), [art. 9](#)

## 109 Provisions where both civil partners have title

- (1) Subject to subsection (2), where, apart from the provisions of this Chapter, both civil partners are entitled to occupy a family home—
  - (a) the rights in that home of one civil partner are not prejudiced by reason only of any dealing of the other civil partner, and
  - (b) a third party is not by reason only of such a dealing entitled to occupy that home or any part of it.
- (2) Sections 106(3) and 107 and the definition of “dealing” in section 106(2) apply for the purposes of subsection (1) as they apply for the purposes of section 106(1) but subject to the following modifications—

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- (a) any reference to the entitled partner and to the non-entitled partner is to be construed as a reference to a civil partner who has entered into, or as the case may be proposes to enter into, a dealing and to the other civil partner respectively, and
- (b) in paragraph (b) of section 107(4) the reference to occupancy rights is to be construed as a reference to any rights in the family home.

## 110 Rights of occupancy in relation to division and sale

Where a civil partner brings an action for the division and sale of a family home owned in common with the other civil partner, the court, after having regard to all the circumstances of the case including—

- (a) the matters specified in paragraphs (a) to (d) of section 103(3), and
- (b) whether the civil partner bringing the action offers or has offered to make available to the other civil partner any suitable alternative accommodation,

may refuse to grant decree in that action or may postpone the granting of decree for such period as it considers reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.

## 111 Adjudication

- (1) Where a family home as regards which there is an entitled partner and a non-entitled partner is adjudged, the Court of Session, on the application of the non-entitled partner made within 40 days after the date of the decree of adjudication, may—
  - (a) order the reduction of the decree, or
  - (b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled partner,

if satisfied that the purpose of the diligence was wholly or mainly to defeat the occupancy rights of the non-entitled partner.

- (2) Section 106(2) applies in construing “entitled partner” and “non-entitled partner” for the purposes of subsection (1).

## [<sup>F82</sup>111A Effect of court action under section 103, 104 or 105 on reckoning of periods in sections 101 and 106

- (1) Subsection (2) applies where an application is made under section 103(1), 104(1) or 105(1).
- (2) In calculating the period of two years mentioned in section 101(6A)(a) or 106(3)(f), no account shall be taken of the period mentioned in subsection (3).
- (3) The period is the period beginning with the date on which the application is made and—
  - (a) in the case of an application under section 103(1) or 104(1), ending on the date on which—
    - (i) an order under section 103(3) or, as the case may be, 104(2) is made, or
    - (ii) the application is otherwise finally determined or abandoned,
  - (b) in the case of an application under section 105(1), ending on the date on which—

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- (i) the order under section 103(3) or, as the case may be, 104(2) is varied or recalled, or
- (ii) the application is otherwise finally determined or abandoned.]

#### **Textual Amendments**

**F82** S. 111A inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 7**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

### *Transfer of tenancy*

## **112 Transfer of tenancy**

- (1) The court may, on the application of a non-entitled partner, make an order transferring the tenancy of a family home to that partner and providing, subject to subsection (12), for the payment by the non-entitled partner to the entitled partner of such compensation as seems to it to be just and reasonable in all the circumstances of the case.
- (2) In an action—
  - (a) for dissolution of a civil partnership, the Court of Session or the sheriff,
  - (b) for declarator of nullity of a civil partnership, the Court of Session,
 may, on granting decree or within such period as the court may specify on granting decree, make an order granting an application under subsection (1).
- (3) In determining whether to grant an application under subsection (1), the court is to have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3) and the suitability of the applicant to become the tenant and the applicant's capacity to perform the obligations under the lease of the family home.
- (4) The non-entitled partner is to serve a copy of an application under subsection (1) on the landlord and, before making an order under subsection (1), the court is to give the landlord an opportunity of being heard by it.
- (5) On the making of an order granting an application under subsection (1), the tenancy vests in the non-entitled partner without intimation to the landlord, subject to all the liabilities under the lease (other than liability for any arrears of rent for the period before the making of the order).
- (6) The arrears mentioned in subsection (5) are to remain the liability of the original entitled partner.
- (7) The clerk of court is to notify the landlord of the making of an order granting an application under subsection (1).
- (8) It is not competent for a non-entitled partner to apply for an order under subsection (1) where the family home—
  - (a) is let to the entitled partner by the entitled partner's employer as an incident of employment, and the lease is subject to a requirement that the entitled partner must reside there,
  - (b) is or is part of an agricultural holding,
  - (c) is on, or pertains to—

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- (i) a croft,
  - (ii) the subject of a cottar, or
  - (iii) the holding of a landholder or of a statutory small tenant,
  - (d) is let on a long lease, or
  - (e) is part of the tenancy land of a tenant-at-will.
- (9) In subsection (8)—
- “agricultural holding” has the same meaning as in section 1 of the Agricultural Holdings (Scotland) Act 1991 (c. 55),
  - “cottar” has the same meaning as in section 12(5) of the Crofters (Scotland) Act 1993 (c. 44),
  - “croft” has the same meaning as in that Act of 1993,
  - “holding”, in relation to a landholder and a statutory small tenant, “landholder” and “statutory small tenant” have the same meanings respectively as in sections 2(1), 2(2) and 32(1) of the Small Landholders (Scotland) Act 1911 (c. 49),
  - “long lease” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979 (c. 33), and
  - “tenant-at-will” has the same meaning as in section 20(8) of that Act of 1979.
- (10) Where both civil partners are joint or common tenants of a family home, the court may, on the application of one of the civil partners, make an order vesting the tenancy in that civil partner solely and providing, subject to subsection (12), for the payment by the applicant to the other partner of such compensation as seems just and reasonable in the circumstances of the case.
- (11) Subsections (2) to (9) apply for the purposes of an order under subsection (10) as they apply for the purposes of an order under subsection (1) but subject to the following modifications—
- (a) in subsection (3), for “tenant” there is substituted “sole tenant”;
  - (b) in subsection (4), for “non-entitled” there is substituted “applicant”;
  - (c) in subsection (5), for “non-entitled” there is substituted “applicant”;
  - (d) in subsection (6), for “liability of the original entitled partner” there is substituted “joint and several liability of both partners”;
  - (e) in subsection (8)—
    - (i) for “a non-entitled” there is substituted “an applicant”;
    - (ii) for paragraph (a) there is substituted—
      - “(a) is let to both partners by their employer as an incident of employment, and the lease is subject to a requirement that both partners must reside there;”,
      - and
    - (iii) paragraphs (c) and (e) are omitted.
- (12) Where the family home is a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10), no account is to be taken, in assessing the amount of any compensation to be awarded under subsection (1) or (10), of the loss, by virtue of the transfer of the tenancy of the home, of a right to purchase the home under Part 3 of the Housing (Scotland) Act 1987 (c. 26).

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## CHAPTER 4

### INTERDICTS

#### 113 Civil partners: competency of interdict

- (1) It shall not be incompetent for the Court of Session or the sheriff to entertain an application by one civil partner in a civil partnership for a relevant interdict by reason only that the civil partners are living together in civil partnership.
- (2) In subsection (1) <sup>F83</sup> . . . , “relevant interdict” means an interdict, including an interim interdict, which—
- (a) restrains or prohibits any conduct of one civil partner towards the other civil partner or a child of the family, or
  - [<sup>F84</sup>(b) subject to subsection (3), prohibits a civil partner from entering or remaining in—
    - (i) a family home,
    - (ii) any other residence occupied by the applicant civil partner,
    - (iii) any place of work of the applicant civil partner,
    - (iv) any school attended by a child in the permanent or temporary care of the applicant civil partner]
- [<sup>F85</sup>(3) Subsection (4) applies if in relation to a family home the non-applicant civil partner—
- (a) is an entitled partner, or
  - (b) has occupancy rights.
- (4) Except where subsection (5) applies, the court may not grant a relevant interdict prohibiting the non-applicant civil partner from entering or remaining in the family home.
- (5) This subsection applies if—
- (a) the interdict is ancillary to an exclusion order, or
  - (b) by virtue of section 101(4), the court refuses leave to exercise occupancy rights.
- (6) In this section <sup>F86</sup> . . . , “applicant civil partner” means the civil partner who has applied for the interdict; and “non-applicant civil partner” is to be construed accordingly.]

#### Textual Amendments

- F83** Words in s. 113(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F84** S. 113(2)(b) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 8(a); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F85** S. 113(3)-(6) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 8(b); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F86** Words in s. 113(6) repealed (30.6.2006) by The Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), art. 10

114 .....

F87 .....

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**Textual Amendments**

**F87** S. 114 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

115 .....

F88 .....

**Textual Amendments**

**F88** S. 115 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

116 .....

F89 .....

**Textual Amendments**

**F89** S. 116 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

**CHAPTER 5**

DISSOLUTION, SEPARATION AND NULLITY

*Dissolution and separation*

**117 Dissolution**

- (1) An action for the dissolution of a civil partnership may be brought in the Court of Session or in the sheriff court.
- (2) In such an action the court may grant decree, if, but only if, it is established that—
  - (a) the civil partnership has broken down irretrievably, or
  - (b) an interim gender recognition certificate under the Gender Recognition Act 2004 (c. 7) has, after the date of registration of the civil partnership, been issued to either of the civil partners.
- (3) The irretrievable breakdown of a civil partnership is taken to be established if—
  - (a) since the date of registration of the civil partnership the defender has at any time behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender,
  - (b) <sup>F90</sup> .....
  - (c) there has been no cohabitation between the civil partners at any time during a continuous period of [<sup>F91</sup>one year] after the date of registration of the

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civil partnership and immediately preceding the bringing of the action and the defender consents to the granting of decree of dissolution of the civil partnership, or

- (d) there has been no cohabitation between the civil partners at any time during a continuous period of [<sup>F92</sup>two] years after that date and immediately preceding the bringing of the action.

(4) Provision is to be made by act of sederunt—

- (a) for the purpose of ensuring that, in an action to which paragraph (c) of subsection (3) relates, the defender has been given such information as enables that civil partner to understand—

- (i) the consequences of consenting to the granting of decree, and  
 (ii) the steps which must be taken to indicate such consent, and

- (b) as to the manner in which the defender in such an action is to indicate such consent, and any withdrawal of such consent,

and where the defender has indicated (and not withdrawn) such consent in the prescribed manner, that indication is sufficient evidence of such consent.

(5) Provision is to be made by act of sederunt for the purpose of ensuring that, where in an action for the dissolution of a civil partnership the defender is suffering from mental illness, the court appoints a curator ad litem to the defender.

(6) <sup>F93</sup> .....

(7) <sup>F94</sup> .....

(8) In an action for dissolution of a civil partnership the standard of proof required to establish the ground of action is on balance of probability.

#### Textual Amendments

- F90** S. 117(3)(b) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), **Sch. 3**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F91** Words in s. 117(3)(c) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 9(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F92** Word in s. 117(3)(d) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 9(b)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F93** S. 117(6) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), **Sch. 3**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F94** S. 117(7) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), **Sch. 3**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

## 118 Encouragement of reconciliation

(1) At any time before granting decree in an action by virtue of paragraph (a) of section 117(2) for dissolution of a civil partnership, if it appears to the court that there is a reasonable prospect of a reconciliation between the civil partners it must continue, or further continue, the action for such period as it thinks proper to enable attempts to be made to effect such a reconciliation.

(2) If during any such continuation the civil partners cohabit with one another, no account is to be taken of such cohabitation for the purposes of that action.



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## 119 Effect of resumption of cohabitation

- (1) <sup>F95</sup> .....
- (2) <sup>F96</sup> .....
- (3) In considering whether any period mentioned in paragraph <sup>F97</sup> . . . , (c) or (d) of section 117(3) has been continuous, no account is to be taken of any period or periods not exceeding 6 months in all during which the civil partners cohabited with one another; but no such period or periods during which the civil partners cohabited with one another is to count as part of the period of non-cohabitation required by any of those paragraphs.

### Textual Amendments

- F95** S. 119(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F96** S. 119(2) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F97** Word in s. 119(3) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

## 120 Separation

- (1) An action for the separation of the civil partners in a civil partnership may be brought in the Court of Session or in the sheriff court.
- (2) In such an action the court may grant decree if satisfied that the circumstances set out in any of paragraphs (a) to (d) of section 117(3) are established.

## 121 Dissolution following on decree of separation

- (1) The court may grant decree in an action for the dissolution of a civil partnership even though decree of separation has previously been granted to the pursuer on the same, or substantially the same, facts as those averred in support of that action; and in any such action the court may treat an extract decree of separation lodged in process as sufficient proof of the facts under which that decree was granted.
- (2) Nothing in this section entitles a court to grant decree of dissolution of a civil partnership without receiving evidence from the pursuer.

## 122 Registration of dissolution of civil partnership

- (1) The Registrar General is to maintain at the General Register Office a register of decrees of dissolution of civil partnership (a register which shall be known as the “Register of Dissolutions of Civil Partnership”).
- (2) The Registrar General is to cause to be made and kept at the General Register Office an alphabetical index of the entries in that register.
- (3) The register is to be in such form as may be prescribed.
- (4) On payment to him of such fee or fees as may be prescribed, the Registrar General must, at any time when the General Register Office is open for that purpose—

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- (a) cause a search of the index to be made on behalf of any person or permit any person to search the index himself,
  - (b) issue to any person an extract of any entry in the register which that person may require.
- (5) An extract of any entry in the register is to be sufficient evidence of the decree of dissolution to which it relates.
- (6) The Registrar General may—
- (a) delete,
  - (b) amend, or
  - (c) substitute another entry for,
- any entry in the register.
- [<sup>F98</sup>(7) Section 39C of the 1965 Act applies in relation to the Register of Dissolutions of Civil Partnership as it applies in relation to the Register of Divorces.]

#### Textual Amendments

**F98** S. 122(7) inserted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), **ss. 52(7)**, 63(2); S.S.I. 2006/469, **art. 2**, Sch. 1

#### Commencement Information

**I24** S. 122 wholly in force at 5.12.2005; s. 122 not in force at Royal Assent see s. 263; s. 122(3) in force at 14.9.2005 by S.S.I. 2005/428, **art. 2**, Sch.; s. 122(4) in force at 14.9.2005 for certain purposes by S.S.I. 2005/428, **art. 2**, Sch. and otherwise 5.12.2005 insofar as not already in force by S.S.I. 2005/604, **art. 2(b)**; s. 122(1)(2)(5)(6) in force at 5.12.2005 insofar as not already in force by S.S.I. 2005/604, **art. 2(b)**

### *Nullity*

#### 123 Nullity

[<sup>F99</sup>(1)] Where two people register in Scotland as civil partners of each other, the civil partnership is void if, and only if—

- (a) they were not eligible to do so, <sup>F100</sup> . . .
- (b) though they were so eligible, either of them did not <sup>F101</sup> . . . consent to its formation [<sup>F102</sup>, or,
- (c) at the time of registration one of them who was capable of consenting to the formation of the civil partnership purported to give consent but did so by reason only of duress or error.]

[<sup>F103</sup>(2) In this section “error” means—

- (a) error as to the nature of civil partnership, or
- (b) a mistaken belief held by a person (“A”) that the other person with whom A purported to register a civil partnership was the person with whom A had agreed to register a civil partnership.]

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#### Textual Amendments

- F99** S. 123 renumbered as s. 123(1) (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 10; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F100** Word in s. 123(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 10(a); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F101** Word in s. 123(1)(b) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 10(b); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F102** S. 123(1)(c) and word inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 10(c); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)
- F103** S. 123(2) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 10(d); S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

## 124 Validity of civil partnerships registered outside Scotland

- (1) Where two people register as civil partners of each other in England and Wales—
  - (a) the civil partnership is void if it would be void in England and Wales under section 49, and
  - (b) the civil partnership is voidable if it would be voidable there under section 50(1)(a), (b), (c) or (e).
- (2) Where two people register as civil partners of each other in Northern Ireland, the civil partnership is—
  - (a) void, if it would be void in Northern Ireland under section 173, and
  - (b) voidable, if it would be voidable there under section 174(1)(a), (b), (c) or (e).
- (3) Subsection (4) applies where two people register as civil partners of each other under an Order in Council under—
  - (a) section 210 (registration at British consulates etc.), or
  - (b) section 211 (registration by armed forces personnel), (“the relevant section”).
- (4) The civil partnership is—
  - (a) void, if—
    - (i) the condition in subsection (2)(a) or (b) of the relevant section is not met, or
    - (ii) a requirement prescribed for the purposes of this paragraph by an Order in Council under the relevant section is not complied with, and
  - (b) voidable, if—
    - (i) the appropriate part of the United Kingdom is England and Wales and the circumstances fall within section 50(1)(a), (b), (c) or (e), or
    - (ii) the appropriate part of the United Kingdom is Northern Ireland and the circumstances fall within section 174(1)(a), (b), (c) or (e).
- (5) The appropriate part of the United Kingdom is the part by reference to which the condition in subsection (2)(b) of the relevant section is met.
- (6) Subsections (7) and (8) apply where two people have registered an apparent or alleged overseas relationship.
- (7) The civil partnership is void if—

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- (a) the relationship is not an overseas relationship, or
  - (b) (even though the relationship is an overseas relationship), the parties are not treated under Chapter 2 of Part 5 as having formed a civil partnership.
- (8) The civil partnership is voidable if—
- (a) the overseas relationship is voidable under the relevant law,
  - (b) where either of the parties was domiciled in England and Wales at the time when the overseas relationship was registered, the circumstances fall within section 50(1)(a), (b), (c) or (e), or
  - (c) where either of the parties was domiciled in Northern Ireland at the time when the overseas relationship was registered, the circumstances fall within section 174(1)(a), (b), (c) or (e).
- (9) Section 51 or (as the case may be) section 175 applies for the purposes of—
- (a) subsections (1)(b), (2)(b) and (4)(b),
  - (b) subsection (8)(a), in so far as applicable in accordance with the relevant law, and
  - (c) subsection (8)(b) and (c).
- (10) In subsections (8)(a) and (9)(b) “the relevant law” means the law of the country or territory where the overseas relationship was registered (including its rules of private international law).
- (11) For the purposes of subsections (8) and (9)(b) and (c), references in sections 50 and 51 or (as the case may be) sections 174 and 175 to the formation of the civil partnership are to be read as references to the registration of the overseas relationship.

*<sup>F104</sup>Special destinations: revocation on dissolution or annulment*

**Textual Amendments**

**F104** S. 124A inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 33, 46(2), [Sch. 1 para. 11](#); [S.S.I. 2006/212](#), [art. 2](#) (subject to [arts. 3-13](#))

**124A Special destination: revocation on dissolution or annulment**

- (1) Subsections (2) and (3) apply where—
- (a) heritable property is held in the name of—
    - (i) a person (“A”) and A's civil partner (“B”) and the survivor of them,
    - (ii) A, B and another person and the survivor or survivors of them,
    - (iii) A with a special destination on A's death, in favour of B,
  - (b) A and B's civil partnership is terminated by dissolution or annulment, and
  - (c) after the dissolution or annulment A dies.
- (2) In relation to the succession to A's heritable property (or part of it) under the destination, B shall be deemed to have failed to survive A.
- (3) If a person has in good faith and for value (whether by purchase or otherwise) acquired title to the heritable property, the title so acquired shall not be challengeable on the ground that, by virtue of subsection (2), the property falls to the estate of A.

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- (4) Subsection (2) shall not apply if the destination specifies that B is to take under the destination despite the termination of A and B's civil partnership by dissolution or annulment.]

*Financial provision after overseas proceedings*

**125 Financial provision after overseas dissolution or annulment**

Schedule 11 relates to applications for financial provision in Scotland after a civil partnership has been dissolved or annulled in a country or territory outside the British Islands.

**CHAPTER 6**

MISCELLANEOUS AND INTERPRETATION

*Miscellaneous*

**126 Regulations**

- (1) In this Chapter and in Chapters 2 and 5, “prescribed” means prescribed by regulations made by the Registrar General.
- (2) Regulations so made may make provision (including provision as to fees) supplementing, in respect of the provision of services by or on behalf of the Registrar General or by local registration authorities (as defined by section 5(3) of the 1965 Act), the provisions of Chapter 2 of this Part.
- (3) Any power to make regulations under subsection (1) or (2) is exercisable by statutory instrument; and no such regulations are to be made except with the approval of the Scottish Ministers.
- (4) A statutory instrument containing regulations under subsection (1) or (2), or regulations under section 106(3)(a)(i), is subject to annulment in pursuance of a resolution of the Scottish Parliament.

