

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

# CIVIL PARTNERSHIP ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – Civil Partnership: Northern Ireland**

##### **Introduction**

255. The sections in this Part (Part 4) of the Civil Partnership Act extend only to Northern Ireland (see section 262(3)).

##### *Chapter 1 - Registration*

##### *Section 137: Formation of civil partnership by registration*

256. This section provides that a civil partnership is created when both persons sign the completed civil partnership schedule before two witnesses and the registrar (all being present). The civil partnership schedule should then be signed by both witnesses and the registrar.

257. *Subsection (4)* provides that the registrar must record the civil partnership as soon as possible after the signing of the civil partnership schedule.

258. *Subsection (5)* states that no religious service is to be used when the civil partnership schedule is being signed.

##### *Section 138: Eligibility*

259. *Subsection (1)* provides that two people are not eligible to register in Northern Ireland 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 (as determined under Schedule 12 –)
- e) either of them is incapable of understanding the nature of a civil partnership

##### *Section 139: Notice of proposed civil partnership*

260. This section provides that each party must give the registrar a notice of proposed civil partnership. The notice must be in a prescribed form and accompanied by a prescribed fee and any other information as may be prescribed. In prescribed cases the notice must be given to the registrar in person.

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

261. This section requires the registrar to record in the civil partnership notice book such particulars as may be prescribed, taken from every civil partnership notice received and the date on which each civil partnership notice is received.
262. *Subsection (3)* requires the registrar to publicise a list containing relevant information (names of intended civil partners and date of intended signing of the civil partnership schedule) in relation to each proposed civil partnership for which the registrar has received a civil partnership notice.
263. *Subsection (5)* provides that any person claiming to have reason to object to a proposed civil partnership may inspect any entry relating to the civil partnership in the civil partnership notice book without charge.

***Section 141: Power to require evidence of name etc.***

264. This section provides for the registrar to request specified evidence from a proposed civil partner to verify certain information contained in a civil partnership notice. This power to request evidence is only exercisable before the civil partnership schedule has been issued.

***Section 142: Objections***

265. This section provides that any person may make an objection in writing to the registrar to the issue of a civil partnership schedule to prevent a civil partnership from being formed. The objection must relate to a lawful impediment.

***Section 143: Civil partnership schedule***

266. This section provides for the completion by the registrar of the civil partnership schedule. This may be done providing the registrar is satisfied that there is no legal impediment to the formation of the civil partnership or the Registrar General has directed him to proceed.

***Section 144: Place of registration***

267. This section provides that a civil partnership schedule may be signed at a registration office or at any place approved for that purpose by the local registration authority. In some cases of serious illness or disability, as supported by a medical statement, the civil partnership may be formed at the place where the person concerned is located.

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

268. This section sets out the provisions for consent requirements where a person wishing to form a civil partnership is under eighteen years of age. The section gives effect to Schedule 13 which identifies the appropriate persons or bodies who may give consent and makes provision for orders dispensing with consent and for recording consents.
269. *Subsection (4)* confirms that a ward of court requires the consent of the High Court to register as a civil partner. *Subsection (5)* provides a definition of “young person” as a person who is under eighteen.

***Section 146: Validity of registration***

270. This section provides that once the formation of a civil partnership has been recorded, its validity must not be questioned in any legal proceedings commenced after that time on the ground of any contravention of a provision of or made under the Act.

***Section 147: Corrections and cancellations***

271. This section provides that regulations may make provision for the Registrar General or other registrars to make corrections to the records of the formation of a civil partnership and that the formation of a void civil partnership must be cancelled by the Registrar General or by the registrar as directed by the Registrar General.

***Section 148: Interpreters***

272. This section provides that a registrar may use an interpreter to assist in relation to the formation of a civil partnership.
273. *Subsections (2)* provides that the interpreter must confirm his ability to act as an interpreter in the relevant language by signing a statement prior to the formation of a civil partnership and must sign a certificate after the registration to the effect that he faithfully acted as an interpreter.

