



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 3

#### CIVIL PARTNERSHIP: SCOTLAND

VALID FROM 05/12/2005

### CHAPTER 1

#### FORMATION AND ELIGIBILITY

#### **85 Formation of civil partnership by registration**

- (1) For the purposes of section 1, two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership schedule, in the presence of—
  - (a) each other,
  - (b) two witnesses both of whom have attained the age of 16, and
  - (c) the authorised registrar,(all being present at a registration office or at a place agreed under section 93).
- (2) But the two people must be eligible to be so registered.
- (3) Subsection (1) applies regardless of whether subsection (4) is complied with.
- (4) After the civil partnership schedule has been signed under subsection (1), it must also be signed, in the presence of the civil partners and each other by—
  - (a) each of the two witnesses, and
  - (b) the authorised registrar.

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## 86 Eligibility

- (1) Two people are not eligible to register in Scotland as civil partners of each other if—
  - (a) they are not of the same sex,
  - (b) they are related in a forbidden degree,
  - (c) either has not attained the age of 16,
  - (d) either is married or already in civil partnership, or
  - (e) either is incapable of—
    - (i) understanding the nature of civil partnership, or
    - (ii) validly consenting to its formation.
- (2) Subject to subsections (3) and (4), a man is related in a forbidden degree to another man if related to him in a degree specified in column 1 of Schedule 10 and a woman is related in a forbidden degree to another woman if related to her in a degree specified in column 2 of that Schedule.
- (3) A man and any man related to him in a degree specified in column 1 of paragraph 2 of Schedule 10, or a woman and any woman related to her in a degree specified in column 2 of that paragraph, are not related in a forbidden degree if—
  - (a) both persons have attained the age of 21, and
  - (b) the younger has not at any time before attaining the age of 18 lived in the same household as the elder and been treated by the elder as a child of the elder's family.
- (4) A man and any man related to him in a degree specified in column 1 of paragraph 3 of Schedule 10, or a woman and any woman related to her in a degree specified in column 2 of that paragraph, are not related in a forbidden degree if—
  - (a) both persons have attained the age of 21, and
  - (b) in the case of—
    - (i) a man entering civil partnership with the father of his former wife, both the former wife and the former wife's mother are dead,
    - (ii) a man entering civil partnership with the father of his former civil partner, both the former civil partner and the former civil partner's mother are dead,
    - (iii) a man entering civil partnership with the former husband of his daughter, both the daughter and the daughter's mother are dead,
    - (iv) a man entering civil partnership with the former civil partner of his son, both the son and the son's mother are dead,
    - (v) a woman entering civil partnership with the mother of her former husband, both the former husband and the former husband's father are dead,
    - (vi) a woman entering civil partnership with the mother of her former civil partner, both the former civil partner and the former civil partner's father are dead,
    - (vii) a woman entering civil partnership with the former wife of her son, both the son and the son's father are dead, or
    - (viii) a woman entering civil partnership with the former civil partner of her daughter, both the daughter and the daughter's father are dead.
- (5) Subsection (4) and paragraphs 2 and 3 of Schedule 10 have effect subject to the modifications specified in subsections (6) and (7) in the case of a person (here the

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- “relevant person”) whose gender has become the acquired gender under the Gender Recognition Act 2004 (c. 7).
- (6) Any reference in subsection (4) or those paragraphs to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person.
- (7) And the reference—
- (a) in sub-paragraph (iii) of subsection (4)(b) to the relevant person’s daughter’s mother is to the relevant person’s daughter’s father if the relevant person is the daughter’s mother,
  - (b) in sub-paragraph (iv) of that subsection to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother,
  - (c) in sub-paragraph (vii) of that subsection to the relevant person’s son’s father is to the relevant person’s son’s mother if the relevant person is the son’s father, and
  - (d) in sub-paragraph (viii) of that subsection to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.
- (8) References in this section and in Schedule 10 to relationships and degrees of relationship are to be construed in accordance with section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9).
- (9) For the purposes of this section, a degree of relationship specified in paragraph 1 of Schedule 10 exists whether it is of the full blood or the half blood.
- (10) Amend section 41(1) of the Adoption (Scotland) Act 1978 (c. 28) (application to determination of forbidden degrees of provisions of that Act relating to the status conferred by adoption) as follows—
- (a) after first “marriage” insert “, to the eligibility of persons to register as civil partners of each other”, and
  - (b) for “and incest” substitute “, to such eligibility and to incest”.

