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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2005 No.**

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

**PART 2**

**RECOGNITION AND REFUSAL OF RECOGNITION OF JUDGMENTS**

**Definitions for Part 2**

5.—(1) In this Part “judgment” means an order for the dissolution or annulment of a civil partnership or the 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—

Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden.

**Recognition of a judgment**

6.—(1) Subject to regulation 7, where a judgment is (or has been) given in respect of a civil partnership, that judgment shall be recognised in Scotland.

(2) Any interested party may apply to the Court of Session for a declarator of recognition or non recognition of a judgment.

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

**Refusal of recognition of judgment**

7.—(1) Recognition of the validity of a judgment may be refused in Scotland 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 Scotland; or
- (b) previously given by a court elsewhere and recognised or entitled to be recognised in Scotland.

(2) Recognition of the validity of a judgment may be refused in Scotland if the judgment was obtained at a time when, according to the law of Scotland, 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 proceeding 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 a body appointed or recognised for the purpose under that law; and
  - “the relevant date” means—
    - (a) in the case of a judgment obtained by means of proceedings, the date of commencement of proceedings; or
    - (b) in the case of a judgment obtained otherwise than by means of proceedings, the date on which it was obtained.

#### **Jurisdiction and review**

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

#### **Differences in applicable law**

- 10. The recognition of a judgment may not be refused because the law of Scotland would not allow dissolution, annulment or separation on the same facts.

#### **Sist of proceedings**

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