POLICY NOTE

THE CIVIL PARTNERSHIP (SUPPLEMENTARY PROVISIONS RELATING TO THE RECOGNITION OF OVERSEAS DISSOLUTIONS, ANNULMENTS OR SEPARATIONS) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/461

The above instrument was made in exercise of the powers conferred by section 237(2) of the Civil Partnership Act 2004. The instrument is subject to negative procedure.

Purpose of the instrument.

This instrument is about the recognition in Scotland of an overseas dissolution, annulment or separation relating to an overseas relationship where a civil partner is in a third country. The instrument reflects that civil partnership in Scotland is now a mixed sex relationship as well as a same sex relationship.

Policy Objectives

Section 235 of the Civil Partnership Act 2004 ("the 2004 Act") makes provision on the recognition in the UK of an overseas dissolution, annulment or separation[1] of a relationship treated in the UK as a civil partnership. It specifies the connection that the parties to the relationship must have with the jurisdiction in which the dissolution, annulment or separation was obtained in order for it to be recognised in Scotland.

In general terms, the provisions in the 2004 Act on the recognition of overseas dissolutions of civil partnerships are modelled very closely on provisions in the Family Law Act 1986 ("the 1986 Act") on the recognition of overseas divorces.

The 1986 Act reflects that in overseas jurisdictions divorce may be obtained through court proceedings (as in the UK) or, in some places, through administrative means (eg a divorce granted by a responsible authority other than the courts).

The 1986 Act implemented in the UK the Hague Convention on the recognition of divorces and legal separations . Around 20 countries, including the UK, have ratified this Convention.

Section 237 of the 2004 Act contains supplementary provisions relating to recognition of dissolutions etc, and includes a power to make regulations at subsection (2). For Scotland, the powers under section 237(2) have been used to make the Civil Partnership (Supplementary Provisions Relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Regulations 2005 (SSI 2005/567).

[1] Judicial separation (showing that the couple have separated but the relationship is not dissolved) in relation to civil partnership and marriage is very rare in Scotland. However, the 2004 Act makes provision to recognise judicial separations granted overseas.

Regulation 3 of SSI 2005/567 modifies the application of section 235 of the 2004 Act. The effect of the modification is to relax the conditions for recognition in Scotland in cases where the person seeking the order for dissolution, annulment or separation was habitually resident or domiciled in a third country where same sex relationships are not recognised and where there is no provision for the granting of such orders in relation to same sex couples.

The powers at section 237(2) were amended by paragraph 6(5) of schedule 2 of the Civil Partnership (Scotland) Act 2020 ("the 2020 Act") to reflect the introduction of mixed sex civil partnership.

Regulation 2 of these Regulations now amends regulation 3 of SSI 2005/567. The effect is that the relaxation of the conditions for recognition applies where, in the third country in question, there is no recognition of the relevant sort of relationship and no provision for the granting of such orders in relation to the relevant sort of relationship. "Relevant sort of relationship" is defined as referring to the sort of relationship generally, or those between same sex couples or those between mixed sex couples in particular.

Consultation

There was no specific consultation on this instrument. However, the Scottish Government carried out a public consultation before introducing the Civil Partnership (Scotland) Bill ("the Bill"), which led to the 2020 Act, into Parliament.

Impact Assessments

There are no specific Impact Assessments for this instrument. However, the Scottish Government prepared Impact Assessments for the Bill, including an equality impact assessment.

Financial Effects

The Scottish Government prepared a Business and Regulatory Impact Assessment for the Bill, along with a Financial Memorandum.

No costs are expected from this instrument. The instrument is about the recognition in Scotland of overseas dissolutions, annulments and separations rather than about cases before the Scottish courts. In any event, the number of dissolutions, annulments and separations covered by this instrument is expected to be low.

Scottish Government
Justice Directorate

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