***Section 149: Detained persons***

274. This section provides that a detained person may register as a civil partner at the place where that person is detained provided that the civil partnership notice is accompanied by a supporting statement.
275. *Subsection (2)* sets out that a supporting statement is one made in a prescribed form by a responsible authority (as defined by *subsection (3)*) identifying the establishment where the person is detained and confirming that the responsible authority has no objection to that place being specified in a notice of proposed civil partnership.
276. *Subsection (4)* sets out that the registrar must notify the Registrar General upon receipt of a civil partnership notice and supporting statement, and must not complete a civil partnership schedule until directed to do so by the Registrar General.

***Section 150: Certificates of no impediment for Part 2 purposes***

277. This section makes provision for a registrar in Northern Ireland to receive notice from a person living in Northern Ireland who wishes to register as a civil partner in England and Wales. Upon receipt of notice of an intended civil partnership, the registrar in Northern Ireland may issue a certificate to the person resident in Northern Ireland stating that there is no impediment under Northern Ireland law to that person registering as a civil partner. Before such a certificate is issued by the registrar any person may submit a written objection to its issue.

***Section 151: Registration districts and registration authorities***

278. This section provides definitions for registration districts and registration authorities in Northern Ireland. *Subsection (2)* states that local registration authorities shall exercise their powers as agents of the Department of Finance and Personnel.

***Section 152: Registrars and other staff***

279. This section makes provision for the appointment or removal, by a local registration authority, of a registrar, one or more deputy registrars and other staff as may be required for the signing of civil partnership documents. The powers of appointment and removal are subject to the approval of the Registrar General.

***Section 153: Records and documents to be sent to Registrar General***

280. This section provides that any person must comply with a request from the Registrar General to provide any record or document relating to a civil partnership.

***Section 154: Annual report***

281. This section provides that the Registrar General must submit to the Department of Finance and Personnel an annual report of the number of formations of civil partnership in each year. *Subsection (2)* provides that each annual report must then be laid before the Northern Ireland Assembly.

***Section 155: Searches***

282. This section provides that the Registrar General and other registrars must ensure that indexes to civil partnership formation records are made available for public inspection.
283. *Subsections (2) and (3)* provide that such indexes may be searched and documents relating to a civil partnership registration may be requested upon payment of a prescribed fee. *Subsections (4) and (5)* provide that any document produced by the Registrar General must be stamped with the seal of the General Register Office and judicial notice must be taken of it.

***Section 156: Proof of civil partnership for purposes of certain statutory provisions***

284. This section makes provision for a civil partner, upon application to the Registrar General and payment of a prescribed fee, to obtain a document proving the civil partnership formation for the purposes of any prescribed statutory provision.

***Section 157: Fees***

285. This section enables the Department of Finance and Personnel to make an order prescribing fees payable in relation to civil partnership registrations. The order must be approved by resolution of the Assembly.

***Section 158: Offences***

286. This section creates offences and associated penalties in relation to the formation of civil partnerships.
287. *Subsection (1)* creates an offence where a registrar signs the civil partnership schedule in the absence of the civil partners.
288. *Subsection (2)* makes it an offence for a person, other than a duly appointed registrar, to officiate at the signing of the civil partnership schedule by leading the civil partners to believe that he is a registrar.
289. *Subsection (3)* sets out the maximum penalty that may be imposed for these offences.
290. *Subsection (4)* specifies the time-limit (3 years) within which a prosecution may be brought.

***Section 159: Regulations***

291. This section provides for the Department of Finance and Personnel, by regulations, to make any necessary provision in relation to registration as civil partners in Northern Ireland.

