



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 3

#### CIVIL PARTNERSHIP: SCOTLAND

### CHAPTER 5

#### DISSOLUTION, SEPARATION AND NULLITY

##### *Dissolution and separation*

#### **117 Dissolution**

- (1) An action for the dissolution of a civil partnership may be brought in the Court of Session or in the sheriff court.
- (2) In such an action the court may grant decree, if, but only if, it is established that—
  - (a) the civil partnership has broken down irretrievably, or
  - (b) an interim gender recognition certificate under the Gender Recognition Act 2004 (c. 7) has, after the date of registration of the civil partnership, been issued to either of the civil partners.
- (3) The irretrievable breakdown of a civil partnership is taken to be established if—
  - (a) since the date of registration of the civil partnership the defender has at any time behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender,
  - (b) the defender has wilfully and without reasonable cause deserted the pursuer and during a continuous period of two years immediately succeeding the defender's desertion—
    - (i) there has been no cohabitation between the parties, and

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- (ii) the pursuer has not refused a genuine and reasonable offer by the defender to adhere,
  - (c) there has been no cohabitation between the civil partners at any time during a continuous period of two years after the date of registration of the civil partnership and immediately preceding the bringing of the action and the defender consents to the granting of decree of dissolution of the civil partnership, or
  - (d) there has been no cohabitation between the civil partners at any time during a continuous period of 5 years after that date and immediately preceding the bringing of the action.
- (4) Provision is to be made by act of sederunt—
- (a) for the purpose of ensuring that, in an action to which paragraph (c) of subsection (3) relates, the defender has been given such information as enables that civil partner to understand—
    - (i) the consequences of consenting to the granting of decree, and
    - (ii) the steps which must be taken to indicate such consent, and
  - (b) as to the manner in which the defender in such an action is to indicate such consent, and any withdrawal of such consent,
- and where the defender has indicated (and not withdrawn) such consent in the prescribed manner, that indication is sufficient evidence of such consent.
- (5) Provision is to be made by act of sederunt for the purpose of ensuring that, where in an action for the dissolution of a civil partnership the defender is suffering from mental illness, the court appoints a curator ad litem to the defender.
- (6) In an action to which paragraph (d) of subsection (3) relates, even though irretrievable breakdown of the civil partnership is established the court is not bound to grant decree if in its opinion to do so would result in grave financial hardship to the defender.
- (7) For the purposes of subsection (6), hardship includes the loss of the chance of acquiring any benefit.
- (8) In an action for dissolution of a civil partnership the standard of proof required to establish the ground of action is on balance of probability.

## **118 Encouragement of reconciliation**

- (1) At any time before granting decree in an action by virtue of paragraph (a) of section 117(2) for dissolution of a civil partnership, if it appears to the court that there is a reasonable prospect of a reconciliation between the civil partners it must continue, or further continue, the action for such period as it thinks proper to enable attempts to be made to effect such a reconciliation.
- (2) If during any such continuation the civil partners cohabit with one another, no account is to be taken of such cohabitation for the purposes of that action.

## **119 Effect of resumption of cohabitation**

- (1) In an action to which paragraph (b) of section 117(3) relates, the irretrievable breakdown of a civil partnership is not to be taken to be established if, after the expiry of the period mentioned in that paragraph—
  - (a) the pursuer resumes cohabitation with the defender, and

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(b) cohabits with the defender at any time after the end of a period of 3 months commencing with the date of such resumption.

(2) Subsection (1) is subject to section 118(2).

(3) In considering whether any period mentioned in paragraph (b), (c) or (d) of section 117(3) has been continuous, no account is to be taken of any period or periods not exceeding 6 months in all during which the civil partners cohabited with one another; but no such period or periods during which the civil partners cohabited with one another is to count as part of the period of non-cohabitation required by any of those paragraphs.

## **120 Separation**

(1) An action for the separation of the civil partners in a civil partnership may be brought in the Court of Session or in the sheriff court.

(2) In such an action the court may grant decree if satisfied that the circumstances set out in any of paragraphs (a) to (d) of section 117(3) are established.

## **121 Dissolution following on decree of separation**

(1) The court may grant decree in an action for the dissolution of a civil partnership even though decree of separation has previously been granted to the pursuer on the same, or substantially the same, facts as those averred in support of that action; and in any such action the court may treat an extract decree of separation lodged in process as sufficient proof of the facts under which that decree was granted.

