

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Civil Partnership: England and Wales

Introduction

Chapter 2 – Dissolution, Nullity and Other Proceedings

Section 37: Powers to make orders and effect of orders

67. This section sets out the orders that the court can make to bring a civil partnership to an end or to provide for the separation of the parties. These are as follows:
- (a) A dissolution order, which when made final will bring a civil partnership to an end.
 - (b) A nullity order, which when made final will annul a civil partnership which is either void or voidable.
 - (c) A presumption of death order, which when made final will dissolve the civil partnership on the ground that one of the civil partners is presumed to be dead.
 - (d) A separation order, which provides for the separation of the civil partners, but will not allow either civil partner to marry or to form another civil partnership.
68. *Subsection (2)* provides that an order for dissolution, nullity or presumption of death will initially be a conditional order and that it may not be made final until the end of the prescribed period defined in section 38.
69. *Subsection (3)* provides that a nullity order made in respect of a civil partnership which is voidable annuls the civil partnership only as respects any time after the order is made final. The civil partnership is to be treated as if it had existed up to that time.
70. The courts which can make these orders are defined in *subsection (4)* as the High Court or a county court with jurisdiction to hear civil partnership proceedings. *Subsection (5)* makes it clear that the powers of the court under this section are subject to the court having jurisdiction under sections 219 to 224 of the Act.

Section 38: The period before conditional orders may be made final

71. This section sets the period which must elapse before a dissolution, nullity or presumption of death order may be made final. By *subsection (1)*, the period is 6 weeks from the making of the conditional order (subject to a slight modification if this period ends on a day when the court office or registry is closed). *Subsection (2)* gives the Lord Chancellor power to make an order substituting a different period not exceeding 6 months. *Subsection (4)* provides that in particular cases the court may reduce the period (this might be relevant, for example, in the case of a deathbed dissolution and formation of a new civil partnership).

Section 39: Intervention of the Queen's Proctor

72. This section provides for the intervention of the Queen's Proctor in proceedings where an application has been made for a dissolution, nullity or presumption of death order. The court may involve the Queen's Proctor where it considers it necessary or expedient to have any question in relation to the case fully argued by counsel appointed by the Queen's Proctor, under the directions of the Attorney General. The Queen's Proctor may also intervene on the basis of information received from any person.

Section 40: Proceedings before order has been made final

73. This section provides for the court to consider the position once a conditional order has been made but before it has been made final. By *subsection (1)*, the section applies where the Queen's Proctor, or anyone who has not been a party to the proceedings, shows that there is cause (good reason) why the conditional order should not be made final on the ground that material facts were not put before the court. By *subsection (2)*, the court may also consider a case under this section where the civil partner who applied for the conditional order has not taken steps to have this made final within 3 months from the earliest date when such an application could have been made, and the other civil partner applies to the court under this section.
74. Where this section applies, the court may make the order final, rescind the order, direct that further enquiries are to be made, or deal with the case in such other manner as it thinks fit. By *subsection (4)*, the court's power to make the order final applies even if the prescribed period under section 38 has not yet expired, but is subject to the restrictions imposed in section 48(4) (relating to financial provision in separation cases) and section 63 (restrictions on the court's powers to make orders affecting children).

Section 41: Time bar on applications for dissolution orders

75. This section states that an application for dissolution of a civil partnership may not be made until at least 1 year after the date of formation of the civil partnership. However, matters which occurred within this 1 year period may be used in support of the application.

Section 42: Attempts at reconciliation of civil partners

76. This section allows the court to adjourn an application for a dissolution or separation order if it appears that the civil partners have a reasonable possibility of achieving a reconciliation. *Subsection (2)* provides that rules of court must make provision requiring the applicant's solicitors to certify whether they have discussed with their client the possibility of reconciliation and to certify whether they have given the applicant details of persons qualified to help with reconciliation.

Section 43: Consideration by the court of certain agreements or arrangements

77. This section provides that rules of court may make provision for civil partners to refer to the court an agreement or arrangement between them in connection with the dissolution of the civil partnership or with their separation. The rules may allow the court to express an opinion about whether the agreement or arrangement is reasonable, or to give directions.