***Section 160: Interpretation***

292. This section provides definitions of various terms which are used in this Chapter.

## **Chapter 2 – Dissolution, Nullity and Other Proceedings**

### **Section 161: Powers to make orders and effect of orders**

293. 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.
294. *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 162.
295. *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. The civil partnership is to be treated as if it had existed up to that time.
296. By *subsection (4)* “the court” is ascribed the meaning given in section 188, namely the High Court or a county court designated by the Lord Chancellor as a civil partnership proceedings county court. *Subsection (5)* makes it clear that the powers of the court under this section are subject to the court having jurisdiction under sections 219 and sections 228 to 232.

### **Section 162: The period before conditional orders may be made final**

297. 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. *Subsection (2)* 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 163: Intervention by the Crown Solicitor**

298. This section provides for the intervention of the Crown Solicitor in proceedings where an application has been made for a dissolution, nullity or presumption of death order. The court may involve the Crown Solicitor where it considers it necessary or expedient to have any question in relation to the case fully argued by counsel appointed by the Crown Solicitor, under the directions of the Attorney General. Any person may also give information to the Crown Solicitor on relevant issues at any time before the order has been made final and the Crown Solicitor can take such steps as the Attorney General considers necessary or expedient. The section also gives the court discretion to order the payment of costs by or to the Crown Solicitor.

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

299. 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 Crown Solicitor, 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

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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.

300. 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 minimum period under section 161(2) has not yet expired, but is subject to the restrictions imposed in section 172(4) (relating to financial provision in separation cases) and section 186 (restrictions on the making of orders affecting children).

***Section 165: Time bar on applications for dissolution orders***

301. This section states that an application for dissolution of a civil partnership may not be made until at least 2 years after the date of formation of the civil partnership. However, matters which occurred within this 2 year period may be used in support of the application.

***Section 166: Attempts at reconciliation of civil partners***

302. 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 (3)* provides that if, during any such adjournment, the parties resume living in the same household, no account will be taken of this fact for the purposes of the proceedings.
303. *Subsection (4)* provides that this power to adjourn is additional to any other power of adjournment.

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

304. 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 give directions.

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

305. This section establishes the ground on which (provided the 2 year period set out in section 165 has elapsed) an application for the dissolution of a civil partnership may be made, and the four facts which can prove the ground for dissolution.
306. *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.
307. 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)*:
- 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 him or her;
  - b) That the applicant and their civil partner have lived apart for a continuous period of at least 2 years immediately preceding the application (this is referred to as "2 years' separation") and that their civil partner consents to a dissolution order being made;
  - c) That the applicant and their civil partner 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 his or her civil partner has deserted him or her for a continuous period of at least 2 years immediately preceding the making of the application.
308. *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.
309. *Subsection (6)* provides that the court must consider the oral testimony of the applicant before making a dissolution order, unless there are special reasons to dispense with such testimony.

***Section 169: Supplemental provisions as to facts raising presumption of breakdown***

310. *Subsections (1)* and *(2)* provide that where an applicant alleges that their civil partner has behaved in such a way that they cannot reasonably be expected to live with him or her, but following the final incident relied on 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.
311. *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.
312. *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.
313. *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).
314. *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 170: Dissolution order not precluded by previous separation order etc.***

315. This section provides that where a separation order, an order for financial relief in a court of summary jurisdiction or an order under Article 11 or 15 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 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.

316. 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 the dissolution order without receiving evidence from the applicant.
317. *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.
318. 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 Article 11 or 15 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 was in force prohibiting the civil partner from occupying a dwelling-house used (then or previously) as the civil partnership home.

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

319. *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 the civil partners and of 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 172: Proceedings before order made final: protection for respondent in separation cases***

320. *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 their civil partner over any matter which was taken into account when giving that consent.
321. *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 has, by order, declared that 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 or that there are circumstances making it desirable to make the order final without delay. *Subsection (8)* provides that if the court will not make an order under subsection (4), it must, on the applicant's application make an order declaring that it is not satisfied as mentioned in that subsection.
322. Under *subsection (5)* the court must not declare it is satisfied that the order should be made final without delay unless it has obtained an undertaking from the applicant to bring the question of financial provision for the respondent before the court within a specified time.