## CHAPTER 2

### REGISTRATION

VALID FROM 05/12/2005

#### 87 Appointment of authorised registrars

For the purpose of affording reasonable facilities throughout Scotland for registration as civil partners, the Registrar General—

- (a) is to appoint such number of district registrars as he thinks necessary, and
- (b) may, in respect of any district for which he has made an appointment under paragraph (a), appoint one or more assistant registrars,

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as persons who may carry out such registration (in this Part referred to as “authorised registrars”).

## 88 Notice of proposed civil partnership

- (1) In order to register as civil partners, each of the intended civil partners must submit to the district registrar a notice, in the prescribed form and accompanied by the prescribed fee, of intention to enter civil partnership (in this Part referred to as a “notice of proposed civil partnership”).
- (2) A notice submitted under subsection (1) must also be accompanied by—
  - (a) the birth certificate of the person submitting it,
  - (b) if that person has previously been married or in civil partnership and—
    - (i) the marriage or civil partnership has been dissolved, a copy of the decree of divorce or dissolution, or
    - (ii) the other party to that marriage or civil partnership has died, the death certificate of that other party, and
  - (c) if that person has previously ostensibly been married or in civil partnership but decree of annulment has been obtained, a copy of that decree.
- (3) If a person is unable to submit a certificate or decree required by subsection (2) he may instead make a declaration to that effect, stating what the reasons are; and he must provide the district registrar with such—
  - (a) information in respect of the matters to which the certificate or document would have related, and
  - (b) documentary evidence in support of that information,
 as the district registrar may require.
- (4) If a document submitted under subsection (2) or (3) is in a language other than English, the person submitting it must attach to the document a translation of it in English, certified by the translator as a correct translation.
- (5) A person submitting a notice under subsection (1) must make and sign the necessary declaration (the form for which must be included in any form prescribed for the notice).
- (6) The necessary declaration is a declaration that the person submitting the notice believes that the intended civil partners are eligible to be in civil partnership with each other.

### Commencement Information

- II** S. 88 wholly in force at 5.12.2005; s. 88 not in force at Royal Assent see s. 263; s. 88(1)(5) 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. 88(2)-(4)(6) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

## 89 Civil partnership notice book

- (1) On receipt of a notice of proposed civil partnership, the district registrar is to enter in a book (to be known as “the civil partnership book”) supplied to him for that purpose by

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the Registrar General such particulars, extracted from the notice, as may be prescribed and the date of receipt by him of that notice.

(2) The form and content of any page of that book is to be prescribed.

#### Commencement Information

**I2** S. 89 wholly in force at 5.12.2005; s. 89 not in force at Royal Assent see s. 263; s. 89(1) 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. 89(2) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#)

## 90 Publicisation

(1) Where notices of a proposed civil partnership are submitted to a district registrar, he must, as soon as practicable after the day on which they are submitted (or, if the two documents are not submitted on the same day, after the day on which the first is submitted), publicise the relevant information and send it to the Registrar General who must also publicise it.

(2) “The relevant information” means—

- (a) the names of the intended civil partners, and
- (b) the date on which it is intended to register them as civil partners of each other, being a date more than 14 days after publicisation by the district registrar under subsection (1).

(3) Paragraph (b) of subsection (2) is subject to section 91.

(4) The manner in which and means by which relevant information is to be publicised are to be prescribed.