Section 44: Dissolution of civil partnership which has broken down irretrievably

78. *Subsection (1)* sets out the sole ground on which an application for dissolution may be made, namely that the civil partnership has broken down irretrievably.
79. In order to demonstrate the irretrievable breakdown of the civil partnership the applicant must satisfy the court of one or more of the following facts set out in *subsection (5)*:

*These notes refer to the Civil Partnership Act 2004 (c.33)
which received Royal Assent on 18th November 2004*

- a) That his or her civil partner (called the respondent for the purposes of the proceedings) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
 - b) That the applicant and the respondent have lived apart for a continuous period of at least 2 years immediately preceding the application (this is referred to in the Act as “2 years’ separation”) and that 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 application (this is referred to as “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.
80. *Subsection (2)* provides that the court must inquire as far as possible into the facts alleged by the applicant and any facts put forward by the respondent. The court may not hold that the civil partnership has broken down irretrievably unless the applicant satisfies the court of one or more of the facts set out in *subsection (5)*. 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.

Section 45: Supplemental provisions as to facts raising presumption of breakdown

81. *Subsections (1) and (2)* provide that where an applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, but following the final incident relied upon in support of this allegation, the civil partners have continued to cohabit for a period or periods of time not exceeding 6 months in total, the court must disregard this time spent living together when determining whether the applicant cannot reasonably be expected to live with their civil partner.
82. *Subsections (3) and (4)* provide that, where a civil partner allegedly consents to the making of a dissolution order under the “2 years’ separation” head, rules of court must make provision to ensure that he or she is given information which will enable him to understand the consequences of consenting to the order and the steps which must be taken to indicate consent.
83. *Subsection (5)* allows the court to consider a period of desertion as continuing even when the civil partner concerned was incapable of continuing the necessary intention, provided the court would on the evidence have inferred that the period of desertion would have continued if the civil partner had been able to continue the intention. This would cover a situation where one civil partner deserts his or her civil partner for 2 years but is involved in an accident at some time over the 2 years which leads to a temporary loss of consciousness. This break in the “intention to desert” would not stop the 2 years from accruing.
84. *Subsection (6)* provides that when considering whether a period of living apart or desertion is continuous, no account is to be taken of a period or periods of time not exceeding 6 months in total in which the civil partners resumed living together. However (as a separate issue from whether the period of living apart or desertion could be regarded as “continuous”) under *subsection (7)* no period during which the civil partners lived together can count as part of the period of living apart or desertion. So for example, desertion or separation for 2 years can be proved, even if the civil partners lived together for, say, 2 months during the relevant period, so long as the total period of desertion or separation adds up to 2 years (excluding those 2 months).
85. *Subsection (8)* provides that civil partners are to be treated as living apart unless they are living with each other in the same household.

Section 46: Dissolution order not precluded by previous separation order etc.

86. This section provides that where a separation order, an order for financial relief in the magistrates' court or an order under sections 33 or 37 of the [Family Law Act 1996 \(c. 27\)](#) has been made, this does not prevent either civil partner from applying to the court for a dissolution order on the basis of the same facts that were relied upon when granting the previous order. Under *subsection (3)* the court may treat the previous order as sufficient proof of the facts by reference to which it was made, but must not make that the dissolution order without receiving evidence from the applicant.
87. *Subsection (4)* applies where an application for a dissolution order is made following a separation order or any order requiring the civil partners to live apart. If there was a period of desertion immediately preceding the application for a separation order, the parties 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 as if it had taken place immediately prior to the application for the dissolution order. This will mean that the period of desertion can be used to support the application for a dissolution order.
88. Under *subsection (5)* the court may also treat as a period of desertion to support an application for a dissolution order a period during which the respondent was subject to an injunction excluding him or her from the civil partnership home or when an order under sections 33 or 37 of the [Family Law Act 1996 \(c. 27\)](#) was in force prohibiting the civil partner from occupying a dwelling-house used (then or previously) as the civil partnership home.

Section 47: Refusal of dissolution in 5 year separation cases on ground of grave hardship

89. *Subsection (1)* provides that the respondent to an application for a dissolution order in which the applicant alleges 5 years' separation may oppose the making of a dissolution order on the ground that the dissolution of the civil partnership would result in grave financial or other hardship to him or her and that in all the circumstances it would be wrong to make the order. By *subsection (3)* the court must consider all the circumstances, including the conduct of the civil partners and the interests of the civil partners and any children or other persons concerned, and if the court is satisfied that there would be grave hardship it must dismiss the application for the dissolution order. *Subsection (4)* provides that "hardship" includes the loss of the chance of acquiring any benefit which the respondent might acquire if the civil partnership were not dissolved.