323. *Subsections (6) and (7)* provide that where an application has been made for a dissolution order on the basis of 2 years' separation or 5 years' separation, and the court makes a final order without making an order under *subsection (4)*, the final order is voidable at the instance of the respondent or the court, but no person may challenge the validity of the final order on the grounds that *subsections (4) and (5)* were not satisfied.

***Section 173: Grounds on which civil partnership is void***

324. This section sets out the grounds on which a civil partnership will be void (and therefore invalid) under the law of Northern Ireland, where the parties registered as civil partners of each other in Northern Ireland. (The grounds on which the law of Northern Ireland will hold other civil partnerships to be void are set out in section 177.)
325. Paragraph (a) provides that the civil partnership will be void if, at the time when the two people registered as civil partners in Northern Ireland, they were not eligible to register as civil partners of each other under the requirements set out in section 138.
326. Paragraph (b) lists the breaches of formal requirements which will render the civil partnership void if both civil partners were aware of them at the time of the registration. These are failure to give the required notice of proposed civil partnership, the civil partnership schedule not being duly issued, the place of registration not being the place specified in the civil partnership schedule, or a registrar not being present at the registration.

***Section 174: Grounds on which civil partnership is voidable***

327. This section sets out the grounds on which an application can be made 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 Northern Ireland. (The grounds on which the law of Northern Ireland will hold other civil partnerships to be voidable are set out in section 177.) 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 175(6) which ensures that the court may not make a nullity order unless satisfied that the applicant did not know of the pregnancy at the time of the formation of the civil partnership.
  - 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. An application on this ground is subject to the 6 month time limit in section 175(5) (see below).
  - 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 175(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 175: Bars to relief where civil partnership is voidable***

328. *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.
329. *Subsection (2)* establishes that an application for a nullity order on the grounds that a civil partnership is voidable (other than in the circumstances dealt with by subsection (5) below) must be made within 3 years of the date of formation of the civil partnership. However *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.
330. 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, the time limit under *subsection (5)* is 6 months from the date of issue of that certificate.
331. *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 176: Proof of certain matters not necessary to validity of civil partnership***

332. This section provides that that where two people have registered as civil partners in Northern Ireland it is not necessary for them to provide evidence that any consent required under section 145 (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 properly appointed registrar. No evidence may be given in any nullity proceedings to disprove either of these facts.

***Section 177: Validity of civil partnerships registered outside Northern Ireland***

333. This section sets out the rules to be applied when determining whether, under the law of Northern Ireland, a civil partnership is void or voidable where the parties did not register as civil partners in Northern Ireland. If the civil partnership is void or voidable, a court in Northern Ireland which has jurisdiction under sections 219 or 229 may make a nullity order in respect of the civil partnership under section 161.
334. *Subsection (1)* ensures that a civil partnership which was formed in England and Wales is void for the purposes of the law of Northern Ireland if it would be void under the provisions applicable in England and Wales under section 49. The civil partnership will also be voidable if it would be voidable under the provisions applicable in Northern Ireland under section 174(1) (since these are all circumstances which would equally render the civil partnership voidable in England and Wales under section 50).
335. *Subsection (2)* ensures that a civil partnership which was formed in Scotland is void for the purposes of the law of Northern Ireland 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.
336. *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 the law of Northern Ireland if the civil partnership had actually been formed in that part of the United Kingdom.

337. 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 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 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 formed, or falls within certain other related categories as set out in section 211(2)(a).
338. 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).
339. *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 Northern Ireland or England and Wales then the civil partnership will also be voidable in the other circumstances set out in section 174(1).
340. Where a civil partnership is voidable in accordance with this section the section 175 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 178: Presumption of death orders***

341. 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 179: Separation orders***

342. This section allows for 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 186 relating to children). However it is irrelevant whether the civil partnership has broken down irretrievably.

