

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Civil partnerships formed or dissolved abroad etc.

Introduction

Chapter 2 – Overseas relationships treated as civil partnerships

414. This Chapter defines the term “overseas relationship”, and sets out the circumstances in which two people who have registered such a relationship are to be treated as having formed a civil partnership as mentioned in section 1(1)(b). However this Chapter should be read in conjunction with the other provisions of the Act concerning the dissolution or annulment of a civil partnership, or the legal separation of civil partners. Where two people have registered an apparent or alleged overseas relationship, the civil partnership will be treated as void or voidable in the United Kingdom in the circumstances set out in subsections (6) to (11) of section 54 (for England and Wales), 124 (for Scotland) or 177 (for Northern Ireland). The circumstances in which the courts in each part of the United Kingdom will recognise the validity of an overseas dissolution or annulment of a civil partnership, or an overseas legal separation of civil partners, are set out in Chapter 3 of Part 5.

Section 212: Meaning of “overseas relationship”

415. This section defines the overseas relationships which are capable of being treated as civil partnerships if the other requirements of this Chapter are met. An overseas relationship must be either a “specified relationship” (see section 213 and Schedule 20) or must meet “the general conditions” (see section 214). In addition the relationship must have been registered with a responsible authority in a country or territory outside the UK by two people who are of the same sex under the relevant law, and (as a matter of UK law) are not already in a civil partnership or lawfully married. (They are also required to be of the same sex as a matter of UK law – see section 216.) The overseas relationship may have been registered before the enactment of the Civil Partnership Act (but, in such cases, section 215 ensures that the couple will usually be treated as having formed a civil partnership only at the time when that section comes into force). “The relevant law” is defined in *subsection (2)* as the law of the country or territory where the overseas relationship is registered, including its rules of private international law.

Section 213: Specified relationships

416. This section introduces Schedule 20, which lists the relationships which are “specified relationships” for the purposes of section 212. The Schedule lists various types of relationship which exist in other countries, such as civil union in Vermont in the United States of America, registered partnership in Denmark, and so on. It also includes marriage in Belgium and the Netherlands (both countries where marriage is available to same-sex partners). Relationships falling within the descriptions in Schedule 20 can be treated as civil partnerships as set out in sections 215 to 218 only if the other

requirements of those sections and section 212 are met. For example, a marriage in Belgium or the Netherlands could be treated as a civil partnership only if it is between two people of the same sex who are not already in a civil partnership or lawfully married.

417. *Subsections (2) to (6)* enable the Schedule to be amended by order made by the Secretary of State with the consent of Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

Section 214: The general conditions

418. If a relationship is not a “specified relationship” listed in Schedule 20, it is nonetheless an “overseas relationship” if it meets the general conditions set out in this section, provided the other requirements of section 212 are also met.
419. The general conditions relate to the following issues:
- (a) exclusivity – it must be a requirement of the relevant law that the relationship cannot be entered into if either of the parties is already in a relationship of that kind or is lawfully married;
 - (b) duration – it must be a requirement of the relevant law that the relationship is indeterminate in duration (this would exclude an arrangement whereby the parties agreed to live together for a fixed period of time); and
 - (c) effect – the effect of entering into the relationship must be that the parties are either treated as a couple under the relevant law (either generally or for certain specified purposes), or are treated as married. This requirement concerns the treatment of the parties under the legal system of the country or territory where the registration took place (see the definition of the “relevant law” in section 212(2)). For example registration under a local or municipal scheme within a particular city or town, which has no legal effects under the law of the country or territory as a whole, would not be sufficient to meet this requirement.

Section 215: Overseas relationships treated as civil partnerships: the general rule

420. *Subsection (1)* provides that two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if under the relevant law they had capacity to enter into the relationship, and met all requirements necessary to ensure its formal validity under that law. “The relevant law” is defined in section 212(2) as the law of the country or territory where the overseas relationship is registered, including its rules of private international law. Section 215 is subject to sections 216 to 218.
421. *Subsection (2)* provides that the civil partnership is treated as having been formed at the time when the overseas relationship is registered as having been entered into. However if the relationship was registered before this section comes into force, then *subsection (3)* provides that the civil partnership is treated as having been formed only at the date when this section comes into force.
422. *Subsections (4) and (5)* deal with the situation where an overseas relationship was dissolved or annulled outside the United Kingdom before this section comes into force. If the dissolution or annulment meets the requirements for recognition under Chapter 3 of Part 5 (see in particular sections 219 and 234 to 237), the parties will be treated as former civil partners who have dissolved or annulled their relationship for the purposes of Schedules 7, 11 and 17 (financial relief in United Kingdom after dissolution or annulment obtained outside the United Kingdom) and for the purposes of any other provision specified by an order made under section 259; but they are not to be treated as having been civil partners for any other purpose.

Section 216: The same-sex requirement

423. *Subsection (1)* provides that both members of the couple must be of the same sex, at the critical time, if the overseas relationship is to be treated as a civil partnership in the UK. “The critical time” is defined in *subsection (5)* to refer back to section 215(2) or (3) (i.e. depending on whether the relationship was entered into before or after the commencement of section 215).
424. *Subsections (2) to (4)* provide an exception where the couple was regarded as a same-sex couple under the relevant law because one of the parties was regarded as having changed gender under that law. In this situation the relationship will be treated as a civil partnership once the party who had changed gender under the relevant law has also acquired a full gender recognition certificate under the Gender Recognition Act 2004. But the parties will only be regarded as having formed a civil partnership if no marriage or civil partnership has been entered into in the interim. These provisions are analogous to provisions contained in the Gender Recognition Act 2004, in relation to overseas marriages.
425. *Subsection (6)* adds the proviso that this section is subject to any enforceable Community right. This means that, where a national of another country within the European Union or European Economic Area has been granted legal recognition of their gender change under the law of that country, and has an enforceable right under European Community law to recognition of their acquired gender in the UK, if they subsequently form a same-sex overseas relationship that relationship can be treated as a civil partnership in the UK without the need for them first to obtain a full gender recognition certificate under the Gender Recognition Act 2004. Again this is analogous to provision contained in the Gender Recognition Act in relation to overseas marriages.

Section 217: Person domiciled in a part of the United Kingdom

426. This section ensures that, where an overseas relationship is registered by a person who is domiciled in England and Wales, Scotland or Northern Ireland, it cannot be treated as a civil partnership unless the couple would have been eligible to register as civil partners of each other in that part of the United Kingdom. Thus the overseas relationship will not be treated as a civil partnership if either party was under 16 at the time of registration, or if the parties are within the prohibited degrees of relationship applicable in the relevant part of the United Kingdom. Where either party was domiciled in Scotland, the overseas relationship will also not be treated as a civil partnership if either party was incapable of understanding the nature of civil partnership. These requirements are additional to the requirements that neither party is already a civil partner or lawfully married and that both parties are of the same sex (see sections 212 and 216).

Section 218: The public policy exception

427. This section provides that two people cannot be treated as having formed a civil partnership as a result of their overseas relationship if it would be manifestly contrary to public policy to recognise the capacity of either or both of them to enter into the relationship under the relevant law.