#### Commencement Information

**I3** S. 90 wholly in force at 5.12.2005; s. 90 not in force at Royal Assent see s. 263; s. 90(4) in force at 14.9.2005 by [S.S.I. 2005/428](#), [art. 2](#), [Sch.](#); s. 90(1)-(3) in force at 5.12.2005 by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

VALID FROM 05/12/2005

## 91 Early registration

An authorised registrar who receives a request in writing from one or both of two intended civil partners that they should be registered as civil partners of each other on a date specified in the request (being a date 14 days or fewer after publicisation by the district registrar under subsection (1) of section 90) may, provided that he is authorised to do so by the Registrar General, fix that date as the date for registration; and if a date is so fixed, paragraph (b) of subsection (2) of that section is to be construed as if it were a reference to that date.

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## 92 Objections to registration

- (1) Any person may at any time before the registration in Scotland of two people as civil partners of each other submit in writing an objection to such registration to the district registrar.
- (2) But where the objection is that the intended civil partners are not eligible to be in civil partnership with each other because either is incapable of—
  - (a) understanding the nature of civil partnership, or
  - (b) validly consenting to its formation,
 it shall be accompanied by a supporting certificate signed by a registered medical practitioner.
- (3) A person claiming that he may have reason to submit such an objection may, free of charge and at any time when the registration office at which a notice of proposed civil partnership to which the objection would relate is open for public business, inspect any relevant entry in the civil partnership book.
- (4) Where the district registrar receives an objection in accordance with subsection (1) he must—
  - (a) in any case where he is satisfied that the objection relates to no more than a misdescription or inaccuracy in a notice submitted under section 88(1)—
    - (i) notify the intended civil partners of the nature of the objection and make such enquiries into the matter mentioned in it as he thinks fit, and
    - (ii) subject to the approval of the Registrar General, make any necessary correction to any document relating to the proposed civil partnership, or
  - (b) in any other case—
    - (i) at once notify the Registrar General of the objection, and
    - (ii) pending consideration of the objection by the Registrar General, suspend the completion or issue of the civil partnership schedule in respect of the proposed civil partnership.
- (5) If the Registrar General is satisfied, on consideration of an objection of which he has received notification under subsection (4)(b)(i) that—
  - (a) there is a legal impediment to registration, he must direct the district registrar not to register the intended civil partners and to notify them accordingly, or
  - (b) there is no such impediment, he must inform the district registrar to that effect.
- (6) For the purposes of this section and section 94, there is a legal impediment to registration where the intended civil partners are not eligible to be in civil partnership with each other.

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VALID FROM 05/12/2005

### 93 Place of registration

- (1) Two people may be registered as civil partners of each other at a registration office or any other place which they and the local registration authority agree is to be the place of registration.
- (2) The place of registration may, if the approval of the Registrar General is obtained, be outwith the district of the authorised registrar carrying out the registration.
- (3) But the place must not be in religious premises, that is to say premises which—
  - (a) are used solely or mainly for religious purposes, or
  - (b) have been so used and have not subsequently been used solely or mainly for other purposes.
- (4) “Local registration authority” has the meaning given by section 5(3) of the 1965 Act.

### 94 The civil partnership schedule

Where—

- (a) the district registrar has received a notice of proposed civil partnership in respect of each of the intended civil partners and—
  - (i) is satisfied that there is no legal impediment to their registration as civil partners of each other, or
  - (ii) as the case may be, is informed under section 92(5)(b) that there is no such impediment,
- (b) the 14 days mentioned in paragraph (b) of section 90(2) have expired (or as the case may be the date which, by virtue of section 91, that paragraph is to be construed as a reference to has been reached), and
- (c) the period which has elapsed since the day of receipt of the notices by him (or, if the two notices were not received on the same day, since the day of receipt of the later) does not exceed 3 months,

he is to complete a civil partnership schedule in the prescribed form.