**127 Attachment**

Where an attachment has been executed of furniture and plenishings of which the debtor's civil partner has the possession or use by virtue of an order under section 103(3) or (4), the sheriff, on the application of that civil partner made within 40 days after the execution of the attachment, may—

- (a) declare the attachment null, or
- (b) make such order as he thinks appropriate to protect such possession or use by that civil partner,

if satisfied that the purpose of the attachment was wholly or mainly to prevent such possession or use.

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## 128 Promise or agreement to enter into civil partnership

No promise or agreement to enter into civil partnership creates any rights or obligations under the law of Scotland; and no action for breach of such a promise or agreement may be brought in any court in Scotland, whatever the law applicable to the promise or agreement.

## 129 Lord Advocate as party to action for nullity or dissolution of civil partnership

F105 .....

### Textual Amendments

**F105** S. 129 repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp. 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); S.S.I. 2006/212, [art. 2](#) (subject to [arts. 3-13](#))

## 130 Civil partner of accused a competent witness

F106 .....

### Textual Amendments

**F106** S. 130 repealed (28.3.2011 with effect as mentioned in the Schedule to the commencing instrument) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [86\(2\)](#), 206(1); S.S.I. 2011/178, [art. 2](#), [Sch.](#)

## 131 Succession: legal rights arising by virtue of civil partnership

- (1) Where a person dies survived by a civil partner then, unless the circumstance is as mentioned in subsection (2), the civil partner has right to half of the moveable net estate belonging to the deceased at the time of death.
- (2) That circumstance is that the person is also survived by issue, in which case the civil partner has right to a third of that moveable net estate and those issue have right to another third of it.
- (3) In this section—
  - “issue” means issue however remote, and
  - “net estate” has the meaning given by section 36(1) (interpretation) of the Succession (Scotland) Act 1964 (c. 41).
- (4) Every testamentary disposition executed after the commencement of this section by which provision is made in favour of the civil partner of the testator and which does not contain a declaration to the effect that the provision so made is in full and final satisfaction of the right to any share in the testator’s estate to which the civil partner is entitled by virtue of subsection (1) or (2), has effect (unless the disposition contains an express provision to the contrary) as if it contained such a declaration.
- (5) In section 36(1) of the Succession (Scotland) Act 1964 (c. 41), in the definition of “legal rights”, for “and legitim” substitute “legitim and rights under section 131 of the Civil Partnership Act 2004”.

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### 132 Assurance policies

Section 2 of the Married Women’s Policies of Assurance (Scotland) Act 1880 (c. 26) (which provides that a policy of assurance may be effected in trust for a person’s spouse, children or spouse and children) applies in relation to a policy of assurance—

- (a) effected by a civil partner (in this section referred to as “A”) on A’s own life, and
- (b) expressed upon the face of it to be for the benefit of A’s civil partner, or of A’s children, or of A’s civil partner and children,

as it applies in relation to a policy of assurance effected as, and expressed upon the face of it to be for such benefit as, is mentioned in that section.

### 133 Council Tax: liability of civil partners

After section 77 of the Local Government Finance Act 1992 (c. 14), insert—

#### “77A Liability of civil partners

(1) Where—

- (a) a person who is liable to pay council tax in respect of any chargeable dwelling and any day is in civil partnership with another person or living with another person in a relationship which has the characteristics of the relationship between civil partners; and
- (b) that other person is also a resident of the dwelling on that day but would not, apart from this section, be so liable,

those persons shall be jointly and severally liable to pay the council tax payable in respect of that dwelling and that day.

(2) Subsection (1) above shall not apply as respects any day on which the other person there mentioned falls to be disregarded for the purposes of discount—

- (a) by virtue of paragraph 2 of Schedule 1 to this Act (the severely mentally impaired); or
- (b) being a student, by virtue of paragraph 4 of that Schedule.”

### 134 General provisions as to fees

(1) Subject to such exceptions as may be prescribed, a district registrar may refuse to comply with any application voluntarily made to him under this Part until the appropriate fee, if any, provided for by or under this Part is paid to him; and any such fee, if not prepaid, is recoverable by the registrar to whom it is payable.

(2) Circumstances, of hardship or otherwise, may be prescribed in which fees provided for by or under this Part may be remitted by the Registrar General.

#### Commencement Information

**I25** S. 134 wholly in force at 5.12.2005; s. 134 not in force at Royal Assent see s. 263; s. 134 in force at 14.9.2005 for certain purposes by S.S.I. 2005/428, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.S.I. 2005/604, art. 2(b)

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## *Interpretation*

### **135 Interpretation of this Part**

[<sup>F107</sup>(1)] In this Part, unless the context otherwise requires—

“the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49);

“authorised registrar” has the meaning given by section 87;

“caravan” means a caravan which is mobile or affixed to land;

“child of the family” has the meaning given by section 101(7);

“civil partnership book” has the meaning given by section 89;

“civil partnership register” has the meaning given by section 95(2);

“civil partnership schedule” has the meaning given by section 94;

“the court” means the Court of Session or the sheriff;

“district” means a registration district as defined by section 5(1) of the 1965 Act;

“district registrar” has the meaning given by section 7(12) of the 1965 Act;

“entitled partner” and “non-entitled partner”, subject to sections 106(2) and 111(2), have the meanings respectively assigned to them by section 101(1);

“exclusion order” has the meaning given by section 104(1);

“family” has the meaning given by section 101(7);

“family home” means [<sup>F108</sup>, subject to subsection (2),] any house, caravan, houseboat or other structure which has been provided or has been made available by one or both of the civil partners as, or has become, a family residence and includes any garden or other ground or building <sup>F109</sup> . . . usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure but does not include a residence provided or made available by [<sup>F110</sup> a person for one] civil partner to reside in, whether with any child of the family or not, separately from the other civil partner;

“furniture and plenishings” means any article situated in a family home of civil partners which—

- (a) is owned or hired by either civil partner or is being acquired by either civil partner under a hire-purchase agreement or conditional sale agreement, and
- (b) is reasonably necessary to enable the home to be used as a family residence,

but does not include any vehicle, caravan or houseboat or such other structure as is mentioned in the definition of “family home”;

“notice of proposed civil partnership” has the meaning given by section 88(1);

“occupancy rights” means the rights conferred by section 101(1);

“Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland;

“registration office” means a registration office provided under section 8(1) of the 1965 Act;

“tenant” includes—

- (a) a sub-tenant,



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- (b) a statutory tenant as defined in section 3 of the Rent (Scotland) Act 1984 (c. 58), and
  - (c) a statutory assured tenant as defined in section 16(1) of the Housing (Scotland) Act 1988 (c. 43),
- and “tenancy” is to be construed accordingly.

[<sup>F111</sup>(2) If—

- (a) the tenancy of a family home is transferred from one civil partner to the other by agreement or under any enactment, and
- (b) following the transfer, the civil partner to whom the tenancy was transferred occupies the home but the other civil partner does not,

the home shall, on such transfer, cease to be a family home.]

#### Textual Amendments

- F107** S. 135 renumbered as s. 135(1) (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 12**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F108** Words in s. 135(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 12(a)(i)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F109** Words in s. 135 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), **Sch. 3**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F110** Words in s. 135(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 12(a)(ii)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F111** S. 135(2) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 12(b)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

### 136 The expression “relative” in the 1965 Act

In section 56(1) of the 1965 Act (interpretation), in the definition of “relative”, at the end insert “, a civil partner and anyone related to the civil partner of the person as regards whom the expression is being construed”.

## PART 4

### CIVIL PARTNERSHIP: NORTHERN IRELAND

#### CHAPTER 1

##### REGISTRATION

###### *Formation and eligibility*

### 137 Formation of civil partnership by registration

- (1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule in the presence of—
  - (a) each other,

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- (b) two witnesses both of whom profess to be 16 or over, and
  - (c) the registrar.
- (2) Subsection (1) applies regardless of whether subsections (3) and (4) are complied with.
- (3) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other, by—
- (a) each of the two witnesses, and
  - (b) the registrar.
- (4) After the witnesses and the registrar have signed the civil partnership schedule, the registrar must cause the registration of the civil partnership to be recorded as soon as practicable.
- (5) No religious service is to be used while the registrar is officiating at the signing of a civil partnership schedule.

### 138 Eligibility

- (1) Two people are not eligible to register as civil partners of each other if—
- (a) they are not of the same sex,
  - (b) either of them is already a civil partner or lawfully married,
  - (c) either of them is under 16,
  - (d) they are within prohibited degrees of relationship, or
  - (e) either of them is incapable of understanding the nature of civil partnership.
- (2) Schedule 12 contains provisions for determining when two people are within prohibited degrees of relationship.

#### *Preliminaries to registration*

### 139 Notice of proposed civil partnership

- (1) For two people to register as civil partners of each other under this Chapter, each of them must give the registrar a notice of proposed civil partnership (a “civil partnership notice”).
- (2) A civil partnership notice must be—
- (a) in the prescribed form, and
  - (b) accompanied by the prescribed fee and such documents and other information as may be prescribed.
- (3) In prescribed cases a civil partnership notice must be given to the registrar by each party in person.

#### **Commencement Information**

**I26** S. 139 wholly in force at 5.12.2005; s. 139 not in force at Royal Assent see s. 263; s. 139(2)(3) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 139(1) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

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#### **140 Civil partnership notice book and list of intended civil partnerships**

- (1) The registrar must keep a record of—
  - (a) such particulars as may be prescribed, taken from each civil partnership notice received by him, and
  - (b) the date on which each civil partnership notice is received by him.
- (2) In this Chapter “civil partnership notice book” means the record kept under subsection (1).
- (3) The registrar must, in accordance with any guidance issued by the Registrar General, place on public display a list containing in relation to each proposed civil partnership in respect of which the registrar has received a civil partnership notice—
  - (a) the names of the proposed civil partners, and
  - (b) the date on which it is intended to register them as civil partners of each other.
- (4) As soon as practicable after the date mentioned in subsection (3) the registrar must remove from the list the names and the date mentioned in that subsection.
- (5) Any person claiming that he may have reason to make an objection to a proposed civil partnership may inspect any entry relating to the civil partnership in the civil partnership notice book without charge.

##### **Commencement Information**

**I27** S. 140 wholly in force at 5.12.2005; s. 140 not in force at Royal Assent see s. 263; s. 140(1)(a) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 140 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

#### **141 Power to require evidence of name etc.**

- (1) A registrar to whom a civil partnership notice is given may require the person giving it to provide him with specified evidence relating to each proposed civil partner.
- (2) Such a requirement may be imposed at any time before the registrar issues the civil partnership schedule under section 143.
- (3) “Specified evidence”, in relation to a person, means such evidence as may be specified in guidance issued by the Registrar General—
  - (a) of the person’s name and surname,
  - (b) of the person’s age,
  - (c) as to whether the person is or has been a civil partner or lawfully married, and
  - (d) of the person’s nationality.

#### **142 Objections**

- (1) Any person may at any time before the formation of a civil partnership in Northern Ireland make an objection in writing to the registrar.
- (2) An objection on the ground that one of the proposed civil partners is incapable of understanding the nature of civil partnership must be accompanied by a supporting certificate signed by a medical practitioner.

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- (3) If the registrar is satisfied that the objection relates to no more than a misdescription or inaccuracy in the civil partnership notice, he must—
  - (a) notify the proposed civil partners,
  - (b) make such inquiries as he thinks fit, and
  - (c) subject to the approval of the Registrar General, make any necessary correction to any document relating to the proposed civil partnership.
- (4) In any other case the registrar must notify the Registrar General of the objection.
- (5) If the Registrar General is satisfied that there is a legal impediment to the formation of the civil partnership, he must direct the registrar to—
  - (a) notify the parties, and
  - (b) take all reasonable steps to ensure that the formation of the civil partnership does not take place.
- (6) If subsection (5) does not apply, the Registrar General must direct the registrar to proceed under section 143.
- (7) For the purposes of this section and section 143 there is a legal impediment to the formation of a civil partnership where the proposed civil partners are not eligible to be registered as civil partners of each other.
- (8) A person who has submitted an objection may withdraw it at any time, but the Registrar General may have regard to an objection which has been withdrawn.

### 143 Civil partnership schedule

After the registrar receives a civil partnership notice from each of the proposed civil partners, he must complete a civil partnership schedule in the prescribed form, if—

- (a) he is satisfied that there is no legal impediment to the formation of the civil partnership, or
- (b) the Registrar General has directed him under section 142(6) to proceed under this section.

#### Commencement Information

**I28** S. 143 wholly in force at 5.12.2005; s. 143 not in force at Royal Assent see s. 263; s. 143 in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

### 144 Place of registration

- (1) The place at which two people may register as civil partners of each other must be—
  - (a) a registration office, or
  - (b) a place approved under subsection (3).
- (2) Subsection (1) is subject to subsections (5) and (7).
- (3) A local registration authority may, in accordance with regulations under subsection (4), approve places where civil partnerships may be registered in its district.

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- (4) Regulations under section 159 may make provision for or in connection with the approval of places under subsection (3), including provision as to—
- (a) the kinds of place in respect of which approvals may be granted,
  - (b) the procedure to be followed in relation to applications for approval,
  - (c) the considerations to be taken into account in determining whether to approve any places,
  - (d) the duration and renewal of approvals (whether for one occasion or for a period),
  - (e) the conditions that must or may be imposed on granting or renewing an approval,
  - (f) the determination and charging of fees in respect of[en rule]
    - (i) applications for the approval of places,
    - (ii) the renewal of approvals, and
    - (iii) the attendance by registrars at places approved under the regulations,
  - (g) the circumstances in which a local registration authority must or may revoke or suspend an approval or vary any of the conditions imposed in relation to an approval,
  - (h) the renewal of decisions made by virtue of the regulations,
  - (i) appeals to a county court from decisions made by virtue of the regulations,
  - (j) the notification to the Registrar General of all approvals granted, renewed, revoked, suspended or varied,
  - (k) the notification to the registrar for the district in which a place approved under the regulations is situated of all approvals relating to such a place which are granted, renewed, revoked, suspended or varied,
  - (l) the keeping by the Registrar General, registrars and local registration authorities of registers of places approved under the regulations, and
  - (m) the issue by the Registrar General of guidance supplementing the provision made by the regulations.
- (5) If either of the parties to a proposed civil partnership gives the registrar a medical statement, the civil partnership may, with the approval of the Registrar General, be registered at any place where that party is.
- (6) In subsection (5) “medical statement”, in relation to any person, means a statement made in the prescribed form by a registered medical practitioner that in his opinion at the time the statement is made—
- (a) by reason of serious illness or serious bodily injury, that person ought not to move or be moved from the place where he is at that time, and
  - (b) it is likely that it will be the case for at least the following 3 months that by reason of illness or disability the person ought not to move or be moved from that place.
- (7) If the Registrar General so directs, a registrar must register a civil partnership in a place specified in the direction.

#### Commencement Information

**I29** S. 144 wholly in force at 5.12.2005; s. 144 not in force at Royal Assent see s. 263; s. 144(4)(6) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not

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already in force by [S.I. 2005/3255, art. 2\(1\), Sch.](#); [s. 144\(1\)-\(3\)\(5\)\(7\)](#) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255, art. 2\(1\), Sch.](#)

### *Young persons*

#### **145 Parental etc. consent where proposed civil partner under 18**

- (1) The consent of the appropriate persons is required before a young person and another person may register as civil partners of each other.
- (2) Schedule 13 contains provisions—
  - (a) for determining who are the appropriate persons for the purposes of this section (see Part 1 of the Schedule);
  - (b) for orders dispensing with consent and for recording consents and orders (see Parts 2 and 3 of the Schedule).
- (3) Each consent required by subsection (1) must be—
  - (a) in the prescribed form; and
  - (b) produced to the registrar before the issue of the civil partnership schedule.
- (4) Nothing in this section affects any need to obtain the consent of the High Court before a ward of court and another person may register as civil partners of each other.
- (5) In this section and Schedule 13 “young person” means a person who is under 18.

#### **Commencement Information**

**I30** [S. 145](#) wholly in force at 5.12.2005; [s. 145](#) not in force at Royal Assent see [s. 263](#); [s. 145\(3\)](#) in force at 5.9.2005 for certain purposes by [S.I. 2005/2399, art. 2, Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3255, art. 2\(1\), Sch.](#); [s. 145](#) in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255, art. 2\(1\), Sch.](#)

### *Supplementary*

#### **146 Validity of registration**

- (1) This section applies to any legal proceedings commenced at any time after the registration of a civil partnership is recorded under section 137.
- (2) The validity of the civil partnership must not be questioned in any such proceedings on the ground of any contravention of a provision of, or made under, this Act.

#### **147 Corrections and cancellations**

- (1) Regulations under section 159 may make provision for the making of corrections by the Registrar General or any registrar.
- (2) The Registrar General must cancel the registration of a void civil partnership or direct the registrar to do so.

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### Commencement Information

- I31** S. 147 wholly in force at 5.12.2005; s. 147 not in force at Royal Assent see s. 263; s. 147(1) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, **art. 2, Sch.** and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, **art. 2(1), Sch.**; s. 147(2) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, **art. 2(1), Sch.**

## 148 Interpreters

- (1) If the registrar considers it necessary or desirable, he may use the services of an interpreter (not being one of the civil partners or a witness).
- (2) The interpreter must—
  - (a) before the registration of the civil partnership, sign a statement in English that he understands, and is able to converse in, any language in respect of which he is to act as an interpreter, and
  - (b) immediately after the registration of the civil partnership, give the registrar a certificate written in English and signed by the interpreter that he has faithfully acted as the interpreter.

## 149 Detained persons

- (1) If—
  - (a) one of the parties to a proposed civil partnership is detained in a prison or as a patient in a hospital, and
  - (b) the civil partnership is to be registered in that prison or hospital,the civil partnership notice given by that party must be accompanied by a statement to which subsection (2) applies.
- (2) This subsection applies to a statement which—
  - (a) is made in the prescribed form by the responsible authority not more than 21 days before the date on which the civil partnership notice is given,
  - (b) identifies the establishment where the person is detained, and
  - (c) states that the responsible authority has no objection to that establishment being the place of registration for that civil partnership.
- (3) In subsection (2) “responsible authority” means—
  - (a) if the person named in the statement is detained in a prison, the governor or other officer in charge of that prison;
  - (b) if the person named in the statement is detained in a hospital or special accommodation, the Health and Social Services Board administering that hospital or the Department of Health, Social Services and Public Safety, respectively;
  - (c) if the person named in the statement is detained in a private hospital, the person in charge of that hospital.
- (4) After the registrar receives a civil partnership notice accompanied by a statement to which subsection (2) applies, he must notify the Registrar General and not complete a civil partnership schedule unless the Registrar General directs him to proceed under section 143.

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(5) In this section—

- (a) “prison” includes a remand centre and a young offenders centre, and
- (b) “hospital”, “patient”, “private hospital” and “special accommodation” have the same meaning as in the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).

#### Commencement Information

**I32** S. 149 wholly in force at 5.12.2005; s. 149 not in force at Royal Assent see s. 263; s. 149(2)(a) in force at 5.9.2005 for certain purposes by [S.I. 2005/2399](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), [art. 2\(1\)](#), [Sch.](#); s. 149 in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), [art. 2\(1\)](#), [Sch.](#)

### 150 Certificates of no impediment for Part 2 purposes

F112 .....

#### Textual Amendments

**F112** S. 150 omitted (5.12.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), [art. 3](#), [Sch. para. 16](#) (subject to [art. 1\(3\)](#))

### 151 Registration districts and registration authorities

- (1) Each local government district shall be a registration district and the district council shall be the local registration authority for the purposes of this Part.
- (2) A district council shall, in the exercise of functions conferred on it as a local registration authority—
  - (a) act as agent for the Department of Finance and Personnel, and
  - (b) act in accordance with such directions as that Department may give to the council.
- (3) Any expenditure to be incurred by the district council in the exercise of functions conferred on it as a local registration authority shall be subject to the approval of the Registrar General.
- (4) The Department of Finance and Personnel shall retain or, as the case may be, defray in respect of each financial year the amount of the difference between—
  - (a) the aggregate of the amounts of salaries, pension provision and other expenses payable by virtue of this Part in respect of any registration district, and
  - (b) the aggregate of the amounts received in that registration district under any statutory provision or otherwise by way of fees or other expenses.