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

90. *Subsection (1)* provides that the court can rescind a dissolution order which has not been made final, where the application was on the basis of 2 years' separation coupled with the other civil partner's consent, if the applicant misled the respondent over any matter which was taken into account when giving that consent.
91. *Subsections (2) to (5)* allow the respondent to an application for a dissolution order alleging either 2 years' or 5 years' separation to apply to the court to consider his or her financial position after dissolution of the civil partnership. The court must consider all the relevant circumstances including the age, health, conduct, earning capacity, financial resources and obligations of each civil partner and the position of the respondent on the death of the applicant, assuming the applicant died first. Under *subsection (4)* the court must not make the dissolution order final unless it is satisfied either that the applicant should not be required to make financial provision for the respondent or that the provision made for the respondent is reasonable and fair, or is the best that can be made in the circumstances. Under *subsection (5)* the court may make the dissolution order final if the circumstances make it desirable to do so without

delay, provided it has obtained an undertaking from the applicant to make such financial provision for the respondent as the court may approve.

Section 49: Grounds on which civil partnership is void

92. This section sets out the grounds on which a civil partnership will be void (in other words invalid) under the law of England and Wales, where the parties registered as civil partners of each other in England and Wales. (The grounds on which the law of England and Wales will hold civil partnerships formed outside England and Wales to be void are set out in section 54.) A civil partnership that is void may be annulled by an order of the court under section 37.
93. *Paragraph (a)* provides that the civil partnership will be void if, at the time when the two people registered as civil partners in England and Wales, they were not eligible to register as civil partners of each other under the requirements set out in section 3.
94. *Paragraph (b)* lists the breaches of formal requirements which will render the civil partnership void, if both civil partners were aware of the breach at the time of the registration. These are failure to give the required notice of proposed civil partnership, the civil partnership document not being duly issued or having expired, the place of registration not being the place specified in the notice(s) of proposed civil partnership and the civil partnership document, or a civil partnership registrar not being present at the registration.
95. *Paragraph (c)* provides that the civil partnership will be void if the civil partnership document is void because one of the intended civil partners is a child (under the age of 18) and the issue of the civil partnership document has been forbidden by a person whose consent is required for the child to form a civil partnership.

Section 50: Grounds on which civil partnership is voidable

96. This section sets out the grounds on which an application can be made in England or Wales for an order annulling a civil partnership on the grounds that it is voidable, where the parties registered as civil partners of each other in England and Wales. (The grounds on which the law of England and Wales will hold other civil partnerships to be voidable are set out in section 54.) The grounds are as follows:
- a) Either of the civil partners did not validly consent to the formation of the civil partnership, through a mistake, through being put under duress or due to unsoundness of mind or otherwise.
 - b) At the time of the formation of the civil partnership either of the civil partners, although able to consent to the registration, was suffering from a mental disorder which made them unfitted for civil partnership.
 - c) At the time of the formation of the civil partnership one of the civil partners was pregnant (other than by the applicant, although that could only be relevant in a case involving a gender change under the Gender Recognition Act 2004). This is subject to section 51(6) which ensures that the court may not make a nullity order unless it is satisfied that the applicant did not know of the pregnancy at the time of the formation of the civil partnership. An application on this ground is subject to the 6 month time limit in section 51(5) (see below).
 - d) An interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either civil partner after the time of the formation of the civil partnership.
 - e) The respondent is a person whose gender at the time of the formation of the civil partnership had become the acquired gender under the Gender Recognition Act 2004. This is subject to section 51(6) which ensures that the court may not make

a nullity order unless it is satisfied that the applicant did not know at the time of the formation of the civil partnership that his or her partner had changed gender.

Section 51: Bars to relief where civil partnership is voidable

97. *Subsection (1)* provides that the court must not make a nullity order on the grounds that a civil partnership is voidable if the respondent satisfies the court that the applicant acted towards the respondent in such a way as to indicate that he or she would not apply for a nullity order, and that it would be unjust to the respondent to make the order now.
98. In most cases an application for a nullity order on the grounds that a civil partnership is voidable must be made within 3 years from the date that the civil partnership was formed (see *subsection (2)*). *Subsections (3) and (4)* permit the court to allow later applications where it is just to do so on the basis that the applicant suffered from mental disorder at some time during the 3-year period.
99. A shorter time limit applies where the application is made on the ground that an interim gender recognition certificate has been issued under the Gender Recognition Act 2004 after the date of formation of the civil partnership. In this case proceedings must be instituted within 6 months from the date of issue of that certificate.
100. *Subsection (6)* provides that, where the application is made on the grounds of pregnancy at the time of formation of the civil partnership, or a change of gender previous to that date, a nullity order must not be made unless the court is satisfied that the applicant did not know of the relevant facts at the time of formation of the civil partnership.

