

Executive Note

The Civil Partnership (Overseas Relationships) (Scotland) Order 2005 S.S.I. 2005/573

The above instrument was made in exercise of the powers conferred by sections 215(2) and 259(2) of the Civil Partnership Act 2004 (“the 2004 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to make provision concerning overseas relationships which may qualify to be treated as civil partnerships and were entered into prior to commencement of the 2004 Act.

Under section 215 of the 2004 Act, an overseas relationship which would otherwise qualify to be treated as a civil partnership in the UK, but which is entered into before section 215 comes into force, is recognised as valid and treated as having been entered into on commencement of section 215. However, this is not the case where the relationship has already been dissolved or annulled prior to commencement. In that case the overseas relationship is generally to be treated as never having been a civil partnership.

This gives rise to some need for modification in specific areas, where it is necessary to recognise that a civil partnership did once exist, even if it has been dissolved before commencement. Article 2 of this instrument lists provisions in relation to which this is the case, and where a civil partnership will be treated as having existed. For instance, for the purpose of the right of a deceased person’s former civil partner to claim damages in respect of that person’s death under the Damages (Scotland) Act 1976, it should not matter whether or not the relationship was dissolved before commencement of section 215.

Section 212 of the 2004 Act sets out the criteria whereby it is to be decided whether an overseas relationship which may potentially qualify to be treated as a civil partnership has been created. These criteria need some modification in the case of relationships entered into before commencement of the 2004 Act, which this instrument provides.

The instrument also contains provision to deal with the situation where an issue arises as to the legal capacity of a person domiciled in Scotland to enter into an overseas relationship which was registered before commencement of the 2004 Act. It would not be appropriate for this issue to be determined under the main rule in section 215 i.e. as at the time that section 215 came into force, because this might retrospectively validate unacceptable relationships, for instance where one party was under 16 at the time the relationship was registered, but had reached the age of 16 by the time of commencement. The instrument provides for capacity to be determined as at the date of registration of the relationship, but on the basis that the 2004 Act rules on eligibility to enter into a civil partnership were already part of Scots law at that time.

Financial Effects

The instrument has no financial effects on the Scottish Executive, local government or on business.

Scottish Executive Justice Department
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