### 152 Registrars and other staff

- (1) A local registration authority shall, with the approval of the Registrar General, appoint—
  - (a) a registrar of civil partnerships, and
  - (b) one or more deputy registrars of civil partnerships.



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- (2) A person holding an appointment under subsection (1) may with the approval of, and shall at the direction of, the Registrar General be removed from his office of registrar or deputy registrar by the local registration authority.
- (3) A local registration authority shall, at the direction of the Registrar General, appoint additional persons to register civil partnerships and carry out other functions for the purposes of this Part.
- (4) A person shall not be appointed under subsection (1) or (3) if he is under the age of 21.
- (5) Regulations under section 159 may confer additional functions on a person holding an appointment under subsection (1).
- (6) A person holding an appointment under subsection (1) shall, in exercising his functions under this Part or any other statutory provision, be subject to such instructions or directions as the Registrar General may give.

#### Commencement Information

**I33** S. 152 wholly in force at 5.12.2005; s. 152 not in force at Royal Assent see s. 263; s. 152(5) in force at 5.9.2005 by [S.I. 2005/2399, art. 2, Sch.](#); s. 152 in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255, art. 2\(1\), Sch.](#)

### 153 Records and documents to be sent to Registrar General

If the Registrar General directs him to do so, a person must send to the Registrar General any record or document relating to civil partnerships in accordance with the Registrar General's directions.

### 154 Annual report

- (1) The Registrar General must send to the Department of Finance and Personnel an annual report of the number of civil partnerships registered during each year, together with such other information as he considers it appropriate to include.
- (2) The Department of Finance and Personnel must lay the report before the Northern Ireland Assembly.

### 155 Searches

- (1) The Registrar General must provide indexes to civil partnership registration records in his custody for inspection by the public.
- (2) A registrar must provide indexes to civil partnership registration records in his custody for inspection by the public.
- (3) Any person may, on payment of the prescribed fee—
  - (a) search any index mentioned in subsection (1) or (2), and
  - (b) require the Registrar General or, as the case may be, the registrar to give him a document in the prescribed form relating to the registration of a civil partnership.

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- (4) The Registrar General must cause any document given by him under this section or section 156 to be stamped with the seal of the General Register Office.
- (5) Judicial notice shall be taken of any document so stamped.
- [<sup>F113</sup>(6) Regulations under section 159 may make provision for any person to have access, on payment of the prescribed fee, to any information contained in any civil partnership registration records.
- (7) Regulations under section 159 may provide that the relevant period must have expired in relation to the information.
- (8) In subsection (7) “the relevant period” in relation to a civil partnership means the period of 75 years from the date on which the civil partnership was registered or such other period as may be prescribed.
- (9) Regulations under section 159 may provide for the Registrar General—
  - (a) to make arrangements with any person for the purpose of providing access to information as mentioned in subsection (6); and
  - (b) for that purpose to transfer information to that person subject to conditions (including conditions as to the making of payments by that person to the Registrar General).]

#### **Textual Amendments**

**F113** S. 155(6)-(9) added (16.11.2012) by [Civil Registration Act \(Northern Ireland\) 2011 \(c. 20\)](#), ss. **23(2)**, 34; S.R. 2012/406, art. 2, Sch.

#### **Commencement Information**

**I34** S. 155 wholly in force at 5.12.2005; s. 155 not in force at Royal Assent see s. 263; s. 155(3) in force at 5.9.2005 for certain purposes by [S.I. 2005/2399](#), art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), art. 2(1), Sch.; s. 155 in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), art. 2(1), Sch.

#### [<sup>F114</sup>**155A** Notification of registration

- (1) The Registrar General may notify such persons as the Registrar General considers appropriate of the registration of a civil partnership.
- (2) An application may be made in the prescribed form to the Registrar General as to persons to be notified by the Registrar General under subsection (1) by either civil partner.
- (3) The prescribed fee shall be payable to the Registrar General by the applicant.
- (4) Any notification under subsection (1) shall be subject to such conditions as the Registrar General considers appropriate.
- (5) The power conferred by subsection (1) may be exercised whether or not an application has been made under subsection (2).]

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### Textual Amendments

**F114** S. 155A inserted (N.I.) (16.11.2012) by [Civil Registration Act \(Northern Ireland\) 2011 \(c. 20\)](#), [ss. 24\(2\), 34](#); [S.R. 2012/406](#), [art. 2](#), [Sch.](#)

## 156 Proof of civil partnership for purposes of certain statutory provisions

- (1) Where the civil partnership of a person is required to be proved for the purposes of any prescribed statutory provision, any person—
  - (a) on application to the Registrar General, and
  - (b) on payment of the prescribed fee,is entitled to a document in the prescribed form relating to the registration of the civil partnership of that person.
- (2) An application under subsection (1) must be in such form and accompanied by such particulars as the Registrar General may require.
- (3) The Registrar General or any registrar may, on payment of the prescribed fee, issue such information (including a document as mentioned in subsection (1)) as may be required for the purposes of any prescribed statutory provision.

### Commencement Information

**I35** S. 156 wholly in force at 5.12.2005; s. 156 not in force at Royal Assent see s. 263; s. 156(1)(3) in force at 5.9.2005 for certain purposes by [S.I. 2005/2399](#), [art. 2](#), [Sch.](#) and otherwise 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), [art. 2\(1\)](#), [Sch.](#); s. 156 in force at 5.12.2005 insofar as not already in force by [S.I. 2005/3255](#), [art. 2\(1\)](#), [Sch.](#)

## 157 Fees

- (1) The Department of Finance and Personnel may by order prescribe—
  - (a) any fee which is required to be prescribed for the purposes of this Chapter;
  - (b) fees for such other matters as that Department considers necessary or expedient for the purposes of this Chapter.
- (2) The power to make an order under subsection (1) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An order under subsection (1) may only be made if a draft has been laid before and approved by resolution of the Northern Ireland Assembly.

## 158 Offences

- (1) Any registrar who signs a civil partnership schedule in the absence of the civil partners is guilty of an offence.
- (2) Any person who is not a registrar but officiates at the signing of a civil partnership schedule in such a way as to lead the civil partners to believe that he is a registrar is guilty of an offence.

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- (3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.
- (4) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (limitation of time for taking proceedings), proceedings for an offence under this section may be instituted at any time within 3 years after the commission of the offence.

## 159 Regulations

- (1) The Department of Finance and Personnel may by regulations make such provision as appears to it necessary or expedient for the registration of civil partnerships in Northern Ireland.
- (2) The power to make regulations under subsection (1) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Regulations under subsection (1) shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))).

## 160 Interpretation

In this Chapter—

“civil partnership notice” means a notice of proposed civil partnership under section 139;

“civil partnership notice book” has the meaning given by section 140;

“prescribed”, except in relation to a fee, means prescribed by regulations under section 159 and, in relation to a fee, means prescribed by order under section 157;

“registrar” means such person appointed under section 152(1)(a) or (b) or (3) as may be prescribed;

“Registrar General” means the Registrar General for Northern Ireland;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.)).

## CHAPTER 2

### DISSOLUTION, NULLITY AND OTHER PROCEEDINGS

#### *Introduction*

## 161 Powers to make orders and effect of orders

- (1) The court may, in accordance with this Chapter—
  - (a) make an order (a “dissolution order”) which dissolves a civil partnership on the ground that it has broken down irretrievably;

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- (b) make an order (a “nullity order”) which annuls a civil partnership which is void or voidable;
  - (c) <sup>F115</sup> .....
  - (d) make an order (a “separation order”) which provides for the separation of the civil partners.
- (2) Every [<sup>F116</sup>dissolution order or nullity order]—
- (a) is, in the first instance, a conditional order, and
  - (b) may not be made final before the end of the prescribed period (see section 162);
- and any reference in this Chapter to a conditional order is to be read accordingly.
- (3) A nullity order made where a civil partnership is voidable annuls the civil partnership only as respects any time after the order has been made final, and the civil partnership is to be treated (despite the order) as if it had existed up to that time.
- (4) In this Chapter “the court” has the meaning given by section 188.
- (5) This Chapter is subject to section 219 and sections 228 to 232 (jurisdiction of the court).

#### Textual Amendments

**F115** S. 161(1)(c) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), (2), 20, Sch. 2, {Sch. 3}; S.R. 2009/356, [art. 2](#)

**F116** Words in s. 161(2) substituted (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), 20, [Sch. 2](#); S.R. 2009/356, [art. 2](#)

### 162 The period before conditional orders may be made final

- (1) Subject to subsection (2), the prescribed period for the purposes of section 161(2)(b) is 6 weeks from the making of the conditional order.
- (2) In a particular case the court dealing with the case may by order shorten the prescribed period.

### 163 Intervention by the Crown Solicitor

- (1) This section applies if an application has been made for a [<sup>F117</sup>dissolution order or nullity order].
- (2) The court may, if it thinks fit, direct that all necessary papers in the matter are to be sent to the Crown Solicitor who must under the directions of the Attorney General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued.
- (3) If any person at any time—
  - (a) during the progress of the proceedings, or
  - (b) before the conditional order is made final,gives information to the Crown Solicitor on any matter material to the due decision of the case, the Crown Solicitor may take such steps as the Attorney General considers necessary or expedient.

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- (4) If the Crown Solicitor intervenes or shows cause against the making of the conditional order in any proceedings relating to its making, the court may make such order as may be just as to—
- (a) the payment by other parties to the proceedings of the costs incurred by him in doing so, or
  - (b) the payment by the Crown Solicitor of any costs incurred by any of those parties because of his doing so.
- (5) In this Chapter—
- “the Attorney General” means the Attorney General for Northern Ireland;  
and  
“the Crown Solicitor” means the Crown Solicitor for Northern Ireland.

#### **Textual Amendments**

**F117** Words in s. 163(1) substituted (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), 20, [Sch. 2](#); S.R. 2009/356, [art. 2](#)

### **164 Proceedings before order has been made final**

- (1) This section applies if—
- (a) a conditional order has been made, and
  - (b) the Crown Solicitor, or any person who has not been a party to proceedings in which the order was made, shows cause why the order should not be made final on the ground that material facts have not been brought before the court.
- (2) This section also applies if—
- (a) a conditional order has been made,
  - (b) 3 months have elapsed since the earliest date on which an application could have been made for the order to be made final,
  - (c) no such application has been made by the civil partner who applied for the conditional order, and
  - (d) the other civil partner makes an application to the court under this subsection.
- (3) The court may—
- (a) make the order final,
  - (b) rescind the order,
  - (c) require further inquiry, or
  - (d) otherwise deal with the case as it thinks fit.
- (4) Subsection (3)(a)—
- (a) applies despite section 161(2) (period before conditional orders may be made final), but
  - (b) is subject to section 172(4) (protection for respondent in separation cases) and section 186 (restrictions on making of orders affecting children).

### **165 Time bar on applications for dissolution orders**

- (1) No application for a dissolution order may be made to the court before the end of the period of 2 years from the date of the formation of the civil partnership.

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- (2) Nothing in this section prevents the making of an application based on matters which occurred before the end of the 2 year period.

**Modifications etc. (not altering text)**

- C7 S. 165 applied (with modifications) (N.I.) (5.12.2005) by [The Civil Partnership \(Treatment of Overseas Relationships\) Order \(Northern Ireland\) 2005 \(S.R. 2005/531\)](#), **art. 3(1)**

**166 Attempts at reconciliation of civil partners**

- (1) This section applies in relation to cases where an application is made for a dissolution or separation order.
- (2) If at any stage of proceedings for the order it appears to the court that there is a reasonable possibility of a reconciliation between the civil partners, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation between them.
- (3) If during any such adjournment the parties resume living with each other in the same household, no account is to be taken of the fact for the purposes of the proceedings.
- (4) The power to adjourn under subsection (2) is additional to any other power of adjournment.

**167 Consideration by the court of certain agreements or arrangements**

- (1) This section applies to cases where—
- (a) proceedings for a dissolution or separation order are contemplated or have begun, and
  - (b) an agreement or arrangement is made or proposed to be made between the civil partners which relates to, arises out of, or is connected with, the proceedings.
- (2) Rules of court may make provision for enabling—
- (a) the civil partners, or either of them, on application made either before or after the making of the application for a dissolution or separation order, to refer the agreement or arrangement to the court, and
  - (b) the court—
    - (i) to express an opinion, if it thinks it desirable to do so, as to the reasonableness of the agreement or arrangement, and
    - (ii) to give such directions, if any, in the matter as it thinks fit.

*Dissolution of civil partnership*

**168 Dissolution of civil partnership which has broken down irretrievably**

- (1) Subject to section 165, an application for a dissolution order may be made to the court by either civil partner on the ground that the civil partnership has broken down irretrievably.
- (2) On an application for a dissolution order the court must inquire, so far as it reasonably can, into—

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- (a) the facts alleged by the applicant, and
  - (b) any facts alleged by the respondent.
- (3) The court hearing an application for a dissolution order must not hold that the civil partnership has broken down irretrievably unless the applicant satisfies the court of one or more of the facts described in subsection (5)(a), (b), (c) or (d).
- (4) But if the court is satisfied of any of those facts, it must make a dissolution order unless it is satisfied on all the evidence that the civil partnership has not broken down irretrievably.
- (5) The facts referred to in subsections (3) and (4) are—
- (a) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
  - (b) that—
    - (i) the applicant and the respondent have lived apart for a continuous period of at least 2 years immediately preceding the making of the application (“2 years' separation”), and
    - (ii) the respondent consents to a dissolution order being made;
  - (c) that the applicant and the respondent have lived apart for a continuous period of at least 5 years immediately preceding the making of the application (“5 years' separation”);
  - (d) that the respondent has deserted the applicant for a continuous period of at least 2 years immediately preceding the making of the application.
- (6) The court must not make a dissolution order without considering the oral testimony of the applicant unless for special reasons it orders that such testimony be dispensed with.

## **169 Supplemental provisions as to facts raising presumption of breakdown**

- (1) Subsection (2) applies if—
- (a) in any proceedings for a dissolution order the applicant alleges, in reliance on section 168(5)(a), that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, but
  - (b) after the date of the occurrence of the final incident relied on by the applicant and held by the court to support his allegation, the applicant and the respondent have lived together for a period (or periods) which does not, or which taken together do not, exceed 6 months.
- (2) The fact that the applicant and respondent have lived together as mentioned in subsection (1)(b) must be disregarded in determining, for the purposes of section 168(5)(a), whether the applicant cannot reasonably be expected to live with the respondent.
- (3) Subsection (4) applies in relation to cases where the applicant alleges, in reliance on section 168(5)(b), that the respondent consents to a dissolution order being made.
- (4) Rules of court must make provision for the purpose of ensuring that the respondent has been given such information as will enable him to understand—
- (a) the consequences to him of consenting to the order, and
  - (b) the steps which he must take to indicate his consent.



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- (5) For the purposes of section 168(5)(d) the court may treat a period of desertion as having continued at a time when the deserting civil partner was incapable of continuing the necessary intention, if the evidence before the court is such that, had he not been so incapable, the court would have inferred that the desertion continued at that time.
- (6) In considering for the purposes of section 168(5) whether the period for which the civil partners have lived apart or the period for which the respondent has deserted the applicant has been continuous, no account is to be taken of—
  - (a) any one period not exceeding 6 months, or
  - (b) any two or more periods not exceeding 6 months in all, during which the civil partners resumed living together.
- (7) But no period during which the civil partners have lived with each other counts as part of the period during which the civil partners have lived apart or as part of the period of desertion.
- (8) For the purposes of section 168(5)(b) and (c) and this section civil partners are to be treated as living apart unless they are living with each other in the same household, and references in this section to civil partners living with each other are to be read as references to their living with each other in the same household.

#### Commencement Information

**I36** S. 169 wholly in force at 5.12.2005; s. 169 not in force at Royal Assent see s. 263; s. 169(3)(4) in force at 5.9.2005 by S.I. 2005/2399, art. 2, Sch.; s. 169 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

### 170 Dissolution order not precluded by previous separation order etc.

- (1) Subsections (2) and (3) apply if any of the following orders has been made in relation to a civil partnership—
  - (a) a separation order;
  - (b) an order under Schedule 16 (financial relief in court of summary jurisdiction etc.);
  - (c) an occupation order under Article 11 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6) (occupation orders));
  - (d) an order under Article 15 of that Order (orders where neither civil partner entitled to occupy the home).
- (2) Nothing prevents—
  - (a) either civil partner from applying for a dissolution order, or
  - (b) the court from making a dissolution order,on the same facts, or substantially the same facts, as those proved in support of the making of the order referred to in subsection (1).
- (3) On the application for the dissolution order, the court—
  - (a) may treat the order referred to in subsection (1) as sufficient proof of any desertion or other fact by reference to which it was made, but
  - (b) must not make the dissolution order without receiving evidence from the applicant.

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- (4) If—
- (a) the application for the dissolution order follows a separation order or any order requiring the civil partners to live apart,
  - (b) there was a period of desertion immediately preceding the institution of the proceedings for the separation order, and
  - (c) the civil partners have not resumed living together and the separation order has been continuously in force since it was made,
- the period of desertion is to be treated for the purposes of the application for the dissolution order as if it had immediately preceded the making of the application.
- (5) For the purposes of section 168(5)(d) the court may treat as a period during which the respondent has deserted the applicant any period during which there is in force—
- (a) an injunction granted by the High Court or a county court which excludes the respondent from the civil partnership home, or
  - (b) an order under Article 11 or 15 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) which prohibits the respondent from occupying a dwelling-house in which the applicant and the respondent have, or at any time have had, a civil partnership home.

#### **171 Refusal of dissolution in 5 year separation cases on ground of grave hardship**

- (1) The respondent to an application for a dissolution order in which the applicant alleges 5 years' separation may oppose the making of an order on the ground that—
- (a) the dissolution of the civil partnership will result in grave financial or other hardship to him, and
  - (b) it would in all the circumstances be wrong to dissolve the civil partnership.
- (2) Subsection (3) applies if—
- (a) the making of a dissolution order is opposed under this section,
  - (b) the court finds that the applicant is entitled to rely in support of his application on the fact of 5 years' separation and makes no such finding as to any other fact mentioned in section 168(5), and
  - (c) apart from this section, the court would make a dissolution order.
- (3) The court must—
- (a) consider all the circumstances, including the conduct of the civil partners and the interests of the civil partners and of any children or other persons concerned, and
  - (b) if it is of the opinion that the ground mentioned in subsection (1) is made out, dismiss the application for the dissolution order.
- (4) “Hardship” includes the loss of the chance of acquiring any benefit which the respondent might acquire if the civil partnership were not dissolved.

#### **172 Proceedings before order made final: protection for respondent in separation cases**

- (1) The court may, on an application made by the respondent, rescind a conditional dissolution order if—

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- (a) it made the order on the basis of a finding that the applicant was entitled to rely on the fact of 2 years' separation coupled with the respondent's consent to a dissolution order being made,
  - (b) it made no such finding as to any other fact mentioned in section 168(5), and
  - (c) it is satisfied that the applicant misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to give his consent.
- (2) Subsections (3) to (5) apply if—
- (a) the respondent to an application for a dissolution order in which the applicant alleged—
    - (i) 2 years' separation coupled with the respondent's consent to a dissolution order being made, or
    - (ii) 5 years' separation,has applied to the court for consideration under subsection (3) of his financial position after the dissolution of the civil partnership, and
  - (b) the court—
    - (i) has made a conditional dissolution order on the basis of a finding that the applicant was entitled to rely in support of his application on the fact of 2 years' or 5 years' separation, and
    - (ii) has made no such finding as to any other fact mentioned in section 168(5).
- (3) The court hearing an application by the respondent under subsection (2) must consider all the circumstances, including—
- (a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and
  - (b) the financial position of the respondent as, having regard to the dissolution, it is likely to be after the death of the applicant should the applicant die first.
- (4) The court must not make the order final unless it has, by order, declared that it is satisfied that—
- (a) the applicant should not be required to make any financial provision for the respondent,
  - (b) the financial provision made by the applicant for the respondent is—
    - (i) reasonable and fair, or
    - (ii) the best that can be made in the circumstances, or
  - (c) there are circumstances making it desirable that the order should be made final without delay.
- (5) The court must not make an order declaring that it is satisfied as mentioned in subsection (4)(c) unless it has obtained a satisfactory undertaking from the applicant that he will bring the question of financial provision for the respondent before the court within a specified time.
- (6) Subsection (7) applies if, following an application under subsection (2) which is not withdrawn, the court makes the order final without making an order under subsection (4).
- (7) The final order is voidable at the instance of the respondent or of the court but no person is entitled to challenge the validity of the order after it is made final on the ground that subsections (4) and (5) were not satisfied.

