



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 4

#### CIVIL PARTNERSHIP: NORTHERN IRELAND

### 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;
  - (b) make an order (a “nullity order”) which annuls a civil partnership which is void or voidable;
  - (c) <sup>F1</sup> .....
  - (d) make an order (a “separation order”) which provides for the separation of the civil partners.
- (2) Every [<sup>F2</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.

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- (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

- F1** S. 161(1)(c) repealed (9.11.2009) by [Presumption of Death Act \(Northern Ireland\) 2009 \(c. 6 \(N.I.\)\)](#), ss. 19(1), (2), 20, Sch. 2, {Sch. 3}; S.R. 2009/356, [art. 2](#)
- F2** 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>F3</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.
- (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.

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### Textual Amendments

- F3** 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 conditional order has been made, and
  - 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 conditional order has been made,
  - 3 months have elapsed since the earliest date on which an application could have been made for the order to be made final,
  - no such application has been made by the civil partner who applied for the conditional order, and
  - the other civil partner makes an application to the court under this subsection.
- (3) The court may—
- make the order final,
  - rescind the order,
  - require further inquiry, or
  - otherwise deal with the case as it thinks fit.
- (4) Subsection (3)(a)—
- applies despite section 161(2) (period before conditional orders may be made final), but
  - 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.
- (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)

- C1** 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\(1\)](#)
- C2** S. 165 applied (with modifications) (N.I.) (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [171\(1\)](#) (with regs. 6-9)

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## **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—
  - (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.

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- (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.
- (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.

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- (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**

- II** 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.
- (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.

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- (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—
- (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—

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- (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.
- (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**

- [<sup>F4</sup>(1)] Where two people register as civil partners of each other in Northern Ireland, the civil partnership is void if—



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- (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.

[<sup>F5</sup>(2) Subsection (3) applies in the case of a civil partnership which results from the conversion, or purported conversion, of a marriage into a civil partnership under Part 3, 4 or 5 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020.

(3) The civil partnership is void if (but only if) the marriage was void.]

#### Textual Amendments

- F4** S. 173 renumbered as s. 173(1) (7.12.2020) by [The Marriage and Civil Partnership \(Northern Ireland\) \(No. 2\) Regulations 2020 \(S.I. 2020/1143\)](#), regs. 1(2), **44(5)(a)**
- F5** S. 173(2)(3) inserted (7.12.2020) by [The Marriage and Civil Partnership \(Northern Ireland\) \(No. 2\) Regulations 2020 \(S.I. 2020/1143\)](#), regs. 1(2), **44(5)(b)**

## 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)).

### [<sup>F6</sup>174A. Civil partnership converted from a marriage: when voidable

- (1) Subsections (2) and (3) apply in the case of a civil partnership which results from the conversion of a marriage into a civil partnership under Part 3, 4 or 5 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020.
- (2) Section 174(1) applies in relation to the civil partnership, but does so as if—

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- (a) the reference in paragraph (a) to either party not validly consenting to the formation of the civil partnership were a reference to either party not validly consenting to the marriage, and
  - (b) a reference in paragraphs (b) to (e) to the time of the civil partnership's formation were a reference to the time of the marriage.
- (3) Section 175 applies in relation to the civil partnership as if—
- (a) the reference in subsection (1)(a) to obtaining a nullity order were a reference to obtaining a nullity order or (at times before the conversion) to having the marriage avoided,
  - (b) the reference in subsection (2) to the date of the formation of the civil partnership were a reference to the date of the marriage, and
  - (c) the reference in subsection (6) to the time of the formation of the civil partnership were a reference to the time of the marriage.]

#### Textual Amendments

- F6** S. 174A inserted (7.12.2020) by [The Marriage and Civil Partnership \(Northern Ireland\) \(No. 2\) Regulations 2020 \(S.I. 2020/1143\)](#), regs. 1(2), **44(6)**

### 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.
- (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.

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- (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;
- [<sup>F7</sup>(c) that, in the case of a civil partnership to which Schedule 13A applied, any of the events listed in paragraph 2(2) to (6) of that Schedule occurred;]

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

### Textual Amendments

- F7** S. 176(c) inserted (1.3.2015) by [The Referral and Investigation of Proposed Marriages and Civil Partnerships \(Northern Ireland and Miscellaneous Provisions\) Order 2015 \(S.I. 2015/395\)](#), art. 1(2), [Sch. 3 para. 7](#) (with art. 1(3))

## 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),
- (“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—

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- (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**

**F8** .....

#### **Textual Amendments**

**F8** 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](#)

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### *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;
  - (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

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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;
  - (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.

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- (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

- I2** 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
  - (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—

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- (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**

- I3** 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
- [<sup>F9</sup>(b) a county court.]

(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.

<sup>F10</sup>(4) .....



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<sup>F10</sup>(4A) .....

<sup>F10</sup>(5) .....

<sup>F10</sup>(6) .....

(7) Any jurisdiction conferred on a [<sup>F11</sup>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 <sup>F12</sup>... 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 <sup>F12</sup>...) 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.

<sup>F13</sup>(9) .....

#### Textual Amendments

**F9** S. 188(1)(b) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 124(1)(a)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)

**F10** S. 188(4)-(6) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 124(1)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F11** Words in s. 188(7) substituted (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), **Sch. 1 para. 124(1)(c)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)

**F12** Words in s. 188(8) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 124(1)(d), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F13** S. 188(9) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 124(1)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

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

**C3** 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)

## 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 <sup>F14</sup>... county court in the exercise of the jurisdiction conferred by a relevant provision, or
- (b) the dismissal by a judge of a <sup>F14</sup>... 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

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(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.

#### Textual Amendments

**F14** Words in s. 189(1)(a)(b) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 124\(2\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)\(m\)](#) (with [art. 3](#))

#### Commencement Information

**I4** 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 [<sup>F15</sup>county court] which ceases to be undefended, and
    - (ii) of any civil partnership cause so pending, where the transfer appears to the [<sup>F15</sup>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 [<sup>F15</sup>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.
- (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.

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- (6) A court has jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of subsection (4).

**Textual Amendments**

**F15** Words in s. 190(2) substituted (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 124\(3\)](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)](#) (with [art. 3](#))

**Commencement Information**

**I5** 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.](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 103(10) inserted by [2023 asp 3 s. 56\(5\)](#)
- s. 108(5) inserted by [2023 asp 3 s. 56\(8\)](#)
- s. 213(1A) inserted by [2013 c. 30 Sch. 2 para. 5\(2\)](#)