### ***Section 180: Effect of separation order***

343. 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 181: Declarations***

344. This section provides for people to apply to the 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 Northern Ireland is or is not entitled to recognition in Northern Ireland.
345. 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 182: General provisions as to making and effect of declarations***

346. This section provides that where an application is made under section 181 and the proposition put forward is proved to the satisfaction of the court, the court must make the order requested unless it would be manifestly contrary to public policy for it 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 183: The Attorney General and proceedings for declarations***

347. This section provides that, in any case where an application is made for a declaration under section 181, the court may direct that the appropriate papers should be sent to the Attorney General. The Attorney General may in any event intervene in proceedings for a declaration under section 181 as he thinks necessary, 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 184: Supplementary provisions as to declarations***

348. This section provides for family proceedings rules (defined in *subsection (8)*) to determine the form of an application for a declaration under section 181, 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, and must make provision for an appeal to the Court of Appeal from any declaration made by a county court under section 181 or the dismissal of an application under that section.
349. *Subsection (3)* provides that no proceedings under section 181 will affect any final order or judgment already given. *Subsection (4)* provides that the court may direct that the whole or part of any application under section 181 may be heard in private (and by *subsection (5)* any application for such a direction must itself be heard in private unless the court directs otherwise).

***Section 185: Relief for respondent in dissolution proceedings***

350. 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 186: Restrictions on making of orders affecting children***

351. 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 (Northern Ireland) Order 1995 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 187: Parties to proceedings under this chapter***

352. 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 also provide for the court to dismiss parties whom it has joined to the proceedings, and as to the persons who are to be party 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.

### ***Section 188: The court***

353. *Subsection (1)* defines “the court” for the purposes of Chapter 2 as being the High Court or a county court designated by the Lord Chancellor as a civil partnership proceedings county court and *subsection (5)* defines “civil partnership proceedings county court” as any such county court.
354. *Subsection (6)* provides that rules of court may be made to ensure that a civil partnership cause pending in one civil partnership proceedings county court may be heard and determined either partly in that court and partly in another, or in another such court.
355. *Subsection (7)* makes provision for civil partnership county courts to have jurisdiction even where the amount claimed would not normally enable a county court to exercise jurisdiction.

### ***Section 189: Appeals***

356. This section provides that rules of court may be made to allow appeals to the Court of Appeal of decisions or dismissals of applications made by a judge in a civil partnership proceedings county court.
357. *Subsection (3)* provides that a person may appeal any order or dismissal of an application made by a county court with jurisdiction under paragraphs 57, 58 or 66 of Schedule 15 (financial relief in the High Court or county court: Northern Ireland) 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.

### ***Section 190: Transfer of proceedings***

358. This section provides that rules of court may be made to facilitate the transfer of any civil partnership cause from a civil partnership proceedings county court to the High Court or alternatively from the High Court back to the civil partnership proceedings county court.
359. *Subsection (3)* provides a definition of a “civil partnership cause” for the purposes of this section.
360. *Subsection (4)* provides that rules of court may provide for the transfer or retransfer of a civil partnership cause from either a civil partnership proceedings county court to the High Court or, from the High Court to a civil partnership proceedings county court.
361. *Subsection (5)* provides that the power conferred by subsections (2) and (4) includes the power to provide for the removal of proceedings at the direction of the High Court. Nothing in this subsection affects the High Court’s powers of removal and remittal.

### **Chapter 3 – Property and Financial Arrangements**

#### **Section 191: Disputes between civil partners about property**

362. This section enables civil partners to refer disputes over property to court. It provides that civil partners may apply to the High Court or to a county court in respect of any question relating to the title to or the possession of property. The court may make such order with respect to the property as it thinks fit, including an order for the sale of the property.

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

363. This section allows one civil partner (A) to make an application under section 191 where the other civil partner (B) no longer has the money or property concerned or A does not know whether B still has the money or property. The power of the court to make orders under section 191 includes the power to order B to pay to A such sum of money as seems appropriate or to make any other order which it could have made under section 191.