#### Commencement Information

- I4** S. 94 wholly in force at 5.12.2005; s. 94 not in force at Royal Assent see s. 263; s. 94 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\(b\)](#)

### 95 Further provision as to registration

- (1) Before the persons present sign in accordance with section 85 the authorised registrar is to require the intended civil partners to confirm that (to the best of their knowledge) the particulars set out in the civil partnership schedule are correct.
- (2) As soon as practicable after the civil partnership schedule has been signed, the authorised registrar must cause those particulars to be entered in a register (to be

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known as the “civil partnership register”) supplied to him for that purpose by the Registrar General.

- (3) The form and content of any page of that register is to be prescribed.
- (4) A fee payable by the intended civil partners for their registration as civil partners of each other is to be prescribed.

#### Commencement Information

- I5** S. 95 wholly in force at 5.12.2005; s. 95 not in force at Royal Assent see s. 263; s. 95(3)(4) in force at 14.9.2005 by [S.S.I. 2005/428, art. 2, Sch.](#); s. 95(1)(2) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604, art. 2\(b\)](#)

VALID FROM 01/10/2006

#### [<sup>F1</sup>95A Validity following entry in civil partnership register

- (1) Subsection (2) applies where the particulars set out in a civil partnership schedule signed in accordance with section 85 are entered in the civil partnership register in pursuance of section 95(2).
- (2) The validity of the registration as civil partners to which the schedule relates is not to be questioned in any legal proceedings on the ground of failure to comply with a requirement or restriction imposed by or under this Part.
- (3) Subsection (2)—
  - (a) is subject to section 85(2), and
  - (b) does not prejudice section 100.]

#### Textual Amendments

- F1** S. 95A inserted (1.10.2006) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\), ss. 52\(5\), 63\(2\); S.S.I. 2006/469, art. 2, Sch. 1](#)

VALID FROM 05/12/2005

#### 96 Civil partnership with former spouse

- (1) Where an intended civil partner has a full gender recognition certificate issued under section 5(1) of the Gender Recognition Act 2004 (c. 7) and the other intended civil partner was the other party in the proceedings in which the certificate was issued, the procedures for their registration as civil partners of each other may—
  - (a) if they so elect, and
  - (b) if each of them submits a notice under section 88(1) within 30 days after the certificate is issued,
 be expedited as follows.
- (2) The registration may take place on any of the 30 days immediately following—



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- (a) that on which the notices are submitted, or
  - (b) (if the two notices are not submitted on the same day) that on which the later is submitted.
- (3) And accordingly there are to be disregarded—
- (a) in section 90—
    - (i) in subsection (2)(b), the words from “being” to the end, and
    - (ii) subsection (3),
  - (b) section 91, and
  - (c) in section 94, paragraph (b).

## 97 Certificates of no impediment for Part 2 purposes

- (1) This section applies where—
- (a) two people propose to register as civil partners of each other under Chapter 1 of Part 2, and
  - (b) one of them (“A”) resides in Scotland but the other (“B”) resides in England or Wales.
- (2) A may submit a notice of intention to register under section 88 as if A and B intended to register as civil partners in the district in which A resides.
- (3) If the district registrar is satisfied (after consultation, if he considers it necessary, with the Registrar General) that there is no impediment (in terms of section 92(6)) to A registering as B’s civil partner, he must issue a certificate to A in the prescribed form that there is not known to be any such impediment.
- (4) But the certificate may not be issued to A earlier than 14 days after the receipt (as entered in the civil partnership notice book) of the notice under subsection (2) unless—
- (a) the circumstances are as mentioned in section 96(1), and
  - (b) A makes an election for the certificate to be issued as soon as possible.
- (5) Any person may, at any time before a certificate is issued under subsection (3), submit to the district registrar an objection in writing to its issue.
- (6) Any objection made under subsection (5) must be taken into account by the district registrar in deciding whether he is satisfied that there is no legal impediment to A registering as B’s civil partner.

