

*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 5 – Civil partnerships formed or dissolved abroad etc.**

##### **Introduction**

409. **Part 5** of the Act extends to the whole of the United Kingdom, with the exception of sections 220 to 224 which extend only to England and Wales, sections 225 to 227 which extend only to Scotland and sections 228 to 232 which extend only to Northern Ireland (see section 262(4)).

#### ***Chapter 1 – Registration outside UK under Order in Council***

##### ***Section 210: Registration at British consulates etc.***

410. This section confers power to make subordinate legislation by Order in Council to make provision for two people to register as civil partners of each other in countries or territories outside the United Kingdom in the presence of an officer of Her Majesty's Diplomatic Service. The officers in whose presence the parties may register as civil partners, and the countries or territories where this may take place, will be set out in the Order in Council (see the definition of "prescribed" in section 244(5)). This power will be used to make provisions for civil partnership corresponding to the provisions of the **Foreign Marriage Act 1892 (c.23)**. Under that Act it is possible for UK nationals to marry in accordance with UK law at a diplomatic post overseas in certain circumstances, so this power will enable civil partnerships likewise to be formed at diplomatic posts overseas.
411. *Subsection (2)* sets out the four conditions which the Diplomatic Service officer must be satisfied are met. These are that at least one of the proposed civil partners is a United Kingdom national, that the civil partners would have been eligible to register in the relevant part of the United Kingdom as determined according to the provisions of the Order in Council, that the authorities in the country or territory in question will not object to the registration, and that there are insufficient facilities for them to enter into an overseas relationship under that country's law. "Overseas relationship" is defined in sections 212 to 214. In addition, by *subsection (3)*, the officer is not required to allow the couple to register as civil partners if in his opinion to do so would be inconsistent with international law or the comity of nations, although the Order may include provision for an appeal against any such refusal. "United Kingdom national" is defined in section 245.

##### ***Section 211: Registration by armed forces personnel***

412. This section enables provision to be made by Order in Council for two people to register as civil partners of each other in countries or territories outside the United Kingdom where one of them is a member of Her Majesty's forces serving in the country or territory in question or falls within certain connected categories set out in *subsection (2)*. The countries or territories where a such persons may register will be set out in the

Order in Council (see the definition of “prescribed” in section 244(5)). “Her Majesty’s forces” is defined in section 245(2).

413. This power will be used to make provisions for civil partnership corresponding to section 22 of the [Foreign Marriage Act 1892 \(c.23\)](#). Under that section, members of the armed forces and certain civilians accompanying them can be married outside the UK by a forces chaplain or an officer authorised by the commanding officer. This section allows similar provision to be made by Order in Council for civil partnership registration outside the UK, in the presence of one of the officers responsible for the recording of births, deaths and marriages (and, in future, civil partnerships) among the Service community.

## ***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.

## ***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.

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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 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.

#### ***Chapter 4 – Miscellaneous and supplementary***

##### ***Section 239: Commanding officers' certificates for part 2 purposes***

469. This section applies to cases where two people wish to register as civil partners of each other in England and Wales and one of them (“A”) is a member of the armed forces and the other resides in England and Wales. Her Majesty may by Order in Council make provision for the issue by A’s commanding office of a certificate of no impediment in such cases. A certificate of no impediment is needed for the two people to register as civil partners of each other under section 20. The section follows the approach taken in the [Marriage Act 1949 \(c.76\)](#) in relation to persons serving in a naval vessel at sea, but extends it to all members of the armed forces.

##### ***Section 240: Certificates of no impediment to overseas relationships***

470. This section permits the making of an Order in Council to allow for the issue of a certificate of no impediment where a United Kingdom national (or a Commonwealth national if prescribed in the Order in Council) intends to enter into an overseas relationship with a person who is neither a United Kingdom national nor a Commonwealth national. The Order in Council will also prescribe the countries or territories which are covered. This power will be used to make provision corresponding to the provisions of section 1(1) of the [Marriage with Foreigners Act 1906 \(c.40\)](#). “United Kingdom national” is defined in section 245. “Overseas relationship” is defined in sections 212 to 214.

##### ***Section 241: Transmission of certificates of registration of overseas relationships***

471. This section permits the making of an Order in Council to provide for the transmission to the Registrar General of foreign certificates in relation to overseas relationships, for the issue of certified copies by the Registrar General, and for these to be received in evidence. This section will be used to make provision for civil partnerships corresponding to the provisions of section 18(2) of the [Foreign Marriage Act 1892 \(c.23\)](#).

##### ***Section 242: Power to make provision relating to certain Commonwealth forces***

472. This section permits the making of an Order in Council to ensure that, where the law of certain Commonwealth countries makes provision corresponding to section 211 (allowing for registration by armed forces personnel serving abroad), relationships formed under such provisions can be recognised in the UK. This will enable provision to be made, if necessary, equivalent to that which can be made under section 3(2) of the [Foreign Marriage Act 1947 \(c.33\)](#).

##### ***Section 243: Fees***

473. *Subsection (1)* provides that the power of the Chancellor of the Exchequer under section 34(1) to make provision for fees may be used to prescribe fees in respect of things done by registration authorities, or by or on behalf of the Registrar General for England and Wales, by virtue of an Order in Council under Part 5 of the Act. This could be used, for example, to set a fee for attesting a notice of intention to register an overseas relationship under an Order in Council made under section 240 (certificates of no impediment to overseas relationships).
474. *Subsections (2) and (3)* provide power for the Registrar General for Scotland, with the approval of the Scottish Ministers, to make regulations prescribing fees in respect of things done by virtue of an Order in Council under Part 5 of the Act.

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475. *Subsection (4)* provides that the power of the Department of Finance and Personnel in Northern Ireland under section 157(1) to make provision for fees may be used to prescribe fees in respect of things required by virtue of an Order in Council under Part 5 of the Act to be done by or on behalf of the Registrar General for Northern Ireland.

***Section 244: Orders in Council: supplementary***

476. This section contains supplementary provisions in relation to the powers to make an Order in Council contained in sections 210, 211 and 239 to 242. Statutory instruments containing an Order in Council under those sections are to be subject to the negative resolution procedure. This procedure applies even if other provisions are included which are made by Order in Council under existing legislation on foreign marriages, such as the Foreign Marriage Act 1892. This section also provides that Orders in Council under those sections may make different provision for different cases. This may be necessary, for example, to take account of differing local conditions in different countries. They may in addition include, for example, supplementary, consequential and transitional provisions. *Subsection (2)* makes clear that such provisions may correspond to, or apply with modifications, any provision of or made under this Act or any Act relating to marriage outside the UK

***Section 245: Interpretation***

477. This section defines the terms “United Kingdom national” and “Her Majesty’s forces” for the purposes of this Part of the Act.