

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

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Civil partnerships formed or dissolved abroad etc.

Introduction

Chapter 3 - Dissolution etc.: jurisdiction and recognition

Section 219: Power to make provision corresponding to EC Regulation 2201/2003

428. *Subsections (1) and (2)* provide powers for the Lord Chancellor or Scottish Ministers to make regulations concerning:
- a) the jurisdiction of the courts in England and Wales, Scotland or Northern Ireland in relation to the dissolution or annulment of civil partnerships or the legal separation of civil partners, where one of them is a resident or national of a member State or is domiciled in a part of the United Kingdom or the Republic of Ireland; and
 - b) the recognition and enforcement of equivalent judgments from other member States.
429. *Subsection (3)* provides that the regulations may, in particular, make provision corresponding to the rules for dissolution, annulment or legal separation in matrimonial matters set out in EC Regulation 2201/2003. This Regulation will come into effect on 1 March 2005.
430. *Subsection (4)* allows the regulations to define “member State” for the purposes of this Part of the Act and for the purposes of the regulations.
431. *Subsection (5)* provides that the regulations may make provision about recognition of overseas dissolutions etc. even if the date of the dissolution etc. preceded the date on which this section comes into force. This will be relevant in the case of an overseas relationship which was dissolved or annulled in a country or territory outside the UK before the Act is brought into force.
432. Under *subsection (6)* regulations under this section for England and Wales or Northern Ireland must be made by statutory instrument under the affirmative resolution procedure in both Houses of Parliament. Under *subsection (7)* equivalent regulations for Scotland must be made by statutory instrument under the affirmative resolution procedure in the Scottish Parliament.

Section 220: Meaning of “the court”

433. *Sections 220 to 224* extend only to England and Wales. Section 220 defines “the court” in sections 221 to 224 in the same way as in Chapter 2 of Part 2 (see section 37(4)).

Section 221: Proceedings for dissolution, separation or nullity order

434. *Subsection (1)* governs jurisdiction to hear applications for dissolution or separation orders. The court may entertain such proceedings if it has jurisdiction under section 219 regulations or, in cases where no court has jurisdiction under those regulations, where either civil partner is domiciled in England and Wales on the date the proceedings begin. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in England and Wales. This will operate where the section 219 regulations do not give any court jurisdiction and the court decides it is in the interests of justice to assume jurisdiction.
435. *Subsection (2)* gives the court jurisdiction to hear applications for nullity orders in the same circumstances as for dissolution and separation orders and also, in a case where no court has jurisdiction under section 219 regulations, if either civil partner died before proceedings began and was at death domiciled in England and Wales or had been habitually resident there throughout the year ending with the date of death.
436. *Subsection (3)* gives the court jurisdiction, when proceedings are pending under *subsection (1)* or *(2)*, to hear other proceedings for a dissolution, separation or nullity order in respect of the same civil partnership, even if the court would not have jurisdiction to hear the latter proceedings under those subsections.

Section 222: Proceedings for presumption of death order

437. This section gives the court jurisdiction to hear applications for a presumption of death order provided the applicant is domiciled in England and Wales on the date proceedings begin or was habitually resident there throughout the year ending with that date. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in England and Wales. This will operate where the court decides it is in the interests of justice to assume jurisdiction.

Section 223: Proceedings for dissolution, nullity or separation order: supplementary

438. This section allows rules of court to make provision corresponding to the provision for marriages made by Schedule 1 to the [Domestic and Matrimonial Proceedings Act 1973 \(c.45\)](#).

Section 224: Applications for declarations as to validity etc.

439. This section gives the court jurisdiction in relation to proceedings under section 58 (declarations in relation to a civil partnership) provided either of the civil partners is domiciled in England and Wales on the date of the application or has been habitually resident there throughout the year ending with that date, or died before that date and was at death domiciled in England and Wales or had been habitually resident there throughout the year ending with the date of death. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in England and Wales. This will operate where the court decides it is in the interests of justice to assume jurisdiction.

Section 225: Jurisdiction of Scottish courts

440. [Sections 225 to 227](#) extend only to Scotland. *Subsections (1) and (2)* govern the jurisdiction of the Court of Session and the sheriff court to hear applications for the dissolution of a civil partnership or for separation of civil partners. They may entertain such proceedings if they have jurisdiction under any Scottish regulations made under section 219 or, in cases where no court has jurisdiction under those regulations, where either civil partner is domiciled in Scotland on the date the proceedings begin. Where an action is raised in the sheriff court then an additional test of 40 days residence in the sheriffdom will need to be satisfied. The Court of Session alone will also have

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jurisdiction where the parties registered as civil partners in Scotland, no court has jurisdiction under section 219 regulations and the court is satisfied that it is in the interests of justice to assume jurisdiction.