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- (8) If the court refuses to make an order under subsection (4), it must, on an application by the applicant, make an order declaring that it is not satisfied as mentioned in that subsection.

### *Nullity*

#### **173 Grounds on which civil partnership is void**

Where two people register as civil partners of each other in Northern Ireland, the civil partnership is void if—

- (a) at the time when they do so, they are not eligible to register as civil partners of each other under Chapter 1 (see section 138), or
- (b) at the time when they do so they both know—
  - (i) that due notice of proposed civil partnership has not been given,
  - (ii) that the civil partnership schedule has not been duly issued,
  - (iii) that the place of registration is a place other than that specified in the civil partnership schedule, or
  - (iv) that a registrar is not present.

#### **174 Grounds on which civil partnership is voidable**

- (1) Where two people register as civil partners of each other in Northern Ireland, the civil partnership is voidable if—
- (a) either of them did not validly consent to its formation (whether as a result of duress, mistake, unsoundness of mind or otherwise);
  - (b) at the time of its formation either of them, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder of such a kind or to such an extent as to be unfitted for civil partnership;
  - (c) at the time of its formation, the respondent was pregnant by some person other than the applicant;
  - (d) an interim gender recognition certificate under the Gender Recognition Act 2004 (c. 7) has, after the time of its formation, been issued to either civil partner;
  - (e) the respondent is a person whose gender at the time of its formation had become the acquired gender under the 2004 Act.
- (2) In this section and section 175 “mental disorder” has the same meaning as in the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).

#### **175 Bars to relief where civil partnership is voidable**

- (1) The court must not make a nullity order on the ground that a civil partnership is voidable if the respondent satisfies the court—
- (a) that the applicant, with knowledge that it was open to him to obtain a nullity order, conducted himself in relation to the respondent in such a way as to lead the respondent reasonably to believe that he would not seek to do so, and
  - (b) that it would be unjust to the respondent to make the order.

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- (2) Without prejudice to subsection (1), the court must not make a nullity order by virtue of section 174(1)(a), (b), (c) or (e) unless—
  - (a) it is satisfied that proceedings were instituted within 3 years from the date of the formation of the civil partnership, or
  - (b) leave for the institution of proceedings after the end of that 3 year period has been granted under subsection (3).
- (3) A judge of the court may, on an application made to him, grant leave for the institution of proceedings if he—
  - (a) is satisfied that the applicant has at some time during the 3 year period suffered from mental disorder, and
  - (b) considers that in all the circumstances of the case it would be just to grant leave for the institution of proceedings.
- (4) An application for leave under subsection (3) may be made after the end of the 3 year period.
- (5) Without prejudice to subsection (1), the court must not make a nullity order by virtue of section 174(1)(d) unless it is satisfied that proceedings were instituted within the period of 6 months from the date of issue of the interim gender recognition certificate.
- (6) Without prejudice to subsections (1) and (2), the court must not make a nullity order by virtue of section 174(1)(c) or (e) unless it is satisfied that the applicant was at the time of the formation of the civil partnership ignorant of the facts alleged.

#### **176 Proof of certain matters not necessary to validity of civil partnership**

Where two people have registered as civil partners of each other in Northern Ireland, it is not necessary in support of the civil partnership to give any proof—

- (a) that any person whose consent to the civil partnership was required by section 145 (parental etc. consent) had given his consent;
- (b) that the registrar was properly appointed under section 152;

and no evidence is to be given to prove the contrary in any proceedings touching the validity of the civil partnership.

#### **177 Validity of civil partnerships registered outside Northern Ireland**

- (1) Where two people register as civil partners of each other in England or Wales, the civil partnership is—
  - (a) void, if it would be void in England and Wales under section 49, and
  - (b) voidable, if the circumstances fall within any paragraph of section 174(1).
- (2) Where two people register as civil partners of each other in Scotland, the civil partnership is—
  - (a) void, if it would be void in Scotland under section 123, and
  - (b) voidable, if the circumstances fall within section 174(1)(d).
- (3) Subsection (4) applies where two people register as civil partners of each other under an Order in Council under—
  - (a) section 210 (registration at British consulates etc.), or
  - (b) section 211 (registration by armed forces personnel),

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(“the relevant section”).

- (4) The civil partnership is—
- (a) void, if—
    - (i) the condition in subsection (2)(a) or (b) of the relevant section is not met, or
    - (ii) a requirement prescribed for the purposes of this paragraph by an Order in Council under the relevant section is not complied with, and
  - (b) voidable, if—
    - (i) the appropriate part of the United Kingdom is Northern Ireland or England and Wales and the circumstances fall within any paragraph of section 174(1), or
    - (ii) the appropriate part of the United Kingdom is Scotland and the circumstances fall within section 174(1)(d).
- (5) The appropriate part of the United Kingdom is the part by reference to which the condition in subsection (2)(b) of the relevant section is met.
- (6) Subsections (7) and (8) apply where two people have registered an apparent or alleged overseas relationship.
- (7) The civil partnership is void if—
- (a) the relationship is not an overseas relationship, or
  - (b) (even though the relationship is an overseas relationship) the parties are not treated under Chapter 2 of Part 5 as having formed a civil partnership.
- (8) The civil partnership is voidable if—
- (a) the overseas relationship is voidable under the relevant law,
  - (b) the circumstances fall within section 174(1)(d), or
  - (c) where either of the parties was domiciled in Northern Ireland or England and Wales at the time when the overseas relationship was registered, the circumstances fall within section 174(1)(a), (b), (c) or (e).
- (9) Section 175 applies for the purposes of—
- (a) subsections (1)(b), (2)(b) and (4)(b),
  - (b) subsection (8)(a), in so far as applicable in accordance with the relevant law, and
  - (c) subsection (8)(b) and (c).
- (10) In subsections (8)(a) and (9)(b) “the relevant law” means the law of the country or territory where the overseas relationship was registered (including its rules of private international law).
- (11) For the purposes of subsections (8) and (9)(b) and (c), references in sections 174 and 175 to the formation of a civil partnership are to be read as references to the registration of the overseas relationship.

### *Presumption of death orders*

## 178 **Presumption of death orders**

F118

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### Textual Amendments

- F118** S. 178 repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 14(1)(b)(3), 19(2), 20, [Sch. 3](#); S.R. 2009/356, [art. 2](#)

## Separation orders

### 179 Separation orders

- (1) An application for a separation order may be made to the court by either civil partner on the ground that any such fact as is mentioned in section 168(5)(a), (b), (c) or (d) exists.
- (2) On an application for a separation order the court must inquire, so far as it reasonably can, into—
  - (a) the facts alleged by the applicant, and
  - (b) any facts alleged by the respondent,but whether the civil partnership has broken down irretrievably is irrelevant.
- (3) If the court is satisfied on the evidence of any such fact as is mentioned in section 168(5)(a), (b), (c) or (d) it must, subject to section 186, make a separation order.
- (4) Section 169 (supplemental provisions as to facts raising presumption of breakdown) applies for the purposes of an application for a separation order alleging any such fact as it applies in relation to an application for a dissolution order alleging that fact.

### 180 Effect of separation order

If either civil partner dies intestate as respects all or any of his or her real or personal property while—

- (a) a separation order is in force, and
- (b) the separation order is continuing,

the property as respects which he or she died intestate devolves as if the other civil partner had then been dead.

## Declarations

### 181 Declarations

- (1) Any person may apply to the court for one or more of the following declarations in relation to a civil partnership specified in the application—
  - (a) a declaration that the civil partnership was at its inception a valid civil partnership;
  - (b) a declaration that the civil partnership subsisted on a date specified in the application;
  - (c) a declaration that the civil partnership did not subsist on a date so specified;
  - (d) a declaration that the validity of a dissolution, annulment or legal separation obtained in any country outside Northern Ireland in respect of the civil partnership is entitled to recognition in Northern Ireland;

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- (e) a declaration that the validity of a dissolution, annulment or legal separation so obtained in respect of the civil partnership is not entitled to recognition in Northern Ireland.
- (2) Where an application under subsection (1) is made to the court by a person other than a civil partner in the civil partnership to which the application relates, the court must refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

## **182 General provisions as to making and effect of declarations**

- (1) Where on an application for a declaration under section 181 the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the declaration unless to do so would be manifestly contrary to public policy.
- (2) Any declaration under section 181 binds Her Majesty and all other persons.
- (3) The court, on the dismissal of an application for a declaration under section 181, may not make any declaration for which an application has not been made.
- (4) No declaration which may be applied for under section 181 may be made otherwise than under section 181 by any court.
- (5) No declaration may be made by any court, whether under section 181 or otherwise, that a civil partnership was at its inception void.
- (6) Nothing in this section affects the powers of any court to annul a civil partnership.

## **183 The Attorney General and proceedings for declarations**

- (1) On an application for a declaration under section 181 the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney General.
- (2) The Attorney General, whether or not he is sent papers in relation to an application for a declaration under section 181, may—
  - (a) intervene in the proceedings on that application in such manner as he thinks necessary or expedient, and
  - (b) argue before the court any question in relation to the application which the court considers it necessary to have fully argued.
- (3) Where any costs are incurred by the Attorney General in connection with any application for a declaration under section 181, the court may make such order as it considers just as to the payment of those costs by parties to the proceedings.

## **184 Supplementary provisions as to declarations**

- (1) Any declaration made under section 181, and any application for such a declaration, must be in the form prescribed by family proceedings rules.
- (2) Family proceedings rules may make provision—
  - (a) as to the information required to be given by any applicant for a declaration under section 181;



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- (b) requiring notice of an application under section 181 to be served on the Attorney General and on persons who may be affected by any declaration applied for.
- (3) No proceedings under section 181 affects any final judgment or order already pronounced or made by any court of competent jurisdiction.
- (4) The court hearing an application under section 181 may direct that the whole or any part of the proceedings must be heard in private.
- (5) An application for a direction under subsection (4) must be heard in private unless the court otherwise directs.
- (6) Family proceedings rules must make provision for an appeal to the Court of Appeal from any declaration made by a county court under section 181 or from the dismissal of an application under that section, upon a point of law, a question of fact or the admission or rejection of any evidence.
- (7) Subsection (6) does not affect Article 61 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) (cases stated).
- (8) In this section “family proceedings rules” means family proceedings rules made under Article 12 of the Family Law (Northern Ireland) Order 1993 (S.I. 1993/1576 (N.I. 6)).

#### Commencement Information

**I37** S. 184 wholly in force at 5.12.2005; s. 184 not in force at Royal Assent see s. 263; s. 184(1) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 184(2)(6)(8) in force at 5.9.2005 by S.I. 2005/2399, art. 2, Sch.; s. 184(3)-(5)(7) in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

### General provisions

#### 185 Relief for respondent in dissolution proceedings

- (1) If in any proceedings for a dissolution or separation order the respondent alleges and proves any such fact as is mentioned in section 168(5)(a), (b), (c) or (d) the court may give to the respondent the relief to which he would have been entitled if he had made an application seeking that relief.
- (2) When applying subsection (1), treat—
  - (a) the respondent as the applicant, and
  - (b) the applicant as the respondent,for the purposes of section 168(5).

#### 186 Restrictions on making of orders affecting children

- (1) In any proceedings for a dissolution, nullity or separation order, the court must consider—
  - (a) whether there are any children of the family to whom this section applies, and

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- (b) if there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) with respect to any of them.
- (2) If, in any case to which this section applies, it appears to the court that—
- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the 1995 Order with respect to any such child,
  - (b) it is not in a position to exercise the power or (as the case may be) those powers without giving further consideration to the case, and
  - (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section,
- it may direct that the order is not to be made final, or (in the case of a separation order) is not to be made, until the court orders otherwise.
- (3) This section applies to—
- (a) any child of the family who has not reached 16 at the date when the court considers the case in accordance with the requirements of this section, and
  - (b) any child of the family who has reached 16 at that date and in relation to whom the court directs that this section shall apply.

## 187 Parties to proceedings under this Chapter

- (1) Rules of court may make provision with respect to—
- (a) the joinder as parties to proceedings under sections 161 to 179 of persons involved in allegations of improper conduct made in those proceedings,
  - (b) the dismissal from such proceedings of any parties so joined, and
  - (c) the persons who are to be parties to proceedings on an application under section 181.
- (2) Rules of court made under this section may make different provision for different cases.
- (3) In every case in which the court considers, in the interest of a person not already a party to the proceedings, that the person should be made a party, the court may if it thinks fit allow the person to intervene upon such terms, if any, as the court thinks just.

### Commencement Information

**I38** S. 187 wholly in force at 5.12.2005; s. 187 not in force at Royal Assent see s. 263; s. 187(1)(2) in force at 5.9.2005 by S.I. 2005/2399, art. 2, Sch. ; s. 187 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

*The court*

## 188 The court

- (1) In this Chapter “the court” means—
- (a) the High Court, or

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- (b) where an order made by the Lord Chancellor is in force designating a county court sitting for any division as a civil partnership proceedings county court, a county court sitting for that division.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) Subsection (1) does not apply where the context shows that “the court” means some particular court.
- (4) The Lord Chancellor may make an order such as is mentioned in subsection (1)(b).
- [<sup>F119</sup>(4A) The Lord Chancellor may make an order under subsection (4) only with the concurrence of the Lord Chief Justice of Northern Ireland.]
- (5) In this Part “civil partnership proceedings county court” means, where an order made by the Lord Chancellor under subsection (4) is in force designating a county court sitting for any division as a civil partnership proceedings county court, a county court sitting for that division.
- (6) Except to the extent that rules of court otherwise provide, the jurisdiction conferred by virtue of this section and section 190 on a civil partnership proceedings county court is exercisable throughout Northern Ireland, but rules of court may provide for a civil partnership cause (within the meaning of section 190) pending in one such court to be heard and determined—
- (a) partly in that court and partly in another, or
- (b) in another.
- (7) Any jurisdiction conferred on a civil partnership proceedings county court is exercisable even though by reason of any amount claimed the jurisdiction would not but for this subsection be exercisable by a county court.
- (8) The jurisdiction of a civil partnership proceedings county court to exercise any power under Schedule 15 (except a power under Part 8 of or paragraph 62 of that Schedule or a power under paragraph 57, 58 or 66 of that Schedule which is exercisable by county courts generally) shall, except to the extent that rules of court otherwise permit and, in particular, without prejudice to section 190(4) and (6), be exercisable only in connection with an application or order pending in or made by such a court.
- (9) The power to make an order under subsection (4) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

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#### Textual Amendments

**F119** S. 188(4A) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), art. 2, **Sch. 1 para. 22(2)**

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#### Modifications etc. (not altering text)

**C8** S. 188: functions transferred (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(1), **Sch. 17 para. 21(a)** (with arts. 15(6), 28-31)

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## 189 Appeals

- (1) Rules of court shall make provision for an appeal upon a point of law, a question of fact or the admission or rejection of any evidence to the Court of Appeal from—
  - (a) any order made by a judge of a civil partnership proceedings county court in the exercise of the jurisdiction conferred by a relevant provision, or
  - (b) the dismissal by a judge of a civil partnership proceedings county court of any application under a relevant provision.
- (2) “Relevant provision” means any provision of—
  - (a) this Chapter or Schedule 15 (except paragraphs 56 to 58 and 66);
  - (b) the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (3) A person dissatisfied with—
  - (a) an order made by any county court in exercise of the jurisdiction conferred by paragraph 57, 58 or 66 of Schedule 15, or
  - (b) with the dismissal of any application made by him under any of those paragraphs,

is entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part 3 of the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)) and the appeal brought under Part 6 of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order apply accordingly.

### Commencement Information

**I39** S. 189 wholly in force at 5.12.2005; s. 189 not in force at Royal Assent see s. 263; s. 189(1) in force at 5.9.2005 by S.I. 2005/2399, art. 2, Sch.; s. 189(2) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 189 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

## 190 Transfer of proceedings

- (1) This section applies if an order is made under section 188.
- (2) Rules of court—
  - (a) must provide for the transfer to the High Court—
    - (i) of any civil partnership cause pending in a civil partnership proceedings county court which ceases to be undefended, and
    - (ii) of any civil partnership cause so pending, where the transfer appears to the civil partnership proceedings county court to be desirable;
  - (b) may provide for the transfer to the High Court of any civil partnership cause which remains undefended;
  - (c) may provide for the transfer or retransfer from the High Court to a civil partnership proceedings county court of any civil partnership cause which is, or again becomes, undefended;
  - (d) must define the circumstances in which any civil partnership cause is to be treated for the purposes of this subsection as undefended.
- (3) “Civil partnership cause” means an action for the dissolution or annulment of a civil partnership or for the legal separation of civil partners.

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- (4) Rules of court may provide for the transfer or retransfer—
  - (a) from a civil partnership proceedings county court to the High Court, or
  - (b) from the High Court to a civil partnership proceedings county court,of any proceedings for the exercise of a power under this Chapter or Schedule 15 (except proceedings on an application under paragraph 57, 58 or 66).
- (5) The power conferred by subsections (2) and (4) includes power to provide for the removal of proceedings at the direction of the High Court; but nothing in this section affects—
  - (a) any other power of the High Court to remove proceedings to that court from a county court, or
  - (b) any power to remit proceedings from that court to a county court.
- (6) A court has jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of subsection (4).

#### Commencement Information

**I40** S. 190 wholly in force at 5.12.2005; s. 190 not in force at Royal Assent see s. 263; s. 190(2)-(4) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 190 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

## CHAPTER 3

### PROPERTY AND FINANCIAL ARRANGEMENTS

#### 191 Disputes between civil partners about property

- (1) In any question between the civil partners in a civil partnership as to title to or possession of property, either civil partner may apply by summons or otherwise in a summary way to—
  - (a) the High Court, or
  - (b) a county court.
- (2) On such an application, the court may make such order with respect to the property as it thinks fit (including an order for the sale of the property).
- (3) Rules of court made for the purposes of this section may confer jurisdiction on county courts whatever the situation or value of the property in dispute.

#### Commencement Information

**I41** S. 191 wholly in force at 5.12.2005; s. 191 not in force at Royal Assent see s. 263; s. 191(3) in force at 5.9.2005 for certain purposes by S.I. 2005/2399, art. 2, Sch. and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.; s. 191 in force at 5.12.2005 insofar as not already in force by S.I. 2005/3255, art. 2(1), Sch.

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## **192 Applications under section 191 where property not in possession etc.**

- (1) The right of a civil partner (“A”) to make an application under section 191 includes the right to make such an application where A claims that the other civil partner (“B”) has had in his possession or under his control—
  - (a) money to which, or to a share of which, A was beneficially entitled, or
  - (b) property (other than money) to which, or to an interest in which, A was beneficially entitled,
 and that either the money or other property has ceased to be in B’s possession or under B’s control or that A does not know whether it is still in B’s possession or under B’s control.
- (2) For the purposes of subsection (1)(a) it does not matter whether A is beneficially entitled to the money or share—
  - (a) because it represents the proceeds of property to which, or to an interest in which, A was beneficially entitled, or
  - (b) for any other reason.
- (3) Subsections (4) and (5) apply if, on such an application being made, the court is satisfied that B—
  - (a) has had in his possession or under his control money or other property as mentioned in subsection (1)(a) or (b), and
  - (b) has not made to A, in respect of that money or other property, such payment or disposition as would have been just and equitable in the circumstances.
- (4) The power of the court to make orders under section 191 includes power to order B to pay to A—
  - (a) in a case falling within subsection (1)(a), such sum in respect of the money to which the application relates, or A’s share of it, as the court considers appropriate, or
  - (b) in a case falling within subsection (1)(b), such sum in respect of the value of the property to which the application relates, or A’s interest in it, as the court considers appropriate.
- (5) If it appears to the court that there is any property which—
  - (a) represents the whole or part of the money or property, and
  - (b) is property in respect of which an order could (apart from this section) have been made under section 191,
 the court may (either instead of or as well as making an order in accordance with subsection (4)) make any order which it could (apart from this section) have made under section 191.
- (6) Any power of the court which is exercisable on an application under section 191 is exercisable in relation to an application made under that section as extended by this section.