### Commencement Information

- I6** S. 97 wholly in force at 5.12.2005; s. 97 not in force at Royal Assent see s. 263; s. 97(3) in force at 14.9.2005 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. 97(1)(2)(4)-(6) in force at 5.12.2005 insofar as not already in force by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

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## 98 Application of certain sections of 1965 Act to civil partnership register

Sections 34 (examination of registers by district examiners), 37(1) and (2) (search of indexes kept by registrars), 38(1) and (2) (search of indexes kept by Registrar General) and 44 (Register of Corrections etc.) of the 1965 Act apply in relation to the civil partnership register as they apply in relation to the registers of births, deaths and marriages.

## 99 Correction of errors in civil partnership register

- (1) No alteration is to be made in the civil partnership register except as authorised by or under this or any other Act (“Act” including an Act of the Scottish Parliament).
- (2) Any clerical error in the register or error in it of a kind prescribed may be corrected by the district registrar.
- (3) The Registrar General may authorise district examiners (“district examiner” having the meaning given by section 2(1) of the 1965 Act) to correct any error in the register of a type specified by him which they discover during an examination under section 34 of the 1965 Act.

### Commencement Information

- 17** S. 99 wholly in force at 5.12.2005; s. 99 not in force at Royal Assent see s. 263; s. 99(2) 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. 99(1)(3) in force at 5.12.2005 by [S.S.I. 2005/604](#), [art. 2\(b\)](#)

VALID FROM 05/12/2005

## 100 Offences

- (1) A person (“A”) commits an offence who registers in Scotland as the civil partner of another person (“B”) knowing that either or both—
  - (a) A is already married to or in civil partnership with a person other than B, or
  - (b) B is already married to or in civil partnership with a person other than A.
- (2) A person commits an offence who knowingly—
  - (a) falsifies or forges any civil partnership document (that is to say, any document issued or made, or purporting to be issued or made, or required, under this Part),
  - (b) uses, or gives or sends to any person as genuine, any false or forged civil partnership document,
  - (c) being an authorised registrar, purports to register two people as civil partners of each other before any civil partnership schedule available to him at the time of registration has been duly completed,

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- (d) not being an authorised registrar, conducts himself in such a way as to lead intended civil partners to believe that he is authorised to register them as civil partners of each other,
  - (e) being an authorised registrar, purports to register two people as civil partners of each other without both of them being present, or
  - (f) being an authorised registrar, purports to register two people as civil partners of each other in a place other than a registration office or a place agreed under section 93.
- (3) A person guilty of an offence under subsection (1) or (2) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both);
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale (or both).
- (4) Summary proceedings for an offence under subsection (1) or (2) may be commenced at any time within 3 months after evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to his knowledge or within 12 months after the offence is committed (whichever period last expires).
- (5) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (time limits) has effect for the purposes of this section as it has for the purposes of that section.

VALID FROM 05/12/2005

## CHAPTER 3

### OCCUPANCY RIGHTS AND TENANCIES

#### *Occupancy rights*

#### **101 Occupancy rights**

- (1) Where, apart from the provisions of this Chapter, one civil partner in a civil partnership is entitled, or permitted by a third party, to occupy a family home of the civil partnership (that civil partner being referred in this Chapter as an “entitled partner”) and the other civil partner is not so entitled or permitted (a “non-entitled partner”), the non-entitled partner has, subject to the provisions of this Chapter, the following rights—
- (a) if in occupation, a right to continue to occupy the family home;
  - (b) if not in occupation, a right to enter into and occupy the family home.
- (2) The rights conferred by subsection (1) to continue to occupy or, as the case may be, to enter and occupy the family home include, without prejudice to their generality, the right to do so together with any child of the family.
- (3) In subsection (1), an “entitled partner” includes a civil partner who is entitled, or permitted by a third party, to occupy the family home along with an individual who

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is not the other civil partner only if that individual has waived a right of occupation in favour of the civil partner so entitled or permitted.