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

364. This section allows a former civil partner to make an application to the court in respect of a dispute over property under Section 191 (as extended by Section 192) despite the fact that the civil partnership has been dissolved, annulled or is void (whether or not an order for annulment has been granted). The application must be made within three years of the date of dissolution or annulment of the civil partnership. Where the civil partnership is void but has not been annulled and the parties have ceased to live together, the application must be made within three years of the date on which the parties ceased to live together.

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

365. This section extends the application of section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964 to civil partners, so that if a civil partner takes out a life insurance policy to provide for his or her civil partner or children the money payable under the policy is not to form part of the estate of the insured.

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

366. This section states that Schedule 14 contains provisions amending enactments relating to wills, administration of estates and family provision to give the same treatment to civil partners as exist for married people.

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

367. This section introduces Schedule 15, which makes provision for financial relief for civil partners which corresponds to the relief available to married couples in the High Court or a county court under Part 3 of the Matrimonial Causes (Northern Ireland) Order 1978 when they go through divorce, nullity or judicial separation proceedings.
368. *Subsection (2)* provides that if the effect of rules of law is that provisions for financial relief under Part 3 of the Matrimonial Causes (Northern Ireland) Order 1978 are interpreted as being available in the case of the dissolution of a marriage on the ground of presumed death, then those rules of law will also apply to the corresponding financial provisions in Schedule 15 to the Act for civil partners, with any necessary modifications. This is to allow case law to be available to civil partners which allows for financial relief to be available if the person who was presumed dead is subsequently proved to be alive.
369. *Subsection (3)* introduces Schedule 16, which provides civil partners with the right to apply for financial relief in courts of summary jurisdiction in a way that corresponds

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to the rights that exist for married people under the Domestic Proceedings (Northern Ireland) Order 1980.

370. *Subsection (4)* introduces Schedule 17, which contains provisions for financial relief in Northern Ireland after a civil partnership has been dissolved or annulled or the civil partners have been legally separated in a country outside the British Islands. “British Islands” is defined in the [Interpretation Act 1978 \(c. 30\)](#) as comprising the United Kingdom, the Channel Islands and the Isle of Man.

#### ***Chapter 4 – Civil Partnership Agreements***

##### ***Section 197: Civil partnership agreements unenforceable***

371. This section provides that an agreement to form a civil partnership by any of the means outlined in section 1 (“a civil partnership agreement”) does not constitute a contract giving rise to legal rights under the law of Northern Ireland and will not be enforceable.
372. *Subsection (2)* provides that no action can be taken over any breach of a civil partnership agreement.
373. *Subsection (4)* provides that the section will apply to civil partnership agreements entered into both before and after the section comes into force but it will not affect any legal action which has begun before the section comes into force.

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

374. This section applies when a civil partnership agreement is terminated. It provides that sections 191 and 192 (relating to disputes between civil partners about property) will apply in relation to property in which either or both of the parties to the agreement had a beneficial interest while the agreement was in force.
375. An application made using section 191 or 192 must be made within three years of the date of termination of the civil partnership agreement.
376. *Subsection (4)* provides that where a person makes a gift to the other person on the understanding that it will be returned if the civil partnership agreement is terminated, they can recover the property given even if he or she terminated the agreement himself or herself.

#### ***Chapter 5 - Children***

377. This Chapter makes various amendments to the Children (Northern Ireland) Order 1995 and the Adoption (Northern Ireland) Order 1987 to reflect the creation of the new relationship of civil partnership.

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

378. This section amends various provisions of the Children (Northern Ireland) Order 1995 (“the Children Order”) to include civil partners in a way that corresponds to the provisions that apply to married couples.
379. *Subsection (2)* amends the definition of “child of the family” in Article 2(2) of the Children Order to include a child of both civil partners and any other child who has been treated as a child of the family by both civil partners, unless the child had been placed with the civil partners - by a local authority or a voluntary organisation - as foster parents.
380. *Subsection (3)* amends the definition of “relative” in Article 2(2) of the Children Order to replace “by affinity” with “by marriage or civil partnership”.