441. Under *subsection (3)*, the Court of Session will have jurisdiction in an action for declarator of nullity of a civil partnership in circumstances largely corresponding to those in subsection (1), but with additional provision where one of the ostensible civil partners has died. *Subsection (4)* makes provision for proceedings parallel to an action already raised.

Section 226: Sisting of proceedings

442. This section allows rules of court to make provision corresponding to the provision for marriages made by Schedule 3 to the [Domestic and Matrimonial Proceedings Act 1973 \(c.45\)](#).

Section 227: Scottish ancillary and collateral orders

443. This section confers jurisdiction on any Scottish court to deal with an application relating to children, aliment (maintenance), financial provision or expenses which is ancillary or collateral to an action for dissolution, separation or declarator of nullity. The only exception is where such jurisdiction would conflict with regulations made under section 219. Section 8 of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1966 \(c.19\)](#) confers power on sheriffs to vary or recall particular types of order made by the Court of Session, provided no party objects. Where section 227 enables the Court of Session to hear an application for variation or recall of one of its own orders, and the order is one to which section 8 (as amended by this Act) applies, *subsection (4)* ensures that the sheriff will also have power to hear the application under the section 8 procedure.

Section 228: Meaning of “the court”

444. [Sections 228 to 232](#) extend only to Northern Ireland. Section 228 defines “the court” for the purposes of sections 229 to 232 as having the meaning given by section 188.

Section 229: Proceedings for dissolution, separation or nullity order

445. *Subsection (1)* governs jurisdiction to hear applications for dissolution or separation orders. A court may entertain such proceedings if it has jurisdiction under section 219 regulations or, in cases where no court has jurisdiction under those regulations, where either civil partner is domiciled in Northern Ireland on the date the proceedings begin. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in Northern Ireland. This will operate where the section 219 regulations do not give any court jurisdiction and the court decides it is in the interests of justice to assume jurisdiction.
446. *Subsection (2)* gives the court jurisdiction to hear applications for nullity orders in the same circumstances as for dissolution and separation orders and also, in a case where no court has jurisdiction under section 219 regulations, if either civil partner died before proceedings began and was at death domiciled in Northern Ireland or had been habitually resident there throughout the year ending with the date of death.
447. *Subsection (3)* gives the court jurisdiction, when proceedings are pending under subsection (1) or (2), to hear other proceedings for a dissolution, separation or nullity order in respect of the same civil partnership, even if the court would not have jurisdiction to hear the latter proceedings under those subsections.

Section 230: Proceedings for presumption of death order

448. This section gives the High Court jurisdiction to hear applications for a presumption of death order provided the applicant is domiciled in Northern Ireland on the date proceedings begin or was habitually resident there throughout the year ending with that date. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in Northern Ireland. This will operate where the court decides it is in the interests of justice to assume jurisdiction.

Section 231: Proceedings for dissolution, nullity or separation order: supplementary

449. This section allows rules of court to make provision corresponding to the provision for marriages made by Schedule 1 to the Matrimonial Causes (Northern Ireland) Order 1978.

Section 232: Applications for declarations as to validity etc.

450. This section gives the court jurisdiction in relation to proceedings under section 181 (declarations in relation to a civil partnership) provided either of the civil partners is domiciled in Northern Ireland on the date of the application or has been habitually resident there throughout the preceding year, or died before that date and was at death domiciled in Northern Ireland or had been habitually resident there throughout the year ending with the date of death. A further discretionary ground of jurisdiction is made available for those cases where the couple registered as civil partners of each other in Northern Ireland. This will operate where the court decides it is in the interests of justice to assume jurisdiction.

Section 233: Effect of dissolution, annulment or separation obtained in the UK

451. *Subsection (1)* provides that no dissolution or annulment of a civil partnership obtained in one part of the United Kingdom can be effective in any part of the United Kingdom unless it has been obtained from a court of civil jurisdiction. The parts of the United Kingdom, for the purposes of sections 233 to 238 are England and Wales, Scotland, and Northern Ireland (see section 237(5)).
452. *Subsection (2)* provides for any dissolution or annulment of a civil partnership or legal separation of civil partners, obtained from a court of civil jurisdiction in one part of the United Kingdom, to be recognised throughout the United Kingdom, subject to subsections (3) and (4).
453. *Subsection (3)* provides that a dissolution, annulment or legal separation obtained from a court of civil jurisdiction in one part of the United Kingdom can be refused recognition in any other part if the dissolution, annulment or separation was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in the other part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in the other part.
454. *Subsection (4)* provides that, in relation to a dissolution or legal separation, recognition can be refused if the dissolution or separation was obtained at a time when, according to the law of the other part, there was no civil partnership in existence.