## **193 Applications under section 191 by former civil partners**

- (1) Where a civil partnership has been dissolved or annulled or is void (whether or not it has been annulled), either party may make an application under section 191 (or under that section as extended by section 192) and references in those sections to a civil partner are to be read accordingly.

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- (2) An application under subsection (1) must—
- (a) where the civil partnership has been dissolved or annulled, be made within the period of 3 years beginning with the date of the dissolution or annulment, and
  - (b) where a civil partnership is void but has not been annulled and the parties have ceased to live together in the same household, be made within the period of 3 years beginning with the date on which they ceased so to live together.

#### **194 Assurance policy by civil partner for benefit of other civil partner etc.**

Section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964 (c. 23 (N.I.)) (money payable under policy of life assurance or endowment not to form part of the estate of the insured) applies in relation to a policy of life assurance or endowment—

- (a) effected by a civil partner on his own life, and
- (b) expressed to be for the benefit of his civil partner, or of his children, or of his civil partner and children, or any of them,

as it applies in relation to a policy of life assurance or endowment effected by a husband and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or of any of them.

#### **195 Wills, administration of estates and family provision**

Schedule 14 amends enactments relating to wills, administration of estates and family provision so that they apply in relation to civil partnerships as they apply in relation to marriage.

#### **196 Financial relief for civil partners and children of family**

- (1) Schedule 15 makes provision for financial relief in connection with civil partnerships that corresponds to the provision made for financial relief in connection with marriages by Part 3 of the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)).
- (2) <sup>F120</sup> .....
- (3) Schedule 16 makes provision for financial relief in connection with civil partnerships that corresponds to provision made for financial relief in connection with marriages by the Domestic Proceedings (Northern Ireland) Order 1980 (S.I. 1980/563 (N.I. 5)).
- (4) Schedule 17 makes provision for financial relief in Northern Ireland after a civil partnership has been dissolved or annulled, or civil partners have been legally separated, in a country outside the British Islands.

#### **Textual Amendments**

**F120** S. 196(2) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 14(1)(b)(3), 19(2), 20, [Sch. 3](#); S.R. 2009/356, [art. 2](#)

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## CHAPTER 4

### CIVIL PARTNERSHIP AGREEMENTS

#### **197 Civil partnership agreements unenforceable**

- (1) A civil partnership agreement does not under the law of Northern Ireland have effect as a contract giving rise to legal rights.
- (2) No action lies in Northern Ireland for breach of a civil partnership agreement, whatever the law applicable to the agreement.
- (3) In this section and section 198 “civil partnership agreement” means an agreement between two people—
  - (a) to register as civil partners of each other—
    - (i) in Northern Ireland (under Part 4),
    - (ii) in England and Wales (under Part 2),
    - (iii) in Scotland (under Part 3), or
    - (iv) outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 (registration at British consulates etc. or by armed forces personnel), or
  - (b) to enter into an overseas relationship.
- (4) This section applies in relation to civil partnership agreements whether entered into before or after this section comes into force, but does not affect any action commenced before it comes into force.

#### **198 Property where civil partnership agreement is terminated**

- (1) This section applies if a civil partnership agreement is terminated.
- (2) Sections 191 and 192 (disputes between civil partners about property) apply to any dispute between, or claim by, one of the parties in relation to property in which either or both had a beneficial interest while the agreement was in force, as if the parties were civil partners of each other.
- (3) An application made under section 191 or 192 by virtue of subsection (2) must be made within 3 years of the termination of the agreement.
- (4) A party to a civil partnership agreement who makes a gift of property to the other party on the condition (express or implied) that it is to be returned if the agreement is terminated is not prevented from recovering the property merely because of his having terminated the agreement.

## CHAPTER 5

### CHILDREN

#### **199 Parental responsibility, children of the family and relatives**

- (1) Amend the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (“the 1995 Order”) as follows.



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- (2) In Article 2(2) (interpretation), for the definition of “child of the family” in relation to the parties to a marriage, substitute—
- ““child of the family”, in relation to parties to a marriage, or to two people who are civil partners of each other, means—
- (a) a child of both of them, and
- (b) any other child, other than a child placed with them as foster parents by an authority or voluntary organisation, who has been treated by both of them as a child of their family.”
- (3) In the definition of “relative” in Article 2(2), for “by affinity)” substitute “ by marriage or civil partnership) ”.
- (4) In Article 7(1C) (acquisition of parental responsibility by step-parent), after “is married to” insert “ , or a civil partner of, ”.

## **200 Guardianship**

In Article 161 of the 1995 Order (revocation of appointment), after paragraph (7) insert—

- “(8) An appointment under paragraph (1) or (2) of Article 160 (including one made in an unrevoked will) is revoked if—
- (a) the civil partnership of the person who made the appointment is dissolved or annulled, and
- (b) the person appointed is his former civil partner.
- (9) Paragraph (8) is subject to a contrary intention appearing from the appointment.
- (10) In paragraph (8) “dissolved or annulled” means—
- (a) dissolved by a dissolution order or annulled by a nullity order under Part 4 of the Civil Partnership Act 2004, or
- (b) dissolved or annulled in any country or territory outside Northern Ireland by a dissolution or annulment which is entitled to recognition in Northern Ireland by virtue of Chapter 3 of Part 5 of that Act.”

## **201 Entitlement to apply for residence or contact order**

In Article 10(5) of the 1995 Order (persons entitled to apply for residence or contact order), after sub-paragraph (a) insert—

- “(aa) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child is a child of the family;”.

## **202 Financial provision for children**

- (1) Amend Schedule 1 to the 1995 Order (financial provision for children) as follows.
- (2) For paragraph 1(2) (extended meaning of “parent”) substitute—
- “(2) In this Schedule, except paragraphs 3 and 17, “parent” includes—
- (a) any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family, and

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- (b) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family;  
and for this purpose any reference to either parent or both parents shall be read as a reference to any parent of his and to all of his parents.”
- (3) In paragraph 3(6) (meaning of “periodical payments order”), after paragraph (d) insert—
- “(e) Part 1 or 8 of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or county court etc.);  
(f) Schedule 16 to the 2004 Act (financial relief in court of summary jurisdiction etc.);”.
- (4) In paragraph 17(2) (person with whom a child lives or is to live), after “husband or wife” insert “ or civil partner ”.

### **203 Adoption**

- (1) Amend the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) as follows.
- (2) In Article 2 (interpretation), in the definition of “relative” in paragraph (2), for “affinity” substitute “ marriage or civil partnership ”.
- (3) In Article 12 (adoption orders), in paragraph (5), after “married” insert “ or who is or has been a civil partner ”.
- (4) In Article 15 (adoption by one person), in paragraph (1)(a), after “is not married” insert “ or a civil partner ”.
- (5) In Article 33 (meaning of “protected child”), in paragraph (3)(g), after “marriage” insert “ or forming a civil partnership ”.
- (6) In Article 40 (status conferred by adoption), in paragraph (3)(a), after “1984” insert “ or for the purposes of Schedule 12 to the Civil Partnership Act 2004 ”.
- (7) In Article 54 (disclosure of birth records of adopted children), in paragraph (2)—
- (a) after “intending to be married” insert “ or to form a civil partnership ”;  
(b) for “the person whom he intends to marry” substitute “ the intended spouse or civil partner ”;  
(c) after “1984” insert “ or Schedule 12 to the Civil Partnership Act 2004 ”.
- (8) In Article 54A (Adoption Contact Register), in paragraph (13)(a), for “or marriage” substitute “ , marriage or civil partnership ”.

## **CHAPTER 6**

### MISCELLANEOUS

### **204 False statements etc. with reference to civil partnerships**

- (1) Amend Article 8 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements etc. with reference to marriage) as follows.
- (2) After paragraph (1) insert—

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“(1A) Any person who—

- (a) for the purpose of procuring the formation of a civil partnership or a document mentioned in paragraph (1B)—
  - (i) makes or signs a declaration required under Part 4 or 5 of the Civil Partnership Act 2004; or
  - (ii) gives a notice or certificate required under Part 4 or 5 of the Civil Partnership Act 2004,knowing that the declaration, notice or certificate is false;
- (b) for the purpose of a record being made in any register relating to civil partnerships—
  - (i) makes a statement as to any information which is required to be registered under Part 4 or 5 of the Civil Partnership Act 2004; or
  - (ii) causes such a statement to be made,knowing that the statement is false;
- (c) forbids the issue of a document mentioned in paragraph (1B)(a) or (b) by representing himself to be a person whose consent to a civil partnership between a child and another person is required under Part 4 or 5 of the Civil Partnership Act 2004, knowing the representation to be false,

shall be guilty of an offence.

(1B) The documents are[en rule]

- (a) a civil partnership schedule;
- (b) a document required by an Order in Council under section 210 or 211 of the Civil Partnership Act 2004 as an authority for two people to register as civil partners of each other;
- (c) a certificate of no impediment under section 240 of the Civil Partnership Act 2004.”

(3) In paragraph (2), after “paragraph (1)” insert “ or (1A) ”.

(4) In the heading to Article 8, after “marriage” insert “ or civil partnership ”.

## **205 Housing and tenancies**

Schedule 18 amends certain enactments relating to housing and tenancies.

## **206 Family homes and domestic violence**

Schedule 19 amends the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (S.I. 1998/1071 (N.I. 6)) and related enactments so that they apply in relation to civil partnerships as they apply in relation to marriages.

## **207 Fatal accidents claims**

(1) Amend the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)) as follows.

(2) In Article 2(2) (meaning of “dependant”), after sub-paragraph (a) insert—

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“(aa) the civil partner or former civil partner of the deceased;”.

- (3) In sub-paragraph (b)(iii) of Article 2(2), after “wife” insert “ or civil partner ”.
- (4) After sub-paragraph (f) of Article 2(2) insert—
- “(fa) any person (not being a child of the deceased) who, in the case of any civil partnership in which the deceased was at any time a civil partner, was treated by the deceased as a child of the family in relation to that civil partnership;”.
- (5) After Article 2(2A) insert—
- “(2B) The reference to the former civil partner of the deceased in paragraph (2)(aa) includes a reference to a person whose civil partnership with the deceased has been annulled as well as a person whose civil partnership with the deceased has been dissolved.”
- (6) In Article 2(3)(b), for “by affinity” substitute “ by marriage or civil partnership ”.
- (7) In Article 3A(2) (persons for whose benefit claim for bereavement damages may be made)—
- (a) in sub-paragraph (a), after “wife or husband” insert “ or civil partner ”, and
- (b) in sub-paragraph (b), after “was never married” insert “ or a civil partner ”.
- (8) In Article 5 (assessment of damages), in paragraph (3A), after “wife” insert “ or civil partner ”.

## 208 Evidence

- (1) Any enactment or rule of law relating to the giving of evidence by a spouse applies in relation to a civil partner as it applies in relation to the spouse.
- (2) Subsection (1) is subject to any specific amendment made by or under this Act which relates to the giving of evidence by a civil partner.
- (3) For the avoidance of doubt, in any such amendment, references to a person’s civil partner do not include a former civil partner.
- (4) References in subsections (1) and (2) to giving evidence are to giving evidence in any way (whether by supplying information, making discovery, producing documents or otherwise).
- (5) Any rule of law—
- (a) which is preserved by Article 22(1) of the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), and
- (b) under which in any proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of a marriage,
- is to be treated as applying in an equivalent way for the purpose of proving or disproving the existence of a civil partnership.

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## 209 Restriction on publicity of reports of proceedings

Section 1 of the Matrimonial Causes (Reports) Act (Northern Ireland) 1966 (c. 29 (N.I.)) (restriction on publication of reports of proceedings) shall extend to proceedings—

- (a) for the dissolution or annulment of a civil partnership or for the legal separation of civil partners,
- (b) under section 181,
- (c) under Part 8 of Schedule 15, or
- (d) under Part 10 of Schedule 15 in relation to an order under Part 8 of that Schedule.

## PART 5

### CIVIL PARTNERSHIP FORMED OR DISSOLVED ABROAD ETC.

## CHAPTER 1

### REGISTRATION OUTSIDE UK UNDER ORDER IN COUNCIL

## 210 Registration at British consulates etc.

- (1) Her Majesty may by Order in Council make provision for two people to register as civil partners of each other—
  - (a) in prescribed countries or territories outside the United Kingdom, and
  - (b) in the presence of [<sup>F121</sup>a registration officer],in cases where the officer is satisfied that the conditions in subsection (2) are met.
- (2) The conditions are that—
  - (a) at least one of the proposed civil partners is a United Kingdom national,
  - (b) the proposed civil partners would have been eligible to register as civil partners of each other in such part of the United Kingdom as is determined in accordance with the Order,
  - (c) the authorities of the country or territory in which it is proposed that they register as civil partners will not object to the registration, and
  - (d) insufficient facilities exist for them to enter into an overseas relationship under the law of that country or territory.
- (3) [<sup>F122</sup>A registration officer] is not required to allow two people to register as civil partners of each other if in his opinion the formation of a civil partnership between them would be inconsistent with international law or the comity of nations.
- (4) An Order in Council under this section may make provision for appeals against a refusal, in reliance on subsection (3), to allow two people to register as civil partners of each other.
- (5) An Order in Council under this section may provide that two people who register as civil partners of each other under such an Order are to be treated for the purposes of sections 221(1)(c)(i) and (2)(c)(i), 222(c), 224(b), 225(1)(c)(i) and (3)(c)(i), 229(1)(c)(i) and (2)(c)(i) [<sup>F123</sup>and section 232(b)] and section 1(3)(c)(i) of the Presumption

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of Death (Scotland) Act 1977 (c. 27) as if they had done so in the part of the United Kingdom determined as mentioned in subsection (2)(b).

[<sup>F124</sup>(6) “Registration officer” means—

- (a) a consular officer in the service of Her Majesty’s government in the United Kingdom, or
- (b) in the case of registration in a country in which Her Majesty’s government in the United Kingdom has for the time being no consular representative, a person authorised by the Secretary of State in respect of registration of civil partnerships in that country.]

#### Textual Amendments

- F121** Words in s. 210(1)(b) substituted (5.12.2012) by [The Legislative Reform \(Civil Partnership\) Order 2012 \(S.I. 2012/3100\)](#), arts. 1, **2(2)**
- F122** Words in s. 210(3) substituted (5.12.2012) by [The Legislative Reform \(Civil Partnership\) Order 2012 \(S.I. 2012/3100\)](#), arts. 1, **2(3)**
- F123** Words in s. 210(5) substituted (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), 20, **Sch. 2**; [S.R. 2009/356](#), **art. 2**
- F124** S. 210(6) inserted (5.12.2012) by [The Legislative Reform \(Civil Partnership\) Order 2012 \(S.I. 2012/3100\)](#), arts. 1, **2(4)**

#### Commencement Information

- I42** S. 210 wholly in force at 5.12.2005; s. 210 not in force at Royal Assent see s. 263; s. 210(1)(2)(4)(5) in force at 15.4.2005 by [S.I. 2005/1112](#), **art. 2**, **Sch. 2**; s. 210(3) in force at 5.12.2005 by [S.I. 2005/3175](#), **art. 3**, **Sch. 2**

## 211 Registration by armed forces personnel

- (1) Her Majesty may by Order in Council make provision for two people to register as civil partners of each other—
- (a) in prescribed countries or territories outside the United Kingdom, and
  - (b) in the presence of an officer appointed by virtue of the Registration of Births, Deaths and Marriages (Special Provisions) Act 1957 (c. 58),
- in cases where the officer is satisfied that the conditions in subsection (2) are met.
- (2) The conditions are that—
- (a) at least one of the proposed civil partners—
    - (i) is a member of a part of Her Majesty’s forces serving in the country or territory,
    - (ii) is employed in the country or territory in such other capacity as may be prescribed, or
    - (iii) is a child of a person falling within sub-paragraph (i) or (ii) and has his home with that person in that country or territory,
  - (b) the proposed civil partners would have been eligible to register as civil partners of each other in such part of the United Kingdom as is determined in accordance with the Order, and
  - (c) such other requirements as may be prescribed are complied with.

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- (3) In determining for the purposes of subsection (2) whether one person is the child of another, a person who is or was treated by another as a child of the family in relation to—
- (a) a marriage to which the other is or was a party, or
  - (b) a civil partnership in which the other is or was a civil partner,
- is to be regarded as the other’s child.
- (4) An Order in Council under this section may provide that two people who register as civil partners of each other under such an Order are to be treated for the purposes of section 221(1)(c)(i) and (2)(c)(i), 222(c), 224(b), 225(1)(c)(i) and (3)(c)(i), 229(1)(c)(i) and (2)(c)(i) [F125 and section 232(b)] and section 1(3)(c)(i) of the Presumption of Death (Scotland) Act 1977 (c. 27) as if they had done so in the part of the United Kingdom determined in accordance with subsection (2)(b).
- (5) Any references in this section—
- (a) to a country or territory outside the United Kingdom,
  - (b) to forces serving in such a country or territory, and
  - (c) to persons employed in such a country or territory,
- include references to ships which are for the time being in the waters of a country or territory outside the United Kingdom, to forces serving in any such ship and to persons employed in any such ship.

#### Textual Amendments

**F125** Words in s. 211(4) substituted (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), 20, [Sch. 2](#); S.R. 2009/356, [art. 2](#)

## CHAPTER 2

### OVERSEAS RELATIONSHIPS TREATED AS CIVIL PARTNERSHIPS

#### 212 Meaning of “overseas relationship”

- (1) For the purposes of this Act an overseas relationship is a relationship which—
- (a) is either a specified relationship or a relationship which meets the general conditions, and
  - (b) is registered (whether before or after the passing of this Act) with a responsible authority in a country or territory outside the United Kingdom, by two people—
    - (i) who under the relevant law are of the same sex at the time when they do so, and
    - (ii) neither of whom is already a civil partner or lawfully married.
- (2) In this Chapter, “the relevant law” means the law of the country or territory where the relationship is registered (including its rules of private international law).

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#### Modifications etc. (not altering text)

- C9** S. 212 applied (with modifications) (E.W.) (5.12.2005) by [The Civil Partnership \(Treatment of Overseas Relationships\) Order 2005 \(S.I. 2005/3042\)](#), **art. 5**  
 S. 212 applied (with modifications) (N.I.) (5.12.2005) by [The Civil Partnership \(Treatment of Overseas Relationships\) Order \(Northern Ireland\) 2005 \(S.R. 2005/531\)](#), **art. 5(1)**  
 S. 212 applied (with modifications) (S.) (5.12.2005) by [The Civil Partnership \(Overseas Relationships\) \(Scotland\) Order 2005 \(S.S.I. 2005/573\)](#), **art. 3**

### 213 Specified relationships

- (1) A specified relationship is a relationship which is specified for the purposes of section 212 by Schedule 20.
- (2) The [<sup>F126</sup>Secretary of State] may by order amend Schedule 20 by—
  - (a) adding a relationship,
  - (b) amending the description of a relationship, or
  - (c) omitting a relationship.
- (3) No order may be made under this section without the consent of the Scottish Ministers and the Department of Finance and Personnel.
- (4) The power to make an order under this section is exercisable by statutory instrument.
- (5) An order which contains any provision (whether alone or with other provisions) amending Schedule 20 by—
  - (a) amending the description of a relationship, or
  - (b) omitting a relationship,
 may not be made unless a draft of the statutory instrument containing the order is laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing any other order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F126** Words in s. 213(2) substituted (18.8.2010) by [The Transfer of Functions \(Equality\) Order 2010 \(S.I. 2010/1839\)](#), art. 7, **Sch. para. 6**

#### Modifications etc. (not altering text)

- C10** S. 213: functions transferred (12.10.2007) by [The Transfer of Functions \(Equality\) Order 2007 \(S.I. 2007/2914\)](#), **art. 3(2)(e)**  
**C11** S. 213: functions transferred (18.8.2010) by [The Transfer of Functions \(Equality\) Order 2010 \(S.I. 2010/1839\)](#), **art. 3(1)(e)**

#### Commencement Information

- I43** S. 213 wholly in force at 5.12.2005; s. 213(2)-(6) in force at Royal Assent, see s. 263(5)(6); s. 213(1) in force at 5.12.2005 by [S.I. 2005/3175](#), **art. 3**, Sch. 2



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## **214 The general conditions**

The general conditions are that, under the relevant law—

- (a) the relationship may not be entered into if either of the parties is already a party to a relationship of that kind or lawfully married,
- (b) the relationship is of indeterminate duration, and
- (c) the effect of entering into it is that the parties are—
  - (i) treated as a couple either generally or for specified purposes, or
  - (ii) treated as married.

