

2005 No. 567

CIVIL PARTNERSHIP

**The Civil Partnership (Supplementary Provisions relating to the
Recognition of Overseas Dissolutions, Annulments or
Separations) (Scotland) Regulations 2005**

Made - - - - - *10th November 2005*
Laid before the Scottish Parliament *11th November 2005*
Coming into force - - - *5th December 2005*

The Scottish Ministers, in exercise of the powers conferred by section 237(2) of the Civil Partnership Act 2004(a), and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Regulations 2005 and shall come into force on 5th December 2005.

(2) In these Regulations “the Act” means the Civil Partnership Act 2004.

(3) These Regulations extend to Scotland only.

Provisions relating to countries which comprise territories having different systems of law

2.—(1) In relation to a dissolution, annulment or separation obtained under the law of a territory in a country whose territories have different systems of law in force as regards such matters, sections 235, 236 and 237(1) of the Act shall have effect subject to the following modifications.

(2) For section 235(1) substitute the following—

“(1) The validity of an overseas dissolution, annulment or separation obtained by means of proceedings is to be recognised if—

- (a) the dissolution, annulment or separation is effective under the law of the territory in which it was obtained, and at the relevant date either civil partner was habitually resident or domiciled in that territory; or
- (b) the dissolution, annulment or separation is effective throughout the country in which it was obtained and at the relevant date either civil partner was a national of that country.”

(a) 2004 c.33.

(3) For section 235(2) substitute the following—

“(2) The validity of an overseas dissolution, annulment or separation obtained otherwise than by means of proceedings is to be recognised if—

- (a) the dissolution, annulment or separation is effective under the law of the territory in which it was obtained,
- (b) at the relevant date—
 - (i) each civil partner was domiciled in that territory, or
 - (ii) either civil partner was domiciled in that territory and the other was domiciled in a country or territory under whose law the dissolution, annulment or separation is recognised as valid, and
- (c) neither civil partner was habitually resident in the United Kingdom throughout the period of 1 year immediately preceding that date.”.

(4) For section 236(3)(b) substitute the following—

“(b) in the case of a dissolution, annulment or separation obtained otherwise than by means of proceedings—

- (i) there is no official document certifying that the dissolution, annulment or separation is effective under the law of the territory in which it was obtained, or
- (ii) where either civil partner was domiciled in another country or territory at the relevant date, there is no official document certifying that the dissolution, annulment or separation is recognised as valid under the law of that other country or territory, or”.

(5) For the definition of “official” in section 236(4) substitute the following—

““official”, in relation to a document certifying that a dissolution, annulment or separation is effective, or is recognised as valid, under the law of any country or territory, means issued by a person or body appointed or recognised for the purpose under that law;”.

(6) For section 237(1) substitute the following—

“(1) For the purposes of sections 235 and 236—

- (a) where a civil partner has obtained an overseas dissolution, annulment or separation in a territory, he is to be treated as domiciled in that territory if he was domiciled there—
 - (i) according to the law of that territory in family matters, or
 - (ii) according to the law of Scotland;
- (b) in all other cases a civil partner is to be treated as domiciled in a country or territory if he was domiciled in that country or territory—
 - (i) according to the law of that country or territory in family matters, or
 - (ii) according to the law of Scotland.”

Recognition of an overseas dissolution, annulment or separation in the case of an overseas relationship (or an apparent or alleged relationship) where a civil partner is domiciled in a country whose law does not recognise relationships between two people of the same sex

3.—(1) In relation to an overseas dissolution, annulment or separation in the case of an overseas relationship (or an apparent or alleged overseas relationship), section 235 applies with the following modifications.

(2) After subsection (1) insert–

“(1A) The validity of an overseas dissolution, annulment or separation obtained by means of proceedings shall also be recognised if–

- (a) the dissolution, annulment or separation is effective under the law of the country in which it was obtained;
- (b) at the relevant date neither civil partner–
 - (i) was habitually resident in the country in which the dissolution, annulment or separation was obtained;
 - (ii) was domiciled in that country; or
 - (iii) was a national of that country; and
- (c) the party seeking the dissolution, annulment or separation was either habitually resident or domiciled in a country whose law does not recognise relationships between people of the same sex and does not provide for dissolution, annulment or separation as regards such relationships.