(2) Nothing in this section entitles a court to grant decree of dissolution of a civil partnership without receiving evidence from the pursuer.

## **122 Registration of dissolution of civil partnership**

(1) The Registrar General is to maintain at the General Register Office a register of decrees of dissolution of civil partnership (a register which shall be known as the “Register of Dissolutions of Civil Partnership”).

(2) The Registrar General is to cause to be made and kept at the General Register Office an alphabetical index of the entries in that register.

(3) The register is to be in such form as may be prescribed.

(4) On payment to him of such fee or fees as may be prescribed, the Registrar General must, at any time when the General Register Office is open for that purpose—

(a) cause a search of the index to be made on behalf of any person or permit any person to search the index himself,

(b) issue to any person an extract of any entry in the register which that person may require.

(5) An extract of any entry in the register is to be sufficient evidence of the decree of dissolution to which it relates.

(6) The Registrar General may—

(a) delete,

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- (b) amend, or
  - (c) substitute another entry for,
- any entry in the register.

### *Nullity*

#### **123 Nullity**

Where two people register in Scotland as civil partners of each other, the civil partnership is void if, and only if—

- (a) they were not eligible to do so, or
- (b) though they were so eligible, either of them did not validly consent to its formation.

#### **124 Validity of civil partnerships registered outside Scotland**

- (1) Where two people register as civil partners of each other in England and Wales—
  - (a) the civil partnership is void if it would be void in England and Wales under section 49, and
  - (b) the civil partnership is voidable if it would be voidable there under section 50(1)(a), (b), (c) or (e).
- (2) Where two people register as civil partners of each other in Northern Ireland, the civil partnership is—
  - (a) void, if it would be void in Northern Ireland under section 173, and
  - (b) voidable, if it would be voidable there under section 174(1)(a), (b), (c) or (e).
- (3) Subsection (4) applies where two people register as civil partners of each other under an Order in Council under—
  - (a) section 210 (registration at British consulates etc.), or
  - (b) section 211 (registration by armed forces personnel),
 (“the relevant section”).
- (4) The civil partnership is—
  - (a) void, if—
    - (i) the condition in subsection (2)(a) or (b) of the relevant section is not met, or
    - (ii) a requirement prescribed for the purposes of this paragraph by an Order in Council under the relevant section is not complied with, and
  - (b) voidable, if—
    - (i) the appropriate part of the United Kingdom is England and Wales and the circumstances fall within section 50(1)(a), (b), (c) or (e), or
    - (ii) the appropriate part of the United Kingdom is Northern Ireland and the circumstances fall within section 174(1)(a), (b), (c) or (e).
- (5) The appropriate part of the United Kingdom is the part by reference to which the condition in subsection (2)(b) of the relevant section is met.
- (6) Subsections (7) and (8) apply where two people have registered an apparent or alleged overseas relationship.

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- (7) The civil partnership is void if—
- (a) the relationship is not an overseas relationship, or
  - (b) (even though the relationship is an overseas relationship), the parties are not treated under Chapter 2 of Part 5 as having formed a civil partnership.
- (8) The civil partnership is voidable if—
- (a) the overseas relationship is voidable under the relevant law,
  - (b) where either of the parties was domiciled in England and Wales at the time when the overseas relationship was registered, the circumstances fall within section 50(1)(a), (b), (c) or (e), or
  - (c) where either of the parties was domiciled in Northern Ireland at the time when the overseas relationship was registered, the circumstances fall within section 174(1)(a), (b), (c) or (e).
- (9) Section 51 or (as the case may be) section 175 applies for the purposes of—
- (a) subsections (1)(b), (2)(b) and (4)(b),
  - (b) subsection (8)(a), in so far as applicable in accordance with the relevant law, and
  - (c) subsection (8)(b) and (c).
- (10) In subsections (8)(a) and (9)(b) “the relevant law” means the law of the country or territory where the overseas relationship was registered (including its rules of private international law).
- (11) For the purposes of subsections (8) and (9)(b) and (c), references in sections 50 and 51 or (as the case may be) sections 174 and 175 to the formation of the civil partnership are to be read as references to the registration of the overseas relationship.

*Financial provision after overseas proceedings*

**125 Financial provision after overseas dissolution or annulment**

Schedule 11 relates to applications for financial provision in Scotland after a civil partnership has been dissolved or annulled in a country or territory outside the British Islands.