Section 234: Recognition in the UK of overseas dissolution, annulment or separation

455. This section provides that the validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if it is entitled to recognition either under regulations made under section 219 or under sections 235 to 237. An overseas dissolution, annulment or legal separation is defined as a dissolution or annulment of a civil partnership or a legal separation of civil partners which was obtained outside the

United Kingdom. This includes a dissolution etc. obtained before the date on which this section comes into force. This could be relevant in the case of an overseas relationship which was dissolved or annulled in a country or territory outside the UK.

Section 235: Grounds for recognition

456. *Subsection (1)* provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained by proceedings if:
- (a) it is effective under the law of the country where it was obtained, and
 - (b) at the relevant date (which is defined by *subsection (3)*) either civil partner was habitually resident or domiciled there or was a national of that country.
457. *Subsection (2)* provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained otherwise than by proceedings if:
- (a) it is effective under the law of the country where it was obtained,
 - (b) at the relevant date:
 - both civil partners were domiciled there; or
 - either civil partner was domiciled there and the other was domiciled in a country under the law of which the dissolution etc. is recognised as valid, and
 - (c) neither civil partner was habitually resident in the United Kingdom for the year immediately before the relevant date.
458. *Subsection (3)* defines the “relevant date”. In the case of an overseas dissolution etc. obtained by means of proceedings, the relevant date is defined as the date the proceedings were commenced; in the case of an overseas dissolution etc. otherwise than by proceedings, the relevant date is defined as the date the dissolution etc. was obtained.

Section 236: Refusal of recognition

459. *Subsection (1)* provides for the refusal of recognition of the validity of an overseas dissolution, annulment or legal separation in any part of the United Kingdom if it was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in that part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in that part.
460. *Subsection (2)* provides for the refusal of recognition of the validity of an overseas dissolution or legal separation in any part of the United Kingdom if it was obtained at a time when according to the law of that part there was at that time no civil partnership in existence.
461. *Subsection (3)* provides for the refusal of recognition of the validity of an overseas dissolution, annulment or separation if, in relation to proceedings, reasonable steps were not taken to give notice to one of the civil partners, or one of the civil partners was for any other reason not given a reasonable opportunity to take part in the proceedings; or in the absence of proceedings, if there is no official documentation regarding the effectiveness and validity of the dissolution etc. in the country where it was obtained (or any other country where either civil partner was domiciled).
462. Recognition may also be refused in either case if recognition of the dissolution etc. would be manifestly contrary to public policy.
463. *Subsection (4)* defines the meaning of “official” in relation to the documents referred to in subsection (3) and “the relevant date” in relation to the domicile of a civil partner also referred to in that subsection. “Proceedings” is defined in section 237(5) as meaning judicial or other proceedings.

Section 237: Supplementary provisions relating to recognition of dissolution etc.

464. *Subsection (1)* provides, for the purposes of sections 235 and 236, that a civil partner is to be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom where the question of recognition arises.
465. *Subsection (2)* gives the Lord Chancellor or the Scottish Ministers the power to make regulations applying sections 235 and 236 and subsection (1) with modifications for countries whose territories have different systems of law in force in matters of dissolution, annulment or legal separation, or applying sections 235 and 236 with modifications in relation to an overseas dissolution etc. in relation to an overseas relationship or any case where a civil partner is domiciled in a country or territory whose law does not recognise legal relationships between persons of the same sex. Regulations may also make provision: concerning recognition of the validity of an overseas dissolution, annulment or legal separation in cases where there are cross-proceedings, for example where the validity of an order is contested; with respect to cases where a legal separation is converted under the law of the country or territory where it is obtained into a dissolution effective under the law of that country or territory; and about proof of findings of fact in proceedings outside the UK.
466. *Subsections (3) and (4)* provide that this power is exercisable by statutory instrument, subject to the negative resolution procedure. In the case of regulations made by the Scottish Ministers this will be the negative resolution procedure in the Scottish Parliament.
467. *Subsection (6)* states that nothing in this Chapter requires recognition of any finding of fault made in proceedings for dissolution etc. or recognition of any maintenance, custody or other ancillary order made in those proceedings.

Section 238: Non-recognition elsewhere of dissolution or annulment

468. Under this section, when a court in any part of the United Kingdom has granted a dissolution or annulment of a civil partnership, or a dissolution or annulment has been recognised as valid by virtue of this chapter, the fact that the dissolution or annulment would not be recognised outside the United Kingdom does not prevent either party from entering a later marriage or civil partnership in that part of the United Kingdom or make the later marriage or civil partnership invalid in that part.