



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) [^{F1}subject to subsection (3A),] 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) ^{F2}
 - (c) there has been no cohabitation between the civil partners at any time during a continuous period of [^{F3}one year] after the date of registration of the civil partnership and immediately preceding the bringing of the action and

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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 [^{F4}two] years after that date and immediately preceding the bringing of the action.

[^{F5}(3A) Subsection (2)(b)—

- (a) does not apply where, under the Gender Recognition Act 2004, a Gender Recognition Panel issues a full gender recognition certificate to the person to whom the interim gender recognition certificate was issued, but
- (b) continues to apply despite a full gender recognition certificate being issued to that person by the sheriff under section 4E of that Act.]

(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) ^{F6}

(7) ^{F7}

(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.

Textual Amendments

- F1** Words in s. 117(2)(b) inserted (30.11.2021) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 6\(2\)\(a\)](#); S.S.I. 2021/351, reg. 2, sch. (with reg. 3)
- F2** S. 117(3)(b) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); S.S.I. 2006/212, [art. 2](#) (subject to arts. 3-13)
- F3** Words in s. 117(3)(c) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 33, 46(2), [Sch. 1 para. 9\(a\)](#); S.S.I. 2006/212, [art. 2](#) (subject to arts. 3-13)
- F4** Word in s. 117(3)(d) substituted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 33, 46(2), [Sch. 1 para. 9\(b\)](#); S.S.I. 2006/212, [art. 2](#) (subject to arts. 3-13)
- F5** S. 117(3A) inserted (30.11.2021) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 6\(2\)\(b\)](#); S.S.I. 2021/351, reg. 2, sch. (with reg. 3)
- F6** S. 117(6) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); S.S.I. 2006/212, [art. 2](#) (subject to arts. 3-13)
- F7** S. 117(7) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); S.S.I. 2006/212, [art. 2](#) (subject to arts. 3-13)

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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) ^{F8}
- (2) ^{F9}
- (3) In considering whether any period mentioned in paragraph ^{F10} . . . , (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.

Textual Amendments

- F8** S. 119(1) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); [S.S.I. 2006/212](#), [art. 2](#) (subject to arts. 3-13)
- F9** S. 119(2) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); [S.S.I. 2006/212](#), [art. 2](#) (subject to arts. 3-13)
- F10** Word in s. 119(3) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); [S.S.I. 2006/212](#), [art. 2](#) (subject to arts. 3-13)

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.

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F11}121A Postponement of decree of dissolution where religious impediment to marry exists

- (1) Notwithstanding that irretrievable breakdown of a civil partnership has been established in an action for dissolution, the court may—
 - (a) on the application of a party (“the applicant”), and
 - (b) if satisfied—
 - (i) that subsection (2) applies, and
 - (ii) that it is just and reasonable to do so,
 postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).
- (2) This subsection applies where—
 - (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage, and
 - (b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.
- (3) A party complies with this subsection by acting in the way described in subsection (2)(b).
- (4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).
- (5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from the relevant religious body confirming that the other party has acted in the way described in subsection (2)(b).
- (6) For the purposes of subsection (5), a religious body is “relevant” if the applicant considers the body competent to provide the confirmation referred to in that subsection.
- (7) In this section—

“religious marriage” means a marriage solemnised by a marriage celebrant of a specified religious body, and “religion of that marriage” is to be construed accordingly,

“specified” means specified by regulations made by the Scottish Ministers.
- (8) Any reference in this section to a marriage celebrant of a specified religious body is a reference to—
 - (a) a minister, clergyman, pastor or priest of such a body,
 - (b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 as empowered to solemnise marriages,
 - (c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.]

Textual Amendments

- F11** S. 121A inserted (1.2.2021 for specified purposes, 1.6.2021 in so far as not already in force) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), **ss. 11(2)**, 16; [S.S.I. 2020/414](#), **reg. 2(1)(c)**; [S.S.I. 2021/23](#), **reg. 2**, **sch.** (with **reg. 3**)

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

122 [F12]Registration of dissolutions and declarators of nullity of civil partnerships

- (1) The Registrar General is to maintain at the General Register Office a register of decrees of dissolution [F13]and of declarator of nullity] 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 [F14]or, as the case may be, of the declarator of nullity of civil partnership] to which it relates.
- (6) The Registrar General may—
 - (a) delete,
 - (b) amend, or
 - (c) substitute another entry for,any entry in the register.

[F15](7) Section 39C of the 1965 Act applies in relation to the Register of Dissolutions of Civil Partnership as it applies in relation to the Register of Divorces.]

Textual Amendments

- F12** S. 122 heading substituted (30.11.2023) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 6\(3\)\(c\)](#); [S.S.I. 2023/146](#), reg. 2, sch.
- F13** Words in s. 122(1) inserted (30.11.2023) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 6\(3\)\(a\)](#); [S.S.I. 2023/146](#), reg. 2, sch.
- F14** Words in s. 122(5) inserted (30.11.2023) by [Civil Partnership \(Scotland\) Act 2020 \(asp 15\)](#), s. 16, [sch. 2 para. 6\(3\)\(b\)](#); [S.S.I. 2023/146](#), reg. 2, sch.
- F15** S. 122(7) inserted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), [ss. 52\(7\)](#), [63\(2\)](#); [S.S.I. 2006/469](#), [art. 2](#), Sch. 1

Commencement Information

- I1** S. 122 wholly in force at 5.12.2005; s. 122 not in force at Royal Assent see s. 263; s. 122(3) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), Sch.; s. 122(4) in force at 14.9.2005 for certain purposes by [S.S.I. 2005/428](#), [art. 2](#), Sch. and otherwise 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#); s. 122(1)(2)(5)(6) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Nullity

123 Nullity

[^{F16}(1)] 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, ^{F17} . . .
- (b) though they were so eligible, either of them did not ^{F18} . . . consent to its formation [^{F19}, or.
- (c) at the time of registration one of them who was capable of consenting to the formation of the civil partnership purported to give consent but did so by reason only of duress or error.]

[^{F20}(2) In this section “error” means—

- (a) error as to the nature of civil partnership, or
- (b) a mistaken belief held by a person (“A”) that the other person with whom A purported to register a civil partnership was the person with whom A had agreed to register a civil partnership.]

Textual Amendments

- F16** S. 123 renumbered as s. 123(1) (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 10**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F17** Word in s. 123(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 10(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F18** Word in s. 123(1)(b) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 10(b)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F19** S. 123(1)(c) and word inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 10(c)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F20** S. 123(2) added (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 10(d)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

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”).

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.
- (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.

Status: Point in time view as at 30/11/2023.

Changes to legislation: Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F21}Special destinations: revocation on dissolution or annulment

Textual Amendments

F21 S. 124A inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 33, 46(2), [Sch. 1 para. 11](#); [S.S.I. 2006/212](#), [art. 2](#) (subject to [arts. 3-13](#))

^{F22}**124A Special destination: revocation on dissolution or annulment**

.....]

Textual Amendments

F22 S. 124A repealed (1.11.2016) by [Succession \(Scotland\) Act 2016 \(asp 7\)](#), s. 31(2), [sch. para. 3](#); [S.S.I. 2016/210](#), [reg. 2\(1\)\(a\)\(2\)](#)

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.

Status:

Point in time view as at 30/11/2023.

Changes to legislation:

Civil Partnership Act 2004, Chapter 5 is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.