- (4) If the entitled partner refuses to allow the non-entitled partner to exercise the right conferred by subsection (1)(b), the non-entitled partner may exercise that right only with the leave of the Court of Session or the sheriff under section 103(3) or (4).
- (5) A non-entitled partner may renounce in writing the rights mentioned in paragraphs (a) and (b) of subsection (1) only—
  - (a) in a particular family home, or
  - (b) in a particular property which it is intended by the civil partners will become their family home.
- (6) A renunciation under subsection (5) has effect only if, at the time of making the renunciation, the non-entitled partner swears or affirms before a notary public that it is made freely and without coercion of any kind.
- (7) In this Part—
 

“child of the family” means a child under the age of 16 years who has been accepted by both civil partners as a child of the family, and

“family” means the civil partners in the civil partnership, together with any child so accepted by them.
- (8) In subsection (6), “notary public” includes any person duly authorised, by the law of the country other than Scotland in which the swearing or affirmation takes place, to administer oaths or receive affirmations in that other country.

## **102 Occupancy: subsidiary and consequential rights**

- (1) For the purpose of securing the occupancy rights of a non-entitled partner, that partner is, in relation to a family home, entitled without the consent of the entitled partner—
  - (a) to make any payment due by the entitled partner in respect of rent, rates, secured loan instalments, interest or other outgoings (not being outgoings on repairs or improvements);
  - (b) to perform any other obligation incumbent on the entitled partner (not being an obligation in respect of non-essential repairs or improvements);
  - (c) to enforce performance of an obligation by a third party which that third party has undertaken to the entitled partner to the extent that the entitled partner may enforce such performance;
  - (d) to carry out such essential repairs as the entitled partner may carry out;
  - (e) to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the entitled partner may carry out and which the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
  - (f) to take such other steps, for the purpose of protecting the occupancy rights of the non-entitled partner, as the entitled partner may take to protect the occupancy rights of the entitled partner.
- (2) Any payment made under subsection (1)(a) or any obligation performed under subsection (1)(b) has effect in relation to the rights of a third party as if the payment were made or the obligation were performed by the entitled partner; and the

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- performance of an obligation which has been enforced under subsection (1)(c) has effect as if it had been enforced by the entitled partner.
- (3) Where there is an entitled and a non-entitled partner, the court, on the application of either of them, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner—
- (a) without the consent of the other partner, on any of the items mentioned in paragraphs (a) and (d) of subsection (1);
  - (b) with the consent of the other partner, on anything relating to a family home.
- (4) Where both partners are entitled, or permitted by a third party, to occupy a family home—
- (a) either partner is entitled, without the consent of the other partner, to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
  - (b) the court, on the application of either partner, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner, with or without the consent of the other partner, on anything relating to the family home.
- (5) Where one partner (“A”) owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a family home—
- (a) the other partner may, without the consent of A—
    - (i) make any payment due by A which is necessary, or take any other step which A is entitled to take, to secure the possession or use of any such furniture and plenishings (and any such payment is to have effect in relation to the rights of a third party as if it were made by A), or
    - (ii) carry out such essential repairs to the furniture and plenishings as A is entitled to carry out;
  - (b) the court, on the application of either partner, may, having regard in particular to the respective financial circumstances of the partners, make an order apportioning expenditure incurred or to be incurred by either partner—
    - (i) without the consent of the other partner, in making payments under a hire, hire-purchase or conditional sale agreement, or in paying interest charges in respect of the furniture and plenishings, or in carrying out essential repairs to the furniture and plenishings, or
    - (ii) with the consent of the other partner, on anything relating to the furniture or plenishings.
- (6) An order under subsection (3), (4)(b) or (5)(b) may require one partner to make a payment to the other partner in implementation of the apportionment.
- (7) Any application under subsection (3), (4)(b) or (5)(b) is to be made within 5 years after the date on which any payment in respect of such incurred expenditure was made.
- (8) Where—
- (a) the entitled partner is a tenant of a family home,
  - (b) possession of it is necessary in order to continue the tenancy, and

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(c) the entitled partner abandons such possession,  
the tenancy is continued by such possession by the non-entitled partner.