## **215 Overseas relationships treated as civil partnerships: the general rule**

- (1) Two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, under the relevant law, they—
  - (a) had capacity to enter into the relationship, and
  - (b) met all requirements necessary to ensure the formal validity of the relationship.
- (2) Subject to subsection (3), the time when they are to be treated as having formed the civil partnership is the time when the overseas relationship is registered (under the relevant law) as having been entered into.
- (3) If the overseas relationship is registered (under the relevant law) as having been entered into before this section comes into force, the time when they are to be treated as having formed a civil partnership is the time when this section comes into force.
- (4) But if—
  - (a) before this section comes into force, a dissolution or annulment of the overseas relationship was obtained outside the United Kingdom, and
  - (b) the dissolution or annulment would be recognised under Chapter 3 if the overseas relationship had been treated as a civil partnership at the time of the dissolution or annulment,subsection (3) does not apply and subsections (1) and (2) have effect subject to subsection (5).
- (5) The overseas relationship is not to be treated as having been a civil partnership for the purposes of any provisions except—
  - (a) Schedules 7, 11 and 17 (financial relief in United Kingdom after dissolution or annulment obtained outside the United Kingdom);
  - (b) such provisions as are specified (with or without modifications) in an order under section 259;
  - (c) Chapter 3 (so far as necessary for the purposes of paragraphs (a) and (b)).
- (6) This section is subject to sections 216, 217 and 218.

## **216 The same-sex requirement**

- (1) Two people are not to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, at the critical time, they were not of the same sex under United Kingdom law.
- (2) But if a full gender recognition certificate is issued under the 2004 Act to a person who has registered an overseas relationship which is within subsection (4), after the issue

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of the certificate the relationship is no longer prevented from being treated as a civil partnership on the ground that, at the critical time, the parties were not of the same sex.

- (3) However, subsection (2) does not apply to an overseas relationship which is within subsection (4) if either of the parties has formed a subsequent civil partnership or lawful marriage.
- (4) An overseas relationship is within this subsection if (and only if), at the time mentioned in section 215(2)—
  - (a) one of the parties (“A”) was regarded under the relevant law as having changed gender (but was not regarded under United Kingdom law as having done so), and
  - (b) the other party was (under United Kingdom law) of the gender to which A had changed under the relevant law.
- (5) In this section—
  - “the critical time” means the time determined in accordance with section 215(2) or (as the case may be) (3);
  - “the 2004 Act” means the Gender Recognition Act 2004 (c. 7);
  - “United Kingdom law” means any enactment or rule of law applying in England and Wales, Scotland and Northern Ireland.
- (6) Nothing in this section prevents the exercise of any enforceable [F127EU] right.

#### Textual Amendments

**F127** Word in s. 216 substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, **6(1)(f)**

## 217 Person domiciled in a part of the United Kingdom

- (1) Subsection (2) applies if an overseas relationship has been registered by a person who was at the time mentioned in section 215(2) domiciled in England and Wales.
- (2) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2)—
  - (a) either of them was under 16, or
  - (b) they would have been within prohibited degrees of relationship under Part 1 of Schedule 1 if they had been registering as civil partners of each other in England and Wales.
- (3) Subsection (4) applies if an overseas relationship has been registered by a person who at the time mentioned in section 215(2) was domiciled in Scotland.
- (4) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2), they were not eligible by virtue of paragraph (b), (c) or (e) of section 86(1) to register in Scotland as civil partners of each other.
- (5) Subsection (6) applies if an overseas relationship has been registered by a person who at the time mentioned in section 215(2) was domiciled in Northern Ireland.
- (6) The two people concerned are not to be treated as having formed a civil partnership if, at the time mentioned in section 215(2)—

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- (a) either of them was under 16, or
- (b) they would have been within prohibited degrees of relationship under Schedule 12 if they had been registering as civil partners of each other in Northern Ireland.

## 218 The public policy exception

Two people are not to be treated as having formed a civil partnership as a result of having entered into an overseas relationship if it would be manifestly contrary to public policy to recognise the capacity, under the relevant law, of one or both of them to enter into the relationship.

### CHAPTER 3

#### DISSOLUTION ETC.: JURISDICTION AND RECOGNITION

##### *Introduction*

## 219 Power to make provision corresponding to EC Regulation 2201/2003

- (1) The Lord Chancellor may by regulations make provision—
- (a) as to the jurisdiction of courts in England and Wales <sup>F128</sup> . . . in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in cases where a civil partner—
    - (i) is or has been habitually resident in a member State,
    - (ii) is a national of a member State, or
    - (iii) is domiciled in a part of the United Kingdom or the Republic of Ireland, and
  - (b) as to the recognition in England and Wales <sup>F128</sup> . . . of any judgment of a court of another member State which orders the dissolution or annulment of a civil partnership or the legal separation of the civil partners.

[<sup>F129</sup>(1A) The Department of Justice in Northern Ireland may by regulations make provision—

- (a) as to the jurisdiction of courts in Northern Ireland in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in such cases as are mentioned in subsection (1)(a), and
- (b) as to the recognition in Northern Ireland of any such judgment as is mentioned in subsection (1)(b).]

- (2) The Scottish Ministers may by regulations make provision—
- (a) as to the jurisdiction of courts in Scotland in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in such cases as are mentioned in subsection (1)(a), and
  - (b) as to the recognition in Scotland of any such judgment as is mentioned in subsection (1)(b).
- (3) The regulations may in particular make provision corresponding to that made by Council Regulation (EC) No 2201/2003 of 27th November 2003 in relation to jurisdiction and the recognition and enforcement of judgments in matrimonial matters.

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- (4) The regulations may provide that for the purposes of this Part and the regulations “member State” means—
- (a) all member States with the exception of such member States as are specified in the regulations, or
  - (b) such member States as are specified in the regulations.
- (5) The regulations may make provision under subsections (1)(b) [<sup>F130</sup>, (1A)(b)] and (2)(b) which applies even if the date of the dissolution, annulment or legal separation is earlier than the date on which this section comes into force.
- (6) Regulations under subsection (1) are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of each House of Parliament.
- [<sup>F131</sup>(6A) Regulations under subsection (1A) are to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (6B) No regulations shall be made under subsection (1A) unless a draft has been laid before and approved by resolution of the Northern Ireland Assembly.
- (6C) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6B) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.]
- (7) Regulations under subsection (2) are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of the Scottish Parliament.
- (8) In this Part “section 219 regulations” means regulations made under this section.

#### **Textual Amendments**

- F128** Words in s. 219(1)(a)(b) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 73(a)** (with arts. 28-31)
- F129** S. 219(1A) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 73(b)** (with arts. 28-31)
- F130** Word in s. 219(5) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 73(c)** (with arts. 28-31)
- F131** S. 219(6A)-(6C) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 73(d)** (with arts. 28-31)

### *Jurisdiction of courts in England and Wales*

#### **220 Meaning of “the court”**

In sections 221 to 224 “the court” means—

- (a) the High Court, or
- (b) if a county court has jurisdiction by virtue of Part 5 of the Matrimonial and Family Proceedings Act 1984 (c. 42), a county court.

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### Commencement Information

**I44** S. 220 wholly in force at 5.12.2005; s. 220 not in force at Royal Assent see s. 263; s. 220 in force at 15.4.2005 for certain purposes by S.I. 2005/1112, art. 2, Sch. 2 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 3, Sch. 2

## 221 Proceedings for dissolution, separation or nullity order

- (1) The court has jurisdiction to entertain proceedings for a dissolution order or a separation order if (and only if)—
- (a) the court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner is domiciled in England and Wales on the date when the proceedings are begun, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in England or Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The court has jurisdiction to entertain proceedings for a nullity order if (and only if)—
- (a) the court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner—
    - (i) is domiciled in England and Wales on the date when the proceedings are begun, or
    - (ii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in England or Wales,
    - (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of subsection (1) or (2) (or this subsection), the court also has jurisdiction to entertain other proceedings, in respect of the same civil partnership, for a dissolution, separation or nullity order, even though that jurisdiction would not be exercisable under subsection (1) or (2).

## 222 Proceedings for presumption of death order

The court has jurisdiction to entertain proceedings for a presumption of death order if (and only if)—

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- (a) the applicant is domiciled in England and Wales on the date when the proceedings are begun,
- (b) the applicant was habitually resident in England and Wales throughout the period of 1 year ending with that date, or
- (c) the two people concerned registered as civil partners of each other in England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

### **223 Proceedings for dissolution, nullity or separation order: supplementary**

- (1) Rules of court may make provision in relation to civil partnerships corresponding to the provision made in relation to marriages by Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (c. 45).
- (2) The rules may in particular make provision—
  - (a) for the provision of information by applicants and respondents in proceedings for dissolution, nullity or separation orders where proceedings relating to the same civil partnership are continuing in another jurisdiction, and
  - (b) for proceedings before the court to be stayed by the court where there are concurrent proceedings elsewhere in respect of the same civil partnership.

### **224 Applications for declarations as to validity etc.**

The court has jurisdiction to entertain an application under section 58 if (and only if)—

- (a) either of the civil partners in the civil partnership to which the application relates—
  - (i) is domiciled in England and Wales on the date of the application,
  - (ii) has been habitually resident in England and Wales throughout the period of 1 year ending with that date, or
  - (iii) died before that date and either was at death domiciled in England and Wales or had been habitually resident in England and Wales throughout the period of 1 year ending with the date of death, or
- (b) the two people concerned registered as civil partners of each other in England and Wales and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

#### *Jurisdiction of Scottish courts*

### **225 Jurisdiction of Scottish courts**

- (1) The Court of Session has jurisdiction to entertain an action for the dissolution of a civil partnership or for separation of civil partners if (and only if)—
  - (a) the court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner is domiciled in Scotland on the date when the proceedings are begun, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in Scotland,

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- (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The sheriff has jurisdiction to entertain an action for the dissolution of a civil partnership or for separation of civil partners if (and only if) the requirements of paragraph (a) or (b) of subsection (1) are met and either civil partner—
  - (a) was resident in the sheriffdom for a period of 40 days ending with the date when the action is begun, or
  - (b) had been resident in the sheriffdom for a period of not less than 40 days ending not more than 40 days before that date and has no known residence in Scotland at that date.
- (3) The Court of Session has jurisdiction to entertain an action for declarator of nullity of a civil partnership if (and only if)—
  - (a) the Court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either of the ostensible civil partners—
    - (i) is domiciled in Scotland on the date when the proceedings are begun, or
    - (ii) died before that date and either was at death domiciled in Scotland or had been habitually resident in Scotland throughout the period of 1 year ending with the date of death, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in Scotland,
    - (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (4) At any time when proceedings are pending in respect of which a court has jurisdiction by virtue of any of subsections (1) to (3) (or this subsection) it also has jurisdiction to entertain other proceedings, in respect of the same civil partnership (or ostensible civil partnership), for dissolution, separation or (but only where the court is the Court of Session) declarator of nullity, even though that jurisdiction would not be exercisable under any of subsections (1) to (3).

## 226 Sisting of proceedings

- (1) Rules of court may make provision in relation to civil partnerships corresponding to the provision made in relation to marriages by Schedule 3 to the Domicile and Matrimonial Proceedings Act 1973 (c. 45) (sisting of Scottish consistorial actions).
- (2) The rules may in particular make provision—
  - (a) for the provision of information by the pursuer and by any other person who has entered appearance in an action where proceedings relating to the same civil partnership (or ostensible civil partnership) are continuing in another jurisdiction, and
  - (b) for an action to be sisted where there are concurrent proceedings elsewhere in respect of the same civil partnership (or ostensible civil partnership).

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## 227 Scottish ancillary and collateral orders

- (1) This section applies where after the commencement of this Act an application is competently made to the Court of Session or the sheriff for the making, or the variation or recall, of an order which is ancillary or collateral to an action for—
- (a) the dissolution of a civil partnership,
  - (b) the separation of civil partners, or
  - (c) declarator of nullity of a civil partnership.
- (2) And the section applies whether the application is made in the same proceedings or in other proceedings and whether it is made before or after the pronouncement of a final decree in the action.
- (3) [<sup>F132</sup>Subject to subsections (3A) and (3B), if] the court has or, as the case may be, had jurisdiction to entertain the action, it has jurisdiction to entertain [<sup>F133</sup>the application.
- (3A) The court may not entertain the application if —
- (a) jurisdiction to entertain the action was under section 219 regulations, and
  - (b) to make, vary or recall the order to which the application relates would contravene the regulations.
- [<sup>F134</sup>(3B) If the application or part of it relates to a matter where jurisdiction falls to be determined by reference to the jurisdictional requirements of the Maintenance Regulation and Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011, the court may not entertain the application or that part of it unless it has jurisdiction to do so by virtue of that Regulation and that Schedule.]
- (4) Where the Court of Session has jurisdiction by virtue of this section to entertain an application for the variation or recall, as respects any person, of an order made by it and the order is one to which section 8 (variation and recall by the sheriff of certain orders made by the Court of Session) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c. 19) applies, then for the purposes of any application under that section for the variation or recall of the order in so far as it relates to the person, the sheriff (as defined in that section) has jurisdiction to exercise the power conferred on him by that section.
- (5) The reference in subsection (1) to an order which is ancillary or collateral is to an order relating to children, aliment, financial provision or expenses.
- [<sup>F135</sup>(6) In this section “the Maintenance Regulation” means Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.]

### Textual Amendments

- F132** Words in s. 227(3) substituted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, [Sch. 7 para. 16\(2\)\(a\)](#)
- F133** Words in s. 227 substituted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, [Sch. 7 para. 16\(2\)\(b\)](#)
- F134** S. 227(3B) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, [Sch. 7 para. 16\(2\)\(c\)](#)
- F135** S. 227(6) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 9, [Sch. 7 para. 16\(2\)\(d\)](#)



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### *Jurisdiction of courts in Northern Ireland*

#### **228 Meaning of “the court”**

In sections 229 to 232 “the court” has the meaning given by section 188.

#### **Commencement Information**

**I45** S. 228 wholly in force at 5.12.2005; s. 228 not in force at Royal Assent see s. 263; s. 228 in force at 15.4.2005 for certain purposes by S.I. 2005/1112, art. 2, Sch. 2 and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, art. 3, Sch. 2

#### **229 Proceedings for dissolution, separation or nullity order**

- (1) The court has jurisdiction to entertain proceedings for a dissolution order or a separation order if (and only if)—
  - (a) the court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner is domiciled in Northern Ireland on the date when the proceedings are begun, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in Northern Ireland,
    - (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (2) The court has jurisdiction to entertain proceedings for a nullity order if (and only if)—
  - (a) the court has jurisdiction under section 219 regulations,
  - (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner—
    - (i) is domiciled in Northern Ireland on the date when the proceedings are begun, or
    - (ii) died before that date and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of 1 year ending with the date of death, or
  - (c) the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in Northern Ireland,
    - (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
    - (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.
- (3) At any time when proceedings are pending in respect of which the court has jurisdiction by virtue of subsection (1) or (2) (or this subsection), the court also has jurisdiction to entertain other proceedings, in respect of the same civil partnership, for a dissolution, separation or nullity order, even though that jurisdiction would not be exercisable under subsection (1) or (2).

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**230** .....

F136 .....

**Textual Amendments**

**F136** S. 230 repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19, 20, Sch. 2, [Sch. 3](#); S.R. 2009/356, [art. 2](#)

**231 Proceedings for dissolution, nullity or separation order: supplementary**

- (1) Rules of court may make provision in relation to civil partnerships corresponding to the provision made in relation to marriages by Schedule 1 to the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15)).
- (2) The rules may in particular make provision—
  - (a) for the provision of information by applicants and respondents in proceedings for dissolution, nullity or separation orders where proceedings relating to the same civil partnership are continuing in another jurisdiction, and
  - (b) for proceedings before the court to be stayed by the court where there are concurrent proceedings elsewhere in respect of the same civil partnership.

**232 Applications for declarations as to validity etc.**

The court has jurisdiction to entertain an application under section 181 if (and only if)—

- (a) either of the civil partners in the civil partnership to which the application relates—
  - (i) is domiciled in Northern Ireland on the date of the application,
  - (ii) has been habitually resident in Northern Ireland throughout the period of 1 year ending with that date, or
  - (iii) died before that date and either was at death domiciled in Northern Ireland or had been habitually resident in Northern Ireland throughout the period of 1 year ending with the date of death, or
- (b) the two people concerned registered as civil partners of each other in Northern Ireland and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

*Recognition of dissolution, annulment and separation*

**233 Effect of dissolution, annulment or separation obtained in the UK**

- (1) No dissolution or annulment of a civil partnership obtained in one part of the United Kingdom is effective in any part of the United Kingdom unless obtained from a court of civil jurisdiction.
- (2) Subject to subsections (3) and (4), the validity of a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained from a court of civil jurisdiction in one part of the United Kingdom is to be recognised throughout the United Kingdom.

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- (3) Recognition of the validity of a dissolution, annulment or legal separation obtained from a court of civil jurisdiction in one part of the United Kingdom may be refused in any other part if the dissolution, annulment or separation 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 the other part, or
  - (b) previously given by a court elsewhere and recognised or entitled to be recognised in the other part.
- (4) Recognition of the validity of a dissolution or legal separation obtained from a court of civil jurisdiction in one part of the United Kingdom may be refused in any other part if the dissolution or separation was obtained at a time when, according to the law of the other part, there was no subsisting civil partnership.

### **234 Recognition in the UK of overseas dissolution, annulment or separation**

- (1) Subject to subsection (2), the validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if, and only if, it is entitled to recognition by virtue of sections 235 to 237.
- (2) This section and sections 235 to 237 do not apply to an overseas dissolution, annulment or legal separation as regards which provision as to recognition is made by section 219 regulations.
- (3) For the purposes of subsections (1) and (2) and sections 235 to 237, an overseas dissolution, annulment or legal separation is a dissolution or annulment of a civil partnership or a legal separation of civil partners which has been obtained outside the United Kingdom (whether before or after this section comes into force).

### **235 Grounds for recognition**

- (1) The validity of an overseas dissolution, annulment or legal separation obtained by means of proceedings is to be recognised if—
  - (a) the dissolution, annulment or legal separation is effective under the law of the country in which it was obtained, and
  - (b) at the relevant date either civil partner—
    - (i) was habitually resident in the country in which the dissolution, annulment or legal separation was obtained,
    - (ii) was domiciled in that country, or
    - (iii) was a national of that country.
- (2) The validity of an overseas dissolution, annulment or legal separation obtained otherwise than by means of proceedings is to be recognised if—
  - (a) the dissolution, annulment or legal separation is effective under the law of the country in which it was obtained,
  - (b) at the relevant date—
    - (i) each civil partner was domiciled in that country, or
    - (ii) either civil partner was domiciled in that country and the other was domiciled in a country under whose law the dissolution, annulment or legal separation is recognised as valid, and

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- (c) neither civil partner was habitually resident in the United Kingdom throughout the period of 1 year immediately preceding that date.
- (3) In this section “the relevant date” means—
- (a) in the case of an overseas dissolution, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings;
  - (b) in the case of an overseas dissolution, annulment or legal separation obtained otherwise than by means of proceedings, the date on which it was obtained.
- (4) Where in the case of an overseas annulment the relevant date fell after the death of either civil partner, any reference in subsection (1) or (2) to that date is to be read in relation to that civil partner as a reference to the date of death.

