

Draft Regulations laid before Parliament under section 219(6) of the Civil Partnership Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

**JUDGMENTS, ENGLAND AND WALES
JUDGMENTS, NORTHERN IRELAND
FAMILY LAW, ENGLAND AND WALES
FAMILY LAW, NORTHERN IRELAND**

The Civil Partnership (Jurisdiction and
Recognition of Judgments) Regulations 2005

Made - - - - 2005

Coming into force - - 5th December 2005

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 219(1), (3), (4) and (5) of the Civil Partnership Act 2004⁽¹⁾. In accordance with section 219(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 and shall come into force on 5 December 2005.

Extent

2.—(1) Except as provided by this regulation, these Regulations extend to England and Wales and Northern Ireland.

(2) Regulations 4 and 11(1) extend to England and Wales only.

(3) Regulations 5 and 11(2) extend to Northern Ireland only.

Application

3.—(1) These Regulations apply to proceedings for the dissolution or annulment of an overseas relationship entitled to be treated as a civil partnership, or the legal separation of the same, as they apply to proceedings for the dissolution or annulment of a civil partnership or the legal separation of civil partners.

(2) Regulations 7 and 8, in respect of recognition and non-recognition of a judgment, apply to all judgments even if the date of the judgment is earlier than the date on which section 219 of the Civil Partnership Act 2004 and these Regulations come into force.

PART 1

Jurisdiction

Jurisdiction: England and Wales

4. The courts in England and Wales shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where—

- (a) both civil partners are habitually resident in England and Wales;
- (b) both civil partners were last habitually resident in England and Wales and one of the civil partners continues to reside there;
- (c) the respondent is habitually resident in England and Wales;
- (d) the petitioner is habitually resident in England and Wales and has resided there for at least one year immediately preceding the presentation of the petition; or
- (e) the petitioner is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately preceding the presentation of the petition.

Jurisdiction: Northern Ireland

5. The courts in Northern Ireland shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where—

- (a) both civil partners are habitually resident in Northern Ireland;
- (b) both civil partners were last habitually resident in Northern Ireland and one of the civil partners continues to reside there;
- (c) the respondent is habitually resident in Northern Ireland;
- (d) the petitioner is habitually resident in Northern Ireland and has resided there for at least one year immediately preceding the presentation of the petition; or
- (e) the petitioner is domiciled and habitually resident in Northern Ireland and has resided there for at least six months immediately preceding the presentation of the petition.

PART 2

Recognition and Refusal of Recognition of Judgments

Definitions for Part 2

6.—(1) In this Part “judgment” means an order for the dissolution or annulment of a civil partnership or the legal separation of civil partners, pronounced by a court of a Member State, however termed by that State.

(2) A “court of a Member State” referred to in paragraph (1) means all the authorities, whether judicial or administrative, in Member States with jurisdiction in those matters falling within the scope of these Regulations.

(3) The “Member States” referred to in paragraph (1) are any of the following States—
Belgium, Cyprus, Czech Republic, Denmark, Germany, Greece, Spain, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Finland and Sweden.

Recognition of a judgment

7.—(1) Where a judgment is (or has been) given in respect of a civil partnership, that judgment shall, without any special formalities, be recognised in England and Wales or Northern Ireland.

(2) Any interested party may, in accordance with the procedure set out in rules, apply for a judgment to be, or not to be, recognised.

(3) Where the recognition of a judgment is raised as an incidental issue in proceedings before the court, that court may determine the issue.

Refusal of recognition of a judgment

8.—(1) Recognition of the validity of a judgment may be refused in England and Wales or Northern Ireland if the judgment was obtained at a time when it was irreconcilable with a decision determining the question of the subsistence or validity of the civil partnership—

- (a) previously given by a court of civil jurisdiction in that part of the United Kingdom, or
- (b) previously given by a court elsewhere and recognised or entitled to be recognised in that part of the United Kingdom.

(2) Recognition of the validity of a judgment may be refused in England and Wales or Northern Ireland if the judgment was obtained at a time when, according to the law of that part of the United Kingdom, there was no subsisting civil partnership.

(3) Recognition of the validity of a judgment may be refused if—

- (a) in the case of a judgment obtained by means of proceedings, it was obtained—
 - (i) without such steps having been taken for giving notice of the proceedings to a civil partner as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or
 - (ii) without a civil partner having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given, or
- (b) in the case of a judgment obtained otherwise than by means of proceedings—
 - (i) there is no official document certifying the judgment is effective under the law of the country in which it was obtained, or

- (ii) where either civil partner was domiciled in another country at the relevant date, there is no official document certifying that the judgment is recognised as valid under the law of that other country, or
 - (c) in either case, recognition of the judgment would be manifestly contrary to public policy.
- (4) In this regulation—
- “official”, in relation to a document certifying that a judgment is effective, or is recognised as valid, under the law of any country, means issued by a person or body appointed or recognised for the purpose under that law;
 - “the relevant date” means—
- (a) in the case of a judgment obtained by means of proceedings, the date of the commencement of the proceedings;
 - (b) in the case of a judgment obtained otherwise than by means of proceedings, the date on which it was obtained.

Jurisdiction and review

- 9. The court may not review the jurisdiction of the court which issued the judgment.
- 10. A judgment may not be reviewed as to its substance.

Differences in applicable law

- 11.—(1) The recognition of a judgment in England and Wales may not be refused because the law of England and Wales would not allow dissolution, annulment or legal separation on the same facts.
- (2) The recognition of a judgment in Northern Ireland may not be refused because the law of Northern Ireland would not allow dissolution, annulment or legal separation on the same facts.

Stay of proceedings

- 12. Where recognition is sought of a judgment given in a Member State and an appeal against that judgment has been lodged in a Member State, the court may stay the proceedings.

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations are to make corresponding provisions, as far as is possible in domestic law, for civil partnerships as to the jurisdiction and recognition elements of Council Regulation (EC) 2201/2003 for matrimonial matters as regards the law of England and Wales and Northern Ireland.

The Regulations apply to all civil partnerships including overseas relationships entitled to be treated as a civil partnership, by virtue of the Civil Partnership Act 2004.

Regulation 3(2) allows for the recognition and non-recognition of judgments regarding relationships that were formed before the coming into force of these Regulations and the 2004 Act.

Regulations 4 and 5 set out the criteria for accepting jurisdiction for dissolution, annulment or legal separation proceedings in respect of civil partners.

Regulations 7 and 8 set out the criteria for recognition and non-recognition of an order made in another Member States for the dissolution or annulment of a civil partnership or the legal separation of civil partners.

Regulations 9 and 10 prevent the court from reviewing the jurisdiction of the court of the Member State that made the original judgment and also prevents a court from reviewing the substance of that judgment.

Regulation 11 ensures that a judgment is recognised notwithstanding that there might well have been a different outcome if the law of England and Wales or Northern Ireland had been applied to the facts of the case.

Regulation 12 allows the court to stay proceedings for recognition of a judgment when there is an appeal outstanding against that judgment.