(9) In this section “improvements” includes alterations and enlargement.

### **103 Regulation by court of rights of occupancy of family home**

(1) [<sup>F2</sup>Subject to section 101(6A),] Where there is an entitled and a non-entitled partner, or where both partners are entitled, or permitted by a third party, to occupy a family home, either partner may apply to the court for an order—

- (a) declaring the occupancy rights of the applicant partner;
- (b) enforcing the occupancy rights of the applicant partner;
- (c) restricting the occupancy rights of the non-applicant partner;
- (d) regulating the exercise by either partner of his or her occupancy rights;
- (e) protecting the occupancy rights of the applicant partner in relation to the other partner.

(2) Where one partner owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a family home and the other partner has occupancy rights in that home, that other person may apply to the court for an order granting to the applicant the possession or use in the family home of any such furniture and plenishings; but, subject to section 102, an order under this subsection does not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.

(3) The court is to grant an application under subsection (1)(a) if it appears to the court that the application relates to a family home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2), the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—

- (a) the conduct of the partners, whether in relation to each other or otherwise,
- (b) the respective needs and financial resources of the partners,
- (c) the needs of any child of the family,
- (d) the extent (if any) to which—
  - (i) the family home, and
  - (ii) in relation only to an order under subsection (2), any item of furniture and plenishings referred to in that subsection, is used in connection with a trade, business or profession of either partner, and
- (e) whether the entitled partner offers or has offered to make available to the non-entitled partner any suitable alternative accommodation.

(4) Pending the making of an order under subsection (3), the court, on the application of either partner, may make such interim order as it considers necessary or expedient in relation to—

- (a) the residence of either partner in the home to which the application relates,
- (b) the personal effects of either partner or of any child of the family, or
- (c) the furniture and plenishings,

but an interim order may be made only if the non-applicant partner has been afforded an opportunity of being heard by or represented before the court.

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- (5) The court is not to make an order under subsection (3) or (4) if it appears that the effect of the order would be to exclude the non-applicant partner from the family home.
- (6) If the court makes an order under subsection (3) or (4) which requires the delivery to one partner of anything which has been left in or removed from the family home, it may also grant a warrant authorising a [<sup>F3</sup>judicial officer ] to enter the family home or other premises occupied by the other partner and to search for and take possession of the thing required to be delivered, (if need be by opening shut and lockfast places) and to deliver the thing in accordance with the order.
- (7) A warrant granted under subsection (6) is to be executed only after expiry of such period as the court is to specify in the order for delivery.
- (8) Where it appears to the court—
  - (a) on the application of a non-entitled partner, that the applicant has suffered a loss of occupancy rights or that the quality of the applicant’s occupation of a family home has been impaired, or
  - (b) on the application of a partner who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3), that the applicant has suffered a loss of such possession or use or that the quality of the applicant’s possession or use of the furniture and plenishings has been impaired,in consequence of any act or default on the part of the other partner which was intended to result in such loss or impairment, it may order that other partner to pay to the applicant such compensation as it considers just and reasonable in respect of that loss or impairment.
- (9) A partner may renounce in writing the right to apply under subsection (2) for the possession or use of any item of furniture and plenishings.

#### Textual Amendments

- F2** Words in s. 103(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 4**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F3** Words in s. 103(6) substituted (prosp.) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227, **Sch. 5 para. 33** (with s. 223)

## 104 Exclusion orders

- (1) Where there is an entitled and non-entitled partner, or where both partners are entitled, or permitted by a third party, to occupy a family home, either partner, whether or not that partner is in occupation at the time of the application, may apply to the court for an order (in this Chapter referred to as “an exclusion order”) suspending the occupancy rights of the other partner (“the non-applicant partner”) in a family home.
- (2) Subject to subsection (3), the court is to make an exclusion order if it appears to it that to do so is necessary for the protection of the applicant or any child of the family from any conduct, or threatened or reasonably apprehended conduct, of the non-applicant partner which is or would be injurious to the physical or mental health of the applicant or child.