**Modifications etc. (not altering text)**

- C12** S. 235 applied (with modifications) (E.W.N.I.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Legal Separations\) \(England and Wales and Northern Ireland\) Regulations 2005 \(S.I. 2005/3104\)](#), **regs. 2, 3**
- C13** S. 235 applied (with modifications) (S.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/567\)](#), **regs. 2, 3** (as amended (28.2.2022) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/461\)](#), **regs. 1, 2**)

**236 Refusal of recognition**

- (1) Recognition of the validity of an overseas dissolution, annulment or legal separation may be refused in any part of the United Kingdom if the dissolution, annulment or separation 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 that part of the United Kingdom, or
  - (b) previously given by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.
- (2) Recognition of the validity of an overseas dissolution or legal separation may be refused in any part of the United Kingdom if the dissolution or separation was obtained at a time when, according to the law of that part of the United Kingdom, there was no subsisting civil partnership.
- (3) Recognition of the validity of an overseas dissolution, annulment or legal separation may be refused if—
- (a) in the case of a dissolution, annulment or legal separation obtained by means of proceedings, it was obtained—
    - (i) without such steps having been taken for giving notice of the proceedings 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

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- (b) in the case of a dissolution, annulment or legal separation obtained otherwise than by means of proceedings—
    - (i) there is no official document certifying that the dissolution, annulment or legal separation 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 dissolution, annulment or legal separation is recognised as valid under the law of that other country, or
  - (c) in either case, recognition of the dissolution, annulment or legal separation would be manifestly contrary to public policy.
- (4) In this section—
- “official”, in relation to a document certifying that a dissolution, annulment or legal separation is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;
  - “the relevant date” has the same meaning as in section 235.

**Modifications etc. (not altering text)**

- C14** S. 236 applied (with modifications) (E.W.N.I.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Legal Separations\) \(England and Wales and Northern Ireland\) Regulations 2005 \(S.I. 2005/3104\)](#), **reg. 2**
- C15** S. 236 applied (with modifications) (S.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/567\)](#), **reg. 2**

**237 Supplementary provisions relating to recognition of dissolution etc.**

- (1) For the purposes of sections 235 and 236, a civil partner is to be treated as domiciled in a country if he was domiciled in that country—
  - (a) according to the law of that country in family matters, or
  - (b) according to the law of the part of the United Kingdom in which the question of recognition arises.
- (2) The Lord Chancellor [<sup>F137</sup>, the Department of Justice in Northern Ireland] or the Scottish Ministers may by regulations make provision—
  - (a) applying sections 235 and 236 and subsection (1) with modifications in relation to any country whose territories have different systems of law in force in matters of dissolution, annulment or legal separation;
  - (b) applying sections 235 and 236 with modifications in relation to—
    - (i) an overseas dissolution, annulment or legal separation in the case of an overseas relationship (or an apparent or alleged overseas relationship);
    - (ii) any case where a civil partner is domiciled in a country or territory whose law does not recognise legal relationships between two people of the same sex;
  - (c) with respect to recognition of the validity of an overseas dissolution, annulment or legal separation in cases where there are cross-proceedings;

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- (d) with respect to cases where a legal separation is converted under the law of the country or territory in which it is obtained into a dissolution which is effective under the law of that country or territory;
  - (e) with respect to proof of findings of fact made in proceedings in any country or territory outside the United Kingdom.
- (3) The power [<sup>F138</sup>of the Lord Chancellor or the Scottish Ministers] to make regulations under subsection (2) is exercisable by statutory instrument.
- (4) A statutory instrument containing such regulations—
- (a) if made by the Lord Chancellor, is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) if made by the Scottish Ministers, is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- [<sup>F139</sup>(4A) The power of the Department of Justice in Northern Ireland to make regulations under subsection (2) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (4B) Regulations made by the Department of Justice under subsection (2) are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.]
- (5) In this section (except subsection (4)) and sections 233 to 236 and 238—
- “annulment” includes any order annulling a civil partnership, however expressed;
  - “part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;
  - “proceedings” means judicial or other proceedings.
- (6) Nothing in this Chapter is to be read as requiring the recognition of any finding of fault made in proceedings for dissolution, annulment or legal separation or of any maintenance, custody or other ancillary order made in any such proceedings.

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#### **Textual Amendments**

**F137** Words in s. 237(2) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 74(a)** (with arts. 28-31)

**F138** Words in s. 237(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 74(b)** (with arts. 28-31)

**F139** S. 237(4A)(4B) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 15(5), **Sch. 18 para. 74(c)** (with arts. 28-31)

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#### **Modifications etc. (not altering text)**

**C16** S. 237(1) applied (with modifications) (E.W.N.I.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Legal Separations\) \(England and Wales and Northern Ireland\) Regulations 2005 \(S.I. 2005/3104\)](#), **reg. 2**

**C17** S. 237(1) applied (with modifications) (S.) (5.12.2005) by [The Civil Partnership \(Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/567\)](#), **reg. 2**

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#### Commencement Information

**I46** S. 237 wholly in force at 5.12.2005; s. 237 not in force at Royal Assent see s. 263; s. 237(2)-(5) in force at 15.4.2005 by S.I. 2005/1112, art. 2, Sch. 2; s. 237(1)(6) in force at 5.12.2005 by S.I. 2005/3175, art. 3, Sch. 2

### 238 Non-recognition elsewhere of dissolution or annulment

- (1) This section applies where, in any part of the United Kingdom—
  - (a) a dissolution or annulment of a civil partnership has been granted by a court of civil jurisdiction, or
  - (b) the validity of a dissolution or annulment of a civil partnership is recognised by virtue of this Chapter.
- (2) The fact that the dissolution or annulment would not be recognised outside the United Kingdom does not—
  - (a) preclude either party from forming a subsequent civil partnership or marriage in that part of the United Kingdom, or
  - (b) cause the subsequent civil partnership or marriage of either party (wherever it takes place) to be treated as invalid in that part.

## CHAPTER 4

### MISCELLANEOUS AND SUPPLEMENTARY

### 239 Commanding officers' certificates for Part 2 purposes

- (1) Her Majesty may by Order in Council make provision in relation to cases where—
  - (a) two people wish to register as civil partners of each other in England and Wales (under Chapter 1 of Part 2), and
  - (b) one of them (“A”) is [<sup>F140</sup>an officer, seaman or marine borne on the books of one of Her Majesty's ships at sea] and the other is resident in England and Wales,  
for the issue [<sup>F141</sup>to A, by the captain or other officer in command of the ship,] of a certificate of no impediment.
- (2) The Order may provide for the issue of the certificate to be subject to the giving of such notice and the making of such declarations as may be prescribed.
- (3) A certificate of no impediment is a certificate that no legal impediment to the formation of the civil partnership has been shown to the <sup>F142</sup> . . . officer issuing the certificate to exist.
- (4) <sup>F143</sup> . . . . .

#### Textual Amendments

**F140** Words in s. 239(1) substituted (21.7.2005) by The Civil Partnership (Amendments to Registration Provisions) Order 2005 (S.I. 2005/2000), arts. 1(c), 3, Sch. para. 17(2)(a)  
**F141** Words in s. 239(1) substituted (21.7.2005) by The Civil Partnership (Amendments to Registration Provisions) Order 2005 (S.I. 2005/2000), arts. 1(c), 3, Sch. para. 17(2)(b)

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**F142** Word in s. 239(3) omitted (21.7.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, [Sch. para. 17\(3\)](#)

**F143** S. 239(4) omitted (21.7.2005) by virtue of [The Civil Partnership \(Amendments to Registration Provisions\) Order 2005 \(S.I. 2005/2000\)](#), arts. 1(c), 3, [Sch. para. 17\(4\)](#)

## 240 Certificates of no impediment to overseas relationships

- (1) Her Majesty may by Order in Council make provision for the issue of certificates of no impediment to—
  - (a) United Kingdom nationals, and
  - (b) such other persons falling within subsection (2) as may be prescribed,
 who wish to enter into overseas relationships in prescribed countries or territories outside the United Kingdom with persons who are not United Kingdom nationals and who do not fall within subsection (2).
- (2) A person falls within this subsection if under any enactment for the time being in force in any country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) (Commonwealth countries) that person is a citizen of that country.
- (3) A certificate of no impediment is a certificate that, after proper notices have been given, no legal impediment to the recipient entering into the overseas relationship has been shown to the person issuing the certificate to exist.

## 241 Transmission of certificates of registration of overseas relationships

- (1) Her Majesty may by Order in Council provide—
  - (a) for the transmission to the Registrar General, by such persons or in such manner as may be prescribed, of certificates of the registration of overseas relationships entered into by United Kingdom nationals in prescribed countries or territories outside the United Kingdom,
  - (b) for the issue by the Registrar General of a certified copy of such a certificate received by him, and
  - (c) for such certified copies to be received in evidence.
- (2) “The Registrar General” means—
  - (a) in relation to England and Wales, the Registrar General for England and Wales,
  - (b) in relation to Scotland, the Registrar General of Births, Deaths and Marriages for Scotland, and
  - (c) in relation to Northern Ireland, the Registrar General for Northern Ireland.

## 242 Power to make provision relating to certain Commonwealth forces

- (1) This section applies if it appears to Her Majesty that any law in force in Canada, the Commonwealth of Australia or New Zealand (or in a territory of either of the former two countries) makes, in relation to forces raised there, provision similar to that made by section 211 (registration by armed forces personnel).
- (2) Her Majesty may by Order in Council make provision for securing that the law in question has effect as part of the law of the United Kingdom.



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## 243 Fees

- (1) The power to make an order under section 34(1) (fees) includes power to make an order prescribing fees in respect of anything which, by virtue of an Order in Council under this Part, is required to be done by registration authorities in England and Wales or by or on behalf of the Registrar General for England and Wales.
- (2) Regulations made by the Registrar General of Births, Deaths and Marriages for Scotland may prescribe fees in respect of anything which, by virtue of an Order in Council under this Part, is required to be done by him or on his behalf.
- (3) Subsections (3) and (4) of section 126 apply to regulations made under subsection (2) as they apply to regulations under Part 3.
- (4) The power to make an order under section 157(1) includes power to make an order prescribing fees in respect of anything which, by virtue of an Order in Council under this Part, is required to be done by or on behalf of the Registrar General for Northern Ireland.

## 244 Orders in Council: supplementary

- (1) An Order in Council under section 210, 211, 239, 240, 241 or 242 may make—
  - (a) different provision for different cases, and
  - (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as appears to Her Majesty to be appropriate.
- (2) The provision that may be made by virtue of subsection (1)(b) includes in particular provision corresponding to or applying with modifications any provision made by or under—
  - (a) this Act, or
  - (b) any Act relating to marriage outside the United Kingdom.
- (3) A statutory instrument containing an Order in Council under section 210, 211, 239, 240, 241 or 242 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) applies whether or not the Order also contains other provisions made by Order in Council under—
  - the Foreign Marriage Act 1892 (c. 23),
  - section 3 of the Foreign Marriage Act 1947 (c. 33), or
  - section 39 of the Marriage Act 1949 (c. 76).
- (5) In sections 210, 211, 239, 240 and 241 “prescribed” means prescribed by an Order in Council under the section in question.

## 245 Interpretation

- (1) In this Part “United Kingdom national” means a person who is—
  - (a) a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas),
  - (b) a British subject under the British Nationality Act 1981 (c. 61), or
  - (c) a British protected person, within the meaning of that Act.

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- (2) In this Part “Her Majesty’s forces” has the same meaning as in the [F144 Armed Forces Act 2006].

#### Textual Amendments

**F144** Words in s. 245(2) substituted (28.3.2009 for certain purposes and otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 243](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)

#### Commencement Information

**I47** S. 245 wholly in force at 5.12.2005; s. 245 not in force at Royal Assent see s. 263; s. 245 in force at 15.4.2005 for certain purposes by S.I. 2005/1112, [art. 2](#) and otherwise 5.12.2005 insofar as not already in force by S.I. 2005/3175, [art. 3](#), [Sch. 2](#)

## PART 6

### RELATIONSHIPS ARISING THROUGH CIVIL PARTNERSHIP

#### 246 Interpretation of statutory references to stepchildren etc.

- (1) In any provision to which this section applies, references to a stepchild or step-parent of a person (here, “A”), and cognate expressions, are to be read as follows—
- A’s stepchild includes a person who is the child of A’s civil partner (but is not A’s child);
  - A’s step-parent includes a person who is the civil partner of A’s parent (but is not A’s parent);
  - A’s stepdaughter includes a person who is the daughter of A’s civil partner (but is not A’s daughter);
  - A’s stepson includes a person who is the son of A’s civil partner (but is not A’s son);
  - A’s stepfather includes a person who is the civil partner of A’s father (but is not A’s parent);
  - A’s stepmother includes a person who is the civil partner of A’s mother (but is not A’s parent);
  - A’s stepbrother includes a person who is the son of the civil partner of A’s parent (but is not the son of either of A’s parents);
  - A’s stepsister includes a person who is the daughter of the civil partner of A’s parent (but is not the daughter of either of A’s parents).
- (2) For the purposes of any provision to which this section applies—
- “brother-in-law” includes civil partner’s brother,
  - “daughter-in-law” includes daughter’s civil partner,
  - “father-in-law” includes civil partner’s father,
  - “mother-in-law” includes civil partner’s mother,
  - “parent-in-law” includes civil partner’s parent,
  - “sister-in-law” includes civil partner’s sister, and
  - “son-in-law” includes son’s civil partner.

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**Modifications etc. (not altering text)**

**C18** S. 246 applied (11.5.2006) by The Civil Partnership Act 2004 (Relationships Arising Through Civil Partnership) Order 2006 (S.I. 2006/1121, art. 2

**247 Provisions to which section 246 applies: Acts of Parliament etc.**

- (1) Section 246 applies to—
  - (a) any provision listed in Schedule 21 (references to stepchildren, in-laws etc. in existing Acts),
  - (b) except in so far as otherwise provided, any provision made by a future Act, and
  - (c) except in so far as otherwise provided, any provision made by future subordinate legislation.
- (2) A Minister of the Crown may by order—
  - (a) amend Schedule 21 by adding to it any provision of an existing Act;
  - (b) provide for section 246 to apply to prescribed provisions of existing subordinate legislation.
- (3) The power conferred by subsection (2) is also exercisable—
  - (a) by the Scottish Ministers, in relation to a relevant Scottish provision;
  - (b) by a Northern Ireland department, in relation to a provision which deals with a transferred matter;
  - (c) by the National Assembly for Wales, if the order is made by virtue of subsection (2)(b) and deals with matters with respect to which functions are exercisable by the Assembly.
- (4) Subject to subsection (5), the power to make an order under subsection (2) is exercisable by statutory instrument.
- (5) Any power of a Northern Ireland department to make an order under subsection (2) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (6) A statutory instrument containing an order under subsection (2) made by a Minister of the Crown is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument containing an order under subsection (2) made by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (8) A statutory rule containing an order under subsection (2) made by a Northern Ireland department is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (9) In this section—
  - “Act” includes an Act of the Scottish Parliament;
  - “existing Act” means an Act passed on or before the last day of the Session in which this Act is passed;
  - “existing subordinate legislation” means subordinate legislation made before the day on which this section comes into force;

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“future Act” means an Act passed after the last day of the Session in which this Act is passed;

“future subordinate legislation” means subordinate legislation made on or after the day on which this section comes into force;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

“prescribed” means prescribed by the order;

“relevant Scottish provision” means a provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) except that it includes an instrument made under an Act of the Scottish Parliament;

“transferred matter” has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47) and “deals with” in relation to a transferred matter is to be construed in accordance with section 98(2) and (3) of the 1998 Act.

#### Commencement Information

**I48** S. 247 wholly in force at 5.12.2005; s. 247(2)-(7) in force at Royal Assent, see s. 263(7)(c); s. 247(8) (9) in force at 18.11.2004 by Royal Assent; s. 247(1) in force at 5.12.2005 by S.I. 2005/3175, art. 3, Sch. 2

#### 248 Provisions to which section 246 applies: Northern Ireland

- (1) Section 246 applies to—
  - (a) any provision listed in Schedule 22 (references to stepchildren, etc. in Northern Ireland legislation),
  - (b) except in so far as otherwise provided, any provision made by any future Northern Ireland legislation, and
  - (c) except in so far as otherwise provided, any provision made by any future subordinate legislation.
- (2) The Department of Finance and Personnel may by order—
  - (a) amend Schedule 22 by adding to it any provision of existing Northern Ireland legislation;
  - (b) provide for section 246 to apply to prescribed provisions of existing subordinate legislation.
- (3) The power to make an order under subsection (2) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (4) An order under subsection (2) is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))).
- (5) In this section—
 

“existing Northern Ireland legislation” means Northern Ireland legislation passed or made on or before the last day of the Session in which this Act is passed;

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“existing subordinate legislation” means subordinate legislation made before the day on which this section comes into force;

“future Northern Ireland legislation” means Northern Ireland legislation passed or made after the last day of the Session in which this Act is passed;

“future subordinate legislation” means subordinate legislation made on or after the day on which this section comes into force;

“prescribed” means prescribed by the order;

“subordinate legislation” means any instrument (within the meaning of section 1(c) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))).

#### Commencement Information

**I49** S. 248 wholly in force at 5.12.2005; s. 248(2)-(5) in force at Royal Assent, see s. 263(7)(c); s. 248(1) in force at 5.12.2005 by S.I. 2005/3255, art. 2(1), Sch.

## PART 7

### MISCELLANEOUS

#### 249 Immigration control and formation of civil partnerships

Schedule 23 contains provisions relating to the formation of civil partnerships in the United Kingdom by persons subject to immigration control.

#### 250 Gender recognition where applicant a civil partner

(1) Amend the Gender Recognition Act 2004 (c. 7) as follows.

(2) In—

- (a) section 3 (evidence), in subsection (6)(a), and
- (b) section 4 (successful applications), in subsections (2) and (3), after “is married” insert “ or a civil partner ”.

(3) In section 5 (subsequent issue of full certificates)—

- (a) in subsection (2), after “is again married” insert “ or is a civil partner ”,
- (b) in subsection (6)(a), for “is not married” substitute “ is neither married nor a civil partner ”, and
- (c) for the heading substitute “ Issue of full certificates where applicant has been married ”.

(4) After section 5 insert—

##### “5A Issue of full certificates where applicant has been a civil partner

(1) A court which—

- (a) makes final a nullity order made on the ground that an interim gender recognition certificate has been issued to a civil partner, or
- (b) (in Scotland) grants a decree of dissolution on that ground,

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must, on doing so, issue a full gender recognition certificate to that civil partner and send a copy to the Secretary of State.

- (2) If an interim gender recognition certificate has been issued to a person and either—
  - (a) the person’s civil partnership is dissolved or annulled (otherwise than on the ground mentioned in subsection (1)) in proceedings instituted during the period of six months beginning with the day on which it was issued, or
  - (b) the person’s civil partner dies within that period,
 the person may make an application for a full gender recognition certificate at any time within the period specified in subsection (3) (unless the person is again a civil partner or is married).
- (3) That period is the period of six months beginning with the day on which the civil partnership is dissolved or annulled or the death occurs.
- (4) An application under subsection (2) must include evidence of the dissolution or annulment of the civil partnership and the date on which proceedings for it were instituted, or of the death of the civil partner and the date on which it occurred.
- (5) An application under subsection (2) is to be determined by a Gender Recognition Panel.
- (6) The Panel—
  - (a) must grant the application if satisfied that the applicant is neither a civil partner nor married, and
  - (b) otherwise must reject it.
- (7) If the Panel grants the application it must issue a full gender recognition certificate to the applicant.”
- (5) In—
  - (a) section 7 (applications: supplementary), in subsection (1),
  - (b) section 8 (appeals etc.), in subsections (1) and (5), and
  - (c) section 22 (prohibition on disclosure of information), in subsection (2)(a), after “5(2)” insert “, 5A(2)”.
- (6) In section 21 (foreign gender change and marriage), in subsection (4), after “entered into a later (valid) marriage” insert “ or civil partnership ”.
- (7) In section 25 (interpretation), in the definition of “full gender recognition certificate” and “interim gender recognition certificate”, for “or 5” substitute “, 5 or 5A ”.
- (8) In Schedule 1 (Gender Recognition Panels), in paragraph 5, after “5(2)” insert “, 5A(2)”.
- (9) In Schedule 3 (registration), in paragraphs 9(1), 19(1) and 29(1), for “or 5(2)” substitute “, 5(2) or 5A(2)”.