(1B) References in paragraph (1A) to “country” shall include, where appropriate, a territory which comprises part of a country in which different systems of law are in force in matters relating to the dissolution or annulment of a civil partnership or the separation of civil partners.”

(3) After subsection (2) insert–

“(2A) The validity of an overseas dissolution, annulment or separation obtained otherwise than by means of proceedings shall also be recognised if–

- (a) the dissolution, annulment or separation is effective under the law of the country in which it was obtained;
- (b) at the relevant date one civil partner was domiciled in that country and the other was domiciled in a country whose law does not recognise relationships between people of the same sex and does not provide for recognition of the validity of dissolutions, annulments or separations as regards such relationships; and
- (c) neither civil partner was habitually resident in the United Kingdom throughout the period of 1 year immediately preceding that date.

(2B) References in paragraph (2A) to “country” shall include a territory which comprises part of a country in which different systems of law are in force in matters relating to the dissolution or annulment of a civil partnership or the separation of civil partners.”.

Cross-proceedings

4. Where there have been cross-proceedings, the validity of an overseas dissolution, annulment or separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if–

- (a) the requirements of section 235(1)(b)(i), (ii) or (iii) of the Act or of regulation 3 above are satisfied in relation to the date of the commencement either of the original proceedings or of the cross-proceedings; and
- (b) the validity of the dissolution, annulment or separation is otherwise entitled to recognition by virtue of sections 235 and 236 of the Act.

Dissolutions following separations

5.—(1) Where a separation, the validity of which is entitled to recognition either by virtue of section 235 of the Act or by virtue of regulation 3 or 4 above, is converted, under the law of the country in which it was obtained, into a dissolution which is effective under the law of that country, the validity of that dissolution shall be recognised whether or not that dissolution would itself be entitled to recognition by virtue of any of those provisions.

(2) In cases where a country comprises territories in which different systems of law are in force in matters concerning the dissolution or annulment of a civil partnership or the separation of civil partners, for the words in paragraph (1) above “under the law of the country in which it was obtained, into a dissolution which is effective under the law of that country” there shall be substituted the words “under the law of the territory in which it was obtained, into a dissolution which is effective throughout the country of which that territory forms a part”.

Proof of facts relevant to recognition

6.—(1) For the purpose of deciding whether an overseas dissolution, annulment or separation obtained by means of proceedings is entitled to recognition by virtue of section 235 of the Act or regulation 3, 4 or 5 above, any finding of fact made (whether expressly or by implication) in the proceedings and on the basis of which jurisdiction was assumed in the proceedings shall—

- (a) if both parties to the civil partnership took part in the proceedings, be conclusive evidence of the fact found; and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this regulation “finding of fact” includes a finding that either party to the civil partnership—

- (a) was habitually resident in the country in which the dissolution, annulment or separation was obtained;
- (b) was under the law of that country domiciled there; or
- (c) was a national of that country.

(3) For the purposes of paragraph (1)(a) above, a party to the civil partnership who has appeared in judicial proceedings shall be treated as having taken part in them.

(4) References in this regulation to “country” include references to a territory which comprises part of a country in which different systems of law are in force in matters relating to the dissolution or annulment of a civil partnership or the separation of civil partners.

HUGH HENRY

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th November 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make supplemental provision for the recognition in Scotland of dissolutions and annulments of civil partnerships and the separation of civil partners obtained abroad. This is in addition to the provision made in sections 234 to 237 of the Civil Partnership Act 2004.

Regulation 2 provides for countries comprising two or more territories which have different systems of law in relation to this subject matter. It ensures that such territories are treated for recognition purposes as countries. It is analogous to section 49 of the Family Law Act 1986, Part II of which deals with the recognition of divorces, nullity of marriage and the separation of married parties.

Regulation 3 provides for situations where section 235 of the 2004 Act would be insufficient to ensure the proper recognition of the validity of certain overseas dissolutions etc. because one or both of the civil partners is either habitually resident or domiciled in a country or territory whose law does not recognise relationships between people of the same sex.

Regulations 4, 5 and 6 provide respectively for the recognition of certain dissolutions etc. obtained in cross-proceedings, the recognition of certain dissolutions obtained following the conversion of separations and the facilitation of the proof of certain facts relevant to recognition and established in the earlier proceedings abroad. These provisions are analogous to section 47(1) and (2) and section 48 of the 1986 Act.

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