Section 52: Proof of certain matters not necessary to validity of civil partnership

101. This section provides that where two people have registered as civil partners of each other in England and Wales it is not necessary for them to provide evidence that any consent required under section 4 (consent by parents etc. where one of the intended civil partners is under 18) was actually given, or that the person who officiated at the signing of the civil partnership schedule was a designated civil partnership registrar for the area in which registration took place. No evidence may be given in any nullity proceedings to disprove either of these facts.
102. The issue of consent is subject to the provisions of section 49(c) which provides that a civil partnership involving a person under 18 will be void if the issue of the civil partnership document was forbidden by a person whose consent was required.

Section 53: Power to validate civil partnership

103. *Subsection (1)* provides that the Lord Chancellor may by order validate a civil partnership, where two people register as civil partners of each other in England and Wales, if it appears to him that the civil partnership is or may be void under section 49(b). *Subsection (2)* provides that an order under subsection (1) may include provisions for relieving a person from any liability under sections 31(2), 32(2), 33(5) or 33(7) (offences relating to civil partnership schedule, Registrar General's licence and recording of civil partnerships). *Subsection (3)* provides that the draft of an order under subsection (1) must be advertised not less than one month prior to the order being made. *Subsection (4)* provides that the Lord Chancellor must consider all written objections sent to him during that month and, if it appears necessary to him, direct a local inquiry into the validity of any such objections. *Subsection (5)* provides that an order under *subsection (1)* is subject to the special parliamentary procedure. The special parliamentary procedure is laid down in the Statutory Orders (Special Procedure) Act 1945.

Section 54: Validity of civil partnership registered outside England and Wales

104. This section sets out the rules to be applied when determining whether, under the law of England and Wales, a civil partnership is void or voidable where the parties did not register as civil partners in England and Wales. If the civil partnership is void or voidable, a court in England and Wales which has jurisdiction under sections 219 to 221 may make a nullity order in respect of the civil partnership under section 37.
105. *Subsection (1)* ensures that a civil partnership formed in Scotland is void for the purposes of the law of England and Wales only if it would be void under the Scottish provisions in section 123. The civil partnership will also be voidable if an interim gender recognition certificate is subsequently issued to either party under the Gender Recognition Act 2004. (If the case were being considered in Scotland, this would instead be grounds for dissolution of the civil partnership under section 117(2)(b).)
106. *Subsection (2)* ensures that, where two people registered as civil partners in Northern Ireland, the civil partnership is void for the purposes of the law of England and Wales only if it would be void under the Northern Ireland provisions in section 173. The civil partnership will also be voidable if the circumstances fall within any paragraph of section 50(1) (since these are all circumstances which would equally render the civil partnership voidable in Northern Ireland under section 174).
107. *Subsection (4)* deals with the situation where the parties registered as civil partners outside the United Kingdom under an Order in Council made under section 210 or 211. Orders in Council made under those sections will include provision for determining the relevant part of the United Kingdom for certain purposes. Paragraphs (a)(i) and (b) of subsection (4) ensure that questions of nullity are then dealt with in exactly the same way as would apply under English law if the parties had registered as civil partners in that part of the United Kingdom.
108. In addition the civil partnership will be void if the condition in section 210(2)(a) or 211(2)(a) (whichever is relevant) was not met. Where the parties registered as civil partners of each other at a British consulate etc., the condition is that one party must be a United Kingdom national as defined in section 245. Where the parties registered as civil partners of each other in the armed services, the condition is that one of the proposed civil partners is a member of the armed forces serving in the country or territory where the partnership is registered, or falls within certain other related categories as set out in section 211(2)(a).
109. Finally the civil partnership will also be void if there is a breach of a requirement of the Order in Council which is prescribed for this purpose by the Order itself (this power will be used to define in the Order those requirements which are mandatory in order to ensure the validity of the civil partnership).
110. *Subsection (8)* sets out the rules to be applied in relation to an apparent or alleged overseas relationship. An overseas relationship can be treated as a civil partnership under Chapter 2 of Part 5. But the civil partnership will be void if it transpires that the relationship is in fact not an overseas relationship as defined in sections 212 to 214, or if one of the requirements for the overseas relationship to be treated as a civil partnership under sections 215 to 218 is not met. For example the civil partnership will be void if, under the law of the country where the registration took place, the formalities necessary to enter into the overseas relationship were not fulfilled or there was no capacity to enter into the overseas relationship (see section 215(1)). It will also be voidable if that is the effect of the law of the country where the registration took place (see the definition of “the relevant law” in *subsection (10)*) or on the grounds that an interim gender recognition certificate has been issued under the Gender Recognition Act 2004. But if either party was domiciled in England and Wales then the civil partnership will also be voidable in the other circumstances set out in section 50(1), and the same applies if either party was domiciled in Northern Ireland (since these are all circumstances

which would equally render the civil partnership voidable in Northern Ireland under section 174).