## **251 Discrimination against civil partners in employment field**

- (1) Amend the Sex Discrimination Act 1975 (c. 65) as follows.

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- (2) For section 3 (discrimination against married persons in employment field) substitute—

**“3 Discrimination against married persons and civil partners in employment field**

- (1) In any circumstances relevant for the purposes of any provision of Part 2, a person discriminates against a person (“A”) who fulfils the condition in subsection (2) if—
- (a) on the ground of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition, or
  - (b) he applies to A a provision, criterion or practice which he applies or would apply equally to a person who does not fulfil the condition, but—
    - (i) which puts or would put persons fulfilling the condition at a particular disadvantage when compared with persons not fulfilling the condition, and
    - (ii) which puts A at that disadvantage, and
    - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.
- (2) The condition is that the person is—
- (a) married, or
  - (b) a civil partner.
- (3) For the purposes of subsection (1), a provision of Part 2 framed with reference to discrimination against women is to be treated as applying equally to the treatment of men, and for that purpose has effect with such modifications as are requisite.”

- (3) In section 5 (interpretation), for subsection (3) substitute—

“(3) Each of the following comparisons, that is—

- (a) a comparison of the cases of persons of different sex under section 1(1) or (2),
- (b) a comparison of the cases of persons required for the purposes of section 2A, and
- (c) a comparison of the cases of persons who do and who do not fulfil the condition in section 3(2),

must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”;

and omit section 1(4).

- (4) In section 7 (exception where sex is a genuine occupational qualification), in subsection (2)(h) for “by a married couple” substitute “—
- (i) by a married couple,
  - (ii) by a couple who are civil partners of each other, or
  - (iii) by a married couple or a couple who are civil partners of each other”.

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- (5) In section 65 (remedies on complaint under section 63), in subsection (1B) for “or marital status as the case may be” substitute “ or (as the case may be) fulfilment of the condition in section 3(2) ”.

## **252 Discrimination against civil partners in employment field: Northern Ireland**

- (1) Amend the Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) as follows.
- (2) For Article 5 (discrimination against married persons in employment field) substitute—

### **“5 Discrimination against married persons and civil partners in employment field**

- (1) In any circumstances relevant for the purposes of any provision of Part 3, a person discriminates against a person (“A”) who fulfils the condition in paragraph (2) if—
- (a) on the ground of the fulfilment of the condition, he treats A less favourably than he treats or would treat a person who does not fulfil the condition, or
  - (b) he applies to A a provision, criterion or practice which he applies or would apply equally to a person who does not fulfil the condition, but—
    - (i) which puts or would put persons fulfilling the condition at a particular disadvantage when compared with persons not fulfilling the condition, and
    - (ii) which puts A at that disadvantage, and
    - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.
- (2) The condition is that the person is—
- (a) married, or
  - (b) a civil partner.
- (3) For the purposes of paragraph (1), a provision of Part 3 framed with reference to discrimination against women is to be treated as applying equally to the treatment of men, and for that purpose has effect with such modifications as are requisite.”

- (3) For Article 7 (basis of comparison) substitute—

### **“7 Basis of comparison**

Each of the following comparisons, that is—

- (a) a comparison of the cases of persons of different sex under Article 3(1) or (2),
- (b) a comparison of the cases of persons required for the purposes of Article 4A, and
- (c) a comparison of the cases of persons who do and who do not fulfil the condition in Article 5(2),



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must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”;

and omit Article 3(4).

- (4) In Article 10 (exception where sex is a genuine occupational qualification), in paragraph (2)(h) for “by a married couple” substitute—
- “(i) by a married couple,
  - (ii) by a couple who are civil partners of each other, or
  - (iii) by a married couple or a couple who are civil partners of each other”.
- (5) In Article 65 (remedies on complaint under Article 63), in paragraph (1B) for “or marital status as the case may be” substitute “ or (as the case may be) fulfilment of the condition in Article 5(2) ”.

### **253 Civil partners to have unlimited insurable interest in each other**

- (1) Where two people are civil partners, each of them is to be presumed for the purposes of section 1 of the Life Assurance Act 1774 (c. 48) to have an interest in the life of the other.
- (2) For the purposes of section 3 of the 1774 Act, there is no limit on the amount of value of the interest.

### **254 Social security, child support and tax credits**

- (1) Schedule 24 contains amendments relating to social security, child support and tax credits.
- (2) Subsection (3) applies in relation to any provision of any Act, Northern Ireland legislation or subordinate legislation which—
- (a) relates to social security, child support or tax credits, and
  - (b) contains references (however expressed) to persons who are living or have lived together as husband and wife.
- (3) The power under section 259 to make orders amending enactments, Northern Ireland legislation and subordinate legislation is to be treated as including power to amend the provision to refer to persons who are living or have lived together as if they were civil partners.
- (4) Subject to subsection (5), section 175(3), (5) and (6) of the Social Security Contributions and Benefits Act 1992 (c. 4) applies to the exercise of the power under section 259 in relation to social security, child support or tax credits as it applies to any power under that Act to make an order (there being disregarded for the purposes of this subsection the exceptions in section 175(3) and (5) of that Act).
- (5) Section 171(3), (5) and (6) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) applies to the exercise by a Northern Ireland department of the power under section 259 in relation to social security and child support as it applies to any power under that Act to make an order (there being disregarded for the purposes of this subsection the exceptions in section 171(3) and (5) of that Act).

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- (6) The reference in subsection (2) to an Act or Northern Ireland legislation relating to social security is to be read as including a reference to—
- (a) the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (c. 41), and
  - (b) the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 (S.I. 1979/925 (N.I. 9));
- and the references in subsections (4) and (5) to social security are to be construed accordingly.

#### Commencement Information

**I50** S. 254 wholly in force at 5.12.2005; s. 254(2)-(6) in force at Royal Assent, see s. 263(8)(f); s. 254(1) in force at 5.12.2005 for certain purposes by S.I. 2005/3175, art. 2(1), Sch. 1; s. 254(1) in force at 5.12.2005 for certain purposes by S.I. 2005/3255, art. 2(1), Sch.

## 255 Power to amend enactments relating to pensions

- (1) A Minister of the Crown may by order make such amendments, repeals or revocations in any enactment, Northern Ireland legislation, subordinate legislation or Church legislation relating to pensions, allowances or gratuities as he considers appropriate for the purpose of, or in connection with, making provision with respect to pensions, allowances or gratuities for the surviving civil partners or dependants of deceased civil partners.
- (2) The power conferred by subsection (1) is also exercisable—
  - (a) by the Scottish Ministers, if the provision making the amendment, repeal or revocation is a relevant Scottish provision;
  - (b) by a Northern Ireland department, if the provision making the amendment, repeal or revocation deals with a transferred matter.
- (3) In the case of judicial pensions, allowances or gratuities, the power conferred by subsection (1) is exercisable—
  - (a) in relation to any judicial office whose jurisdiction is exercised exclusively in relation to Scotland, by the Secretary of State, or
  - (b) subject to paragraph (a), by the Lord Chancellor.
- (4) The provision which may be made by virtue of subsection (1)—
  - (a) may be the same as, or different to, the provision made with respect to widows, widowers or the dependants of persons who are not civil partners, and
  - (b) may be made with a view to ensuring that pensions, allowances or gratuities take account of rights which accrued, service which occurred or any other circumstances which existed before the passing of this Act.
- (5) The power conferred by subsection (1) is not restricted by any provision of this Act.
- (6) Before the appropriate person makes an order under subsection (1) he must consult such persons as he considers appropriate.
- (7) Subsection (6) does not apply—
  - (a) to an order in the case of which the appropriate person considers that consultation is inexpedient because of urgency, or

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- (b) to an order made before the end of the period of 6 months beginning with the coming into force of this section.
- (8) Subject to subsection (9), the power to make an order under subsection (1) is exercisable by statutory instrument.
- (9) Any power of a Northern Ireland department to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (10) An order under subsection (1) may not be made—
- (a) by a Minister of the Crown, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament;
  - (b) by the Scottish Ministers, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament;
  - (c) by a Northern Ireland department, unless a draft of the statutory rule containing the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (11) In this section—
- “the appropriate person”, in relation to an order under this section, means the person making the order;
  - “Church legislation” means—
    - (a) any Measure of the Church Assembly or of the General Synod of the Church of England, or
    - (b) any order, regulation or other instrument made under or by virtue of such a Measure;
  - “enactment” includes an enactment comprised in an Act of the Scottish Parliament;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
  - “relevant Scottish provision” means a provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) except that it includes any instrument made under an Act of the Scottish Parliament and any instrument within the meaning of section 1(c) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.));
  - “transferred matter” has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47) and “deals with” in relation to a transferred matter is to be construed in accordance with section 98(2) and (3) of the 1998 Act.

## **256 Amendment of certain enactments relating to pensions**

Schedule 25 amends certain enactments relating to pensions.

## **257 Amendment of certain enactments relating to the armed forces**

Schedule 26 amends certain enactments relating to the armed forces.

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## PART 8

### SUPPLEMENTARY

#### **258 Regulations and orders**

- (1) This section applies to any power conferred by this Act to make regulations or an order (except a power of a court to make an order).
- (2) The power may be exercised so as to make different provision for different cases and different purposes.
- (3) The power includes power to make any supplementary, incidental, consequential, transitional, transitory or saving provision which the person making the regulations or order considers expedient.

#### **259 Power to make further provision in connection with civil partnership**

- (1) A Minister of the Crown may by order make such further provision (including supplementary, incidental, consequential, transitory, transitional or saving provision) as he considers appropriate—
  - (a) for the general purposes, or any particular purpose, of this Act,
  - (b) in consequence of any provision made by or under this Act, or
  - (c) for giving full effect to this Act or any provision of it.
- (2) The power conferred by subsection (1) is also exercisable—
  - (a) by the Scottish Ministers, in relation to a relevant Scottish provision;
  - (b) by a Northern Ireland department, in relation to a provision which deals with a transferred matter;
  - (c) by the National Assembly for Wales, in relation to a provision which is made otherwise than by virtue of subsection (3) and deals with matters with respect to which functions are exercisable by the Assembly.
- (3) An order under subsection (1) may—
  - (a) amend or repeal any enactment contained in an Act passed on or before the last day of the Session in which this Act is passed, including an enactment conferring power to make subordinate legislation where the power is limited by reference to persons who are or have been parties to a marriage;
  - (b) amend, repeal or (as the case may be) revoke any provision contained in Northern Ireland legislation passed or made on or before the last day of the Session in which this Act is passed, including a provision conferring power to make subordinate legislation where the power is limited by reference to persons who are or have been parties to a marriage;
  - (c) amend, repeal or (as the case may be) revoke any Church legislation.
- (4) An order under subsection (1) may—
  - (a) provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order;
  - (b) amend or revoke any subordinate legislation.
- (5) The power to make an order under subsection (1) is not restricted by any other provision of this Act.

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- (6) Subject to subsection (7), the power to make an order under subsection (1) is exercisable by statutory instrument.
- (7) Any power of a Northern Ireland department to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) An order under subsection (1) which contains any provision (whether alone or with other provisions) made by virtue of subsection (3) may not be made—
- (a) by a Minister of the Crown, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament;
  - (b) by the Scottish Ministers, unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament;
  - (c) by a Northern Ireland department, unless a draft of the statutory rule containing the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) A statutory instrument containing an order under subsection (1) to which subsection (8) does not apply—
- (a) if made by a Minister of the Crown, is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) if made by the Scottish Ministers, is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (10) A statutory rule made by a Northern Ireland department and containing an order to which subsection (8) does not apply is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).
- (11) In this section—
- “Act” includes an Act of the Scottish Parliament;
  - “Church legislation” has the same meaning as in section 255;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
  - “relevant Scottish provision” means a provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) except that it includes any instrument made under an Act of the Scottish Parliament and any instrument within the meaning of section 1(c) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.));
  - “transferred matter” has the meaning given by section 4(1) of the Northern Ireland Act 1998 (c. 47) and “deals with” in relation to a transferred matter is to be construed in accordance with section 98(2) and (3) of the 1998 Act.

## 260 [F145 EU] obligations and civil partners

- (1) Subsection (2) applies where any person, by Order in Council or regulations under section 2(2) of the European Communities Act 1972 (c. 68) (general implementation of Treaties)—

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- (a) is making provision for the purpose of implementing, or for a purpose concerning, [<sup>F146</sup>an EU] obligation of the United Kingdom which relates to persons who are or have been parties to a marriage, or
  - (b) has made such provision and it has not been revoked.
- (2) The appropriate person may by Order in Council or (as the case may be) by regulations make provision in relation to persons who are or have been civil partners in a civil partnership that is the same or similar to the provision referred to in subsection (1).
- (3) “Marriage” and “civil partnership” include a void marriage and a void civil partnership respectively.
- (4) “The appropriate person” means—
- (a) if subsection (1)(a) applies, the person making the provision referred to there;
  - (b) if subsection (1)(b) applies, any person who would have power to make the provision referred to there if it were being made at the time of the exercise of the power under subsection (2).
- (5) The following provisions apply in relation to the power conferred by subsection (2) to make an Order in Council or regulations as they apply in relation to the power conferred by section 2(2) of the 1972 Act to make an Order in Council or regulations—
- (a) paragraph 2 of Schedule 2 to the 1972 Act (procedure etc. in relation to making of Orders in Council and regulations: general);
  - (b) paragraph 15(3)(c) of Schedule 8 to the Scotland Act 1998 (c. 46) (modifications of paragraph 2 in relation to Scottish Ministers and to Orders in Council made on the recommendation of the First Minister);
  - (c) paragraph 3 of Schedule 2 to the 1972 Act (modifications of paragraph 2 in relation to Northern Ireland departments etc.) and the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)) (treating the power conferred by subsection (2) as conferred by an Act passed before 1st January 1974 for the purposes of the application of that Order);
  - (d) section 29(3) of the Government of Wales Act 1998 (c. 38) (modifications of paragraph 2 in relation to the National Assembly for Wales).

#### **Textual Amendments**

**F145** Word in s. 260 heading substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, **6(1)(e)**

**F146** Words in s. 260(1)(a) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, {6(1)(e) (3)}

## **261 Minor and consequential amendments, repeals and revocations**

- (1) Schedule 27 contains minor and consequential amendments.
- (2) Schedule 28 contains consequential amendments of enactments relating to Scotland.
- (3) Schedule 29 contains minor and consequential amendments relating to Northern Ireland.
- (4) Schedule 30 contains repeals and revocations.

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## 262 Extent

- (1) Part 2 (civil partnership: England and Wales), excluding section 35 but including Schedules 1 to 9, extends to England and Wales only.
- (2) Part 3 (civil partnership: Scotland), including Schedules 10 and 11, extends to Scotland only.
- (3) Part 4 (civil partnership: Northern Ireland), including Schedules 12 to 19, extends to Northern Ireland only.
- (4) In Part 5 (civil partnerships formed or dissolved abroad etc.)—
  - (a) sections 220 to 224 extend to England and Wales only;
  - (b) sections 225 to 227 extend to Scotland only;
  - (c) sections 228 to 232 extend to Northern Ireland only.
- (5) In Part 6—
  - (a) any amendment made by virtue of section 247(1)(a) and Schedule 21 has the same extent as the provision subject to the amendment;
  - (b) section 248 and Schedule 22 extend to Northern Ireland only.
- (6) Section 251 extends to England and Wales and Scotland only.
- (7) Section 252 extends to Northern Ireland only.
- (8) Schedule 28 extends to Scotland only.
- (9) Schedule 29 extends to Northern Ireland only.
- (10) Any amendment, repeal or revocation made by Schedules 24 to 27 and 30 has the same extent as the provision subject to the amendment, repeal or revocation.

## 263 Commencement

- (1) Part 1 comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Finance and Personnel.
- (2) Part 2, including Schedules 1 to 9, comes into force in accordance with provision made by order by the Secretary of State.
- (3) Part 3, including Schedules 10 and 11, comes into force in accordance with provision made by order by the Scottish Ministers, after consulting the Secretary of State.
- (4) Part 4, including Schedules 12 to 19, comes into force in accordance with provision made by order by the Department of Finance and Personnel, after consulting the Secretary of State.
- (5) Part 5, excluding section 213(2) to (6) but including Schedule 20, comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Finance and Personnel.
- (6) Section 213(2) to (6) comes into force on the day on which this Act is passed.
- (7) In Part 6 —

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- (a) sections 246 and 247(1) and Schedule 21 come into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Finance and Personnel,
  - (b) section 248(1) and Schedule 22 come into force in accordance with provision made by order by the Department of Finance and Personnel, after consulting the Secretary of State, and
  - (c) sections 247(2) to (7) and 248(2) to (5) come into force on the day on which this Act is passed.
- (8) In Part 7—
- (a) sections 249, 251, 253, 256 and 257 and Schedules 23, 25 and 26 come into force in accordance with provision made by order by the Secretary of State,
  - (b) section 250 comes into force in accordance with provision made by order by the Secretary of State, after consulting the Scottish Ministers and the Department of Finance and Personnel,
  - (c) section 252 comes into force in accordance with provision made by the Department of Finance and Personnel, after consulting the Secretary of State,
  - (d) subject to paragraph (e), section 254(1) and Schedule 24 come into force in accordance with provision made by order by the Secretary of State,
  - (e) the provisions of Schedule 24 listed in subsection (9), and section 254(1) so far as relating to those provisions, come into force in accordance with provision made by the Department of Finance and Personnel, after consulting the Secretary of State, and
  - (f) sections 254(2) to (6) and 255 come into force on the day on which this Act is passed.
- (9) The provisions are—
- (a) Part 2;
  - (b) in Part 5, paragraphs 67 to 85, 87, 89 to 99 and 102 to 105;
  - (c) Part 6;
  - (d) Parts 9 and 10;
  - (e) Part 15.
- (10) In this Part—
- (a) sections 258, 259, 260 and 262, this section and section 264 come into force on the day on which this Act is passed,
  - (b) section 261(1) and Schedule 27 and, except so far as relating to any Acts of the Scottish Parliament or any provision which extends to Northern Ireland only, section 261(4) and Schedule 30 come into force in accordance with provision made by order by the Secretary of State,
  - (c) section 261(2) and Schedule 28 and, so far as relating to any Acts of the Scottish Parliament, section 261(4) and Schedule 30 come into force in accordance with provision made by order by the Scottish Ministers, after consulting the Secretary of State,
  - (d) section 261(3) and Schedule 29 and, so far as relating to any provision which extends to Northern Ireland only, section 261(4) and Schedule 30 come into force in accordance with provision made by order by the Department of Finance and Personnel, after consulting the Secretary of State.
- (11) The power to make an order under this section is exercisable by statutory instrument.



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#### Subordinate Legislation Made

- P1** S. 263 power partly exercised: 15.4.2005 appointed for specified provisions by {S.I. 2005/1112}, art. 2, Schs. 1, 2
- P2** S. 263 power partly exercised: 5.9.2005 appointed for specified provisions by {S.I. 2005/2399}, art. 2, Sch.
- P3** S. 263 power partly exercised: 7.11.2005 appointed for specified provisions by {S.I. 2005/3058}, art. 2
- P4** S. 263 power partly exercised: different dates appointed for specified provisions by {S.I. 2005/3175}, arts. 2, 3, Schs. 1, 2
- P5** S. 263 power partly exercised: 5.12.2005 appointed for specified provisions by {S.I. 2005/3255}, art. 2, Sch.
- P6** S. 263 power partly exercised: 6.4.2006 appointed for specified provisions by {S.I. 2006/639}, art. 2
- P7** S. 263 power partly exercised: 6.4.2006 appointed for specified provisions by {S.I. 2006/928}, art. 2
- P8** S. 263(3) power partly exercised: 14.9.2005 appointed for specified provisions by {S.S.I. 2005/428}, art. 2, Sch.
- P9** S. 263(3)(10)(c) power partly exercised: 5.12.2005 appointed for specified provisions by {S.S.I. 2005/604}, arts. 2-4

#### 264 Short title

This Act may be cited as the Civil Partnership Act 2004.

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