381. *Subsection (4)* amends Article 7(1C) of the Children Order to enable a civil partner to acquire parental responsibility of their civil partner's child in the same way as a person who is married to the parent of the child (but is not that child's parent).

### ***Section 200: Guardianship***

382. This section amends Article 161 of the Children Order in relation to the revocation and disclaimer of appointments of guardians. Under Article 160 (1) and (2) of the Children Order a parent or guardian may appoint any person to act as the guardian of a child in his or her place. This section inserts a provision into Article 161 of the Children Order so that where a person appoints his or her civil partner to be the guardian of a child that appointment is revoked if the civil partnership is dissolved or annulled, unless the appointment itself indicates that the dissolution or annulment of the civil partnership should not affect the appointment.

### ***Section 201: Entitlement to apply for a residence or contact order***

383. This section amends Article 10(5) of the Children Order to add a civil partner in a civil partnership to the class of people who are able to apply for a residence or contact order. The amendment enables civil partners to apply for an order whether or not the civil partnership subsists.

### ***Section 202: Financial provision for children***

384. This section amends Schedule 1 to the Children Order.
- Subsection (2)* extends the meaning of "parent" in paragraph 1(2) of Schedule 1 to the Children Order to include any civil partner in a civil partnership, whether it is still in existence or whether it has been brought to an end, for whom the child concerned is a child of the family.
385. *Subsection (3)* amends Schedule 1 to the Children Order by adding to the definition of periodical payment orders in paragraph 3(6) of that Schedule orders under the provisions of Parts 1 and 8 of Schedule 15 (Financial relief in the High Court or county court etc.) and under Schedule 16 (Financial relief in court of summary jurisdiction etc.) to this Act. This will enable courts to make orders for periodical payments from one civil partner to the other or to a child of the family, or to a particular person for the benefit of a child of the family.
386. *Subsection (4)* amends paragraph 17(2) of Schedule 1 to the Children Order so that a local authority will not be able to make a contribution towards the maintenance of a child who is subject to a residence order where the person with whom the child is living is a parent of the child, or the husband or wife or civil partner of a parent of the child.

### ***Section 203: Adoption***

387. This section amends the Adoption (Northern Ireland) Order 1987 ("the 1987 Order") to ensure that the status of civil partnership is recognised for the purposes of adoption.
388. *Subsection (2)* amends the definition of "relative" in relation to a child in Article 2(2) of the 1987 Order to replace "by affinity" with "by marriage or civil partnership".
389. *Subsection (3)* amends Article 12(5) of the 1987 Order so that an adoption order cannot be made in respect of any person who is or has been married or in a civil partnership.
390. *Subsection (4)* amends Article 15(1)(a) of the 1987 Order to allow for an adoption order to be made on the application of one person where that person is over the age of 21 years and is not married or is not a civil partner.
391. *Subsection (5)* amends Article 33(3)(g) of the 1987 Order so that a protected child ceases to be so on his or her marrying or forming a civil partnership.



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392. *Subsection (6)* amends Article 40(3)(a) of the 1987 Order so that the status conferred as a consequence of an adoption order does not apply for the purposes of Schedule 12 to the Civil Partnership Act (prohibited degrees of relationship).
393. *Subsection (7)* amends Article 54(2) of the 1987 Order to ensure that an adopted person who intends to enter into a civil partnership can apply to the Registrar General for him to check that the person with whom the applicant intends to enter a civil partnership, does not fall within the prohibited degrees of relationship for the purposes of Schedule 12 to the Civil Partnership Act.
394. *Subsection (8)* amends Article 54A(13)(a) of the 1987 Order to ensure that the meaning of “relative” for the purposes of an entry in the adoption contact register includes a person related by civil partnership.

