

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Civil Partnerships: Scotland

Introduction

Chapter 6 – Miscellaneous and Interpretation

Section 126: Regulations

244. This section provides that, in Chapters 2 and 5, “prescribed” means prescribed in regulations made by the Registrar General for Scotland with the approval of the Scottish Ministers. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 127: Attachment

245. This section protects the interests and rights of a civil partner where an attachment has been made on property or furnishing belonging to the other civil partner, which the former uses.

Section 128 - Promise of agreement to enter into civil partnership

246. This section sets out that if a couple make an agreement to register as civil partners of each other, it will not confer any rights or obligations under Scots law. If the promise or agreement to form a civil partnership is broken, no action can be brought in a court in Scotland and this is irrespective of the law applicable to the promise of agreement.

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

247. This section makes provision for intimation on the Lord Advocate of proceedings for either declarator of nullity or dissolution of a civil partnership. *Subsection (1)* provides that the Lord Advocate can become a party to either of these kinds of proceedings, and conduct his case in such manner as he considers appropriate. *Subsection (2)* allows the court to intimate these proceedings on the Lord Advocate if the court thinks it necessary to assist in the determination of the proceedings. *Subsection (3)* provides that, in any case where the Lord Advocate does become a party to the proceedings, no expenses can be claimed against him.

Section 130: Civil partner of accused a competent witness

248. This section provides that the civil partner of an accused person may be called as a witness by the accused, a co-accused, or the prosecutor. If a civil partner of an accused is called as a witness, they cannot be forced to give evidence by the co-accused or the prosecutor, and cannot be forced to reveal communications between the civil partners while the civil partnership continues. If a civil partner of an accused person does not

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

give evidence, neither the defence nor the prosecutor can take advantage of this in any submissions to the court.

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

249. This section ensures that civil partners have the same access to legal rights of succession following the death of a civil partner as a spouse would have following the death of a spouse.

Section 132: Assurance policies: Scotland

250. This section ensures that civil partners are recognised in terms of assurance policies in the same way that spouses are at present.

Section 133: Council Tax: liability of civil partners

251. This section adds a section to the Local Government Finance Act 1992 so that civil partners (and persons living together as such) are jointly and severally liable for the payment of council tax on a property in the same way as spouses (and persons living together as such).

Section 134: General provisions as to fees

252. This section enables a district registrar to refuse to comply with any application made under Part 3 until the appropriate fee has been paid to him. For example, this reflects section 19(2) of the Marriage (Scotland) Act 1977 which provides that an authorised registrar should not solemnise a marriage unless the prescribed fee has been paid. The section also enables the Registrar General to remit fees in cases of hardship. That provision follows what is provided in section 54 of the 1965 Act.

Section 135: Interpretation of this Part

253. This section defines certain expressions used in Part 3 (Civil Partnership: Scotland).

Section 136: The expression “relative” in the 1965 Act

254. This section provides that the definition of “relative” in section 56(1) of the 1965 Act should include “a civil partner and anyone related to the civil partner of the person”. In practical terms, this would (for instance) enable a civil partner or a relative of a civil partner to act as the informant for the registration of a death under section 23 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.