111. Where a civil partnership is voidable in accordance with this section the section 51 bars to relief are applied in the usual way. However where the civil partnership is voidable by virtue of the application of foreign law, the bars to relief will only apply in so far as they are applicable in accordance with the foreign law.

Section 55: Presumption of death orders

112. This section gives the court power to make a presumption of death order, on the application of a civil partner, if satisfied that there are reasonable grounds for believing that the other civil partner is dead. The fact that the other civil partner has been absent from the applicant for a continuous period of 7 years or more and that the applicant has no reason to believe that he or she has been living during that time will be accepted as evidence that the other civil partner is dead until the contrary is proved.

Section 56: Separation orders

113. This section allows an application to be made for a separation order on the basis of the same facts as are required for an order for dissolution of a civil partnership. The court must inquire as far as possible into the facts alleged by the applicant and any facts put forward by his or her civil partner (referred to as the respondent for the purpose of the proceedings). If the court is satisfied of the facts alleged it must make a separation order (subject to the provisions of section 63 relating to children). However it is irrelevant whether the civil partnership has broken down irretrievably.

Section 57: Effect of separation order

114. This section provides that, if a civil partner dies without making a will (intestate) at a time when a separation order is in force and the separation is continuing, the rules in respect of the passing of intestate estates shall be applied as if his or her surviving (but separated) civil partner were also dead.

Section 58: Declarations

115. This section provides for people to apply to the High Court or a county court for declarations regarding the status of a civil partnership. These applications cover its validity, that it was or was not in existence on a certain date, and declarations as to whether a dissolution, annulment or legal separation obtained outside England and Wales is or is not entitled to recognition in England and Wales.
116. Under *subsection (2)* if the applicant is not one of the civil partners the court must refuse to hear the application if it considers that the applicant has insufficient interest in the outcome.

Section 59: General provisions as to making and effect of declarations

117. This section provides that where an application is made under section 58 and the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the declaration requested unless it would be manifestly contrary to public policy to do so. If the court dismisses the application, it must not make any other declaration which has not been applied for. The court cannot make a declaration that a civil partnership was void at its inception. Nothing in this section will prevent the court from being able to make a nullity order in respect of the civil partnership.

Section 60: The Attorney General and proceedings for declarations

118. This section provides that, in any case where an application is made for a declaration under section 58, the court may direct that the appropriate papers in the matter should

be sent to the Attorney General. The Attorney General may in any event intervene in proceedings for a declaration under section 58 as he thinks necessary or expedient, and may argue any question which the court thinks should be fully argued. *Subsection (3)* enables the court to make an order for the parties to the proceedings to pay the costs incurred by the Attorney General if this is justified.

Section 61: Supplementary provisions as to declarations

119. This section provides for rules of court to determine the form of an application under section 58 for a declaration, and of the declaration itself. The rules may provide for the information to be supplied by the applicant and for notice of the application to be served on the Attorney General and on persons who may be affected by the declaration.
120. *Subsection (3)* provides that no proceedings under section 58 will affect any final order or judgment already given. *Subsection (4)* allows the court to hear any application under section 58 (or any part of it) in private (and by *subsection (5)* any application for such a direction must itself be heard in private unless the court directs otherwise).

Section 62: Relief for respondent in dissolution proceedings

121. This section provides that if the respondent in dissolution proceedings alleges and proves any of the facts which the applicant had to satisfy the court of, the court may grant the respondent the relief that would normally be granted to an applicant who had proved such facts, as if it had been the respondent who had made the application.

Section 63: Restrictions on making of orders affecting children

122. This section provides that in any proceedings for a dissolution, nullity or separation order the court must consider whether there are any children for whom the court should exercise its powers under the [Children Act 1989 \(c. 41\)](#) in order to safeguard their welfare and provide for their upbringing. If necessary the court may direct that the dissolution, nullity or separation order is not to be made final until the court has considered whether to exercise those powers. The provisions apply to any child of the family who is under 16 years of age at the date the court considers the position and also to children of the family over 16 if the court directs that they should also be included in its consideration.

Section 64: Parties to proceedings under this chapter

123. This section allows rules of court to be made to allow for parties to be joined to proceedings for dissolution, nullity or separation if they are involved in allegations of improper conduct made in the proceedings. The rules may provide for the court to dismiss from the proceedings any parties whom it has joined. Rules may also make provision as to the persons who are to be parties to an application for a declaration. *Subsection (3)* enables the court to permit a person to intervene if it thinks he or she should be made a party.