## **Chapter 6 – Miscellaneous**

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

395. This section amends Article 8 of the Perjury (Northern Ireland) Order 1979 to make it an offence for a person to make false statements or representations with reference to marriage or civil partnership formation.
396. *Subsection (2)* inserts a new paragraph (1A) into Article 8 making it an offence to knowingly make certain false statements or representations for the purpose of procuring the formation of a civil partnership or a record being made in any register relating to civil partnerships, or as a means of forbidding the issue of a civil partnership document or a document required by an Order in Council. For example, a person who signs a declaration that he is free to enter into a civil partnership, knowing that the declaration is false, commits an offence.

### **Section 205: Housing and tenancies**

397. This section introduces Schedule 18 (Housing and tenancies: Northern Ireland), which makes amendments to a range of enactments relating to housing and tenancies.

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

398. This section introduces Schedule 19 (Family homes and domestic violence), which amends the Family Homes and Domestic Violence (Northern Ireland) Order 1998 and related enactments so that they apply in relation to civil partnerships as they apply in relation to marriages. The amendments will mean that civil partners have the same rights to occupy the matrimonial home. In addition civil partners will be able to apply for non-molestation orders and occupation orders. Occupation orders are orders regulating occupation of the home (which may include excluding the respondent from the home and vicinity of the home and prohibiting, terminating or restricting the exercise of the respondent’s occupation rights, as appropriate).

### **Section 207: Fatal accidents claims**

399. This section extends the provisions of the Fatal Accidents (Northern Ireland) Order 1977 to include civil partners, so that where a person’s death is caused by the wrongful act, neglect or default of another person, a civil partner of the deceased will be able to claim compensation in the same way as a spouse.
400. *Subsections (2), (3) and (4)* widen the definition of “dependant” for the purposes of a right of action under the Order to include civil partners and former civil partners of the deceased; any person who was living with the deceased as if they were a civil partner; and any person (not being a child of the deceased) who was treated by the deceased as a child of the family, in relation to any civil partnership to which the deceased was at any time a party.

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401. *Subsection (5)* defines “former civil partner” as a person whose civil partnership with the deceased has been annulled or dissolved.
402. *Subsection (6)* replaces the reference to a relationship by “affinity” in Article 2(3)(b) of the Order with a reference to a relationship “by marriage or civil partnership”, for the purposes of clarity.
403. *Subsection (7)(a)* enables a civil partner of the deceased to claim bereavement damages. *Subsection (7)(b)* prevents a parent of a deceased minor from making a claim for bereavement damages where the minor had entered into a civil partnership.
404. *Subsection (8)* provides that upon assessing damages payable to a dependant in respect of the death of a person with whom the dependant was living as a civil partner, the court shall take account of the fact that the dependant had no enforceable right to financial support by the deceased as a result of their living together.

***Section 208: Evidence***

405. *Subsection (1)* of this section contains a provision that enactments or rules of law applying to the giving of evidence by a spouse will apply also to the giving of evidence by a civil partner.
406. However, *subsection (2)* sets out that the general provision in *subsection (1)* is subject to any specific amendment made by or under the Civil Partnership Act which relates to the giving of evidence by a civil partner. This takes account of the fact that in some instances it is more appropriate to amend specific provisions in other enactments or rules.
407. *Subsection (5)* provides that any rule of law which makes evidence of family tradition admissible to prove or disprove the existence of a marriage is to apply in a similar way in order to prove or disprove the existence of a civil partnership.

***Section 209: Restrictions on publicity of reports of proceedings***

408. This section extends section 1 of the Matrimonial Causes (Reports) Act (Northern Ireland) 1966 to civil partners. Section 1 of the 1966 Act makes it an offence to publish certain details in connection with judicial proceedings for dissolution or nullity of marriage, judicial separation and any proceedings by one spouse against the other for financial provision or proceedings concerning an order made in connection with any cause or matter. This clause makes it an offence to disclose similar details in relation to civil partners involved in comparable judicial proceedings under the Civil Partnership Act.