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- (3) The court is not to make an exclusion order if it appears to it that to do so would be unjustified or unreasonable—
- (a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3), and
  - (b) where the family home—
    - (i) is, or is part of, an agricultural holding within the meaning of section 1 of the Agricultural Holdings (Scotland) Act 1991 (c. 55), or
    - (ii) is let, or is a home in respect of which possession is given, to the non-applicant partner or to both partners by an employer as an incident of employment,
 having regard to any requirement that the non-applicant partner, or, as the case may be, both partners must reside in the family home and to the likely consequences of the exclusion of the non-applicant partner from the family home.
- (4) In making an exclusion order the court is, on the application of the applicant partner—
- (a) to grant a warrant for the summary ejection of the non-applicant partner from the family home unless the non-applicant partner satisfies the court that it is unnecessary for it to grant such a remedy,
  - (b) to grant an interdict prohibiting the non-applicant partner from entering the family home without the express permission of the applicant, and
  - (c) to grant an interdict prohibiting the removal by the non-applicant partner, except with the written consent of the applicant or by a further order of the court, of any furniture and plenishings in the family home unless the non-applicant partner satisfies the court that it is unnecessary for it to grant such a remedy.
- (5) In making an exclusion order the court may—
- (a) grant an interdict prohibiting the non-applicant partner from entering or remaining in a specified area in the vicinity of the family home;
  - (b) where the warrant for the summary ejection of the non-applicant partner has been granted in that partner's absence, give directions as to the preservation of that partner's goods and effects which remain in the family home;
  - (c) on the application of either partner, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe;
  - (d) on the application of either partner, make such other order as it considers necessary for the proper enforcement of an order made under subsection (4) or paragraph (a), (b) or (c).
- (6) Pending the making of an exclusion order, the court may, on the application of the applicant partner, make an interim order suspending the occupancy rights of the non-applicant partner in the family home to which the application for the exclusion order relates; and subsections (4) and (5) apply to such an interim order as they apply to an exclusion order.
- (7) But an interim order may be made only if the non-applicant partner has been afforded an opportunity of being heard by or represented before the court.



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- (8) Without prejudice to subsections (1) and (6), where both partners are entitled, or permitted by a third party, to occupy a family home, it is incompetent for one partner to bring an action of ejection from the family home against the other partner.

#### **105 Duration of orders under sections 103 and 104**

- (1) The court may, on the application of either partner, vary or recall any order made by it under section 103 or 104.
- (2) Subject to subsection (3), any such order, unless previously so varied or recalled, ceases to have effect—
- (a) on the dissolution of the civil partnership,
  - (b) subject to section 106(1), where there is an entitled and non-entitled partner, on the entitled partner ceasing to be an entitled partner in respect of the family home to which the order relates, or
  - (c) where both partners are entitled, or permitted by a third party, to occupy the family home, on both partners ceasing to be so entitled or permitted.
- (3) Without prejudice to the generality of subsection (2), an order under section 103(3) or (4) which grants the possession or use of furniture and plenishings ceases to have effect if the furniture and plenishings cease to be permitted by a third party to be retained in the family home.

#### **106 Continued exercise of occupancy rights after dealing**

- (1) Subject to subsection (3)—
- (a) the continued exercise of the rights conferred on a non-entitled partner by the provisions of this Chapter in respect of a family home are not prejudiced by reason only of any dealing of the entitled partner relating to that home, and
  - (b) a third party is not by reason only of such a dealing entitled to occupy that home or any part of it.
- (2) In this section and section 107—
- “dealing” includes the grant of a heritable security and the creation of a trust but does not include a conveyance under section 80 of the Lands Clauses Consolidation Act 1845 (c. 18);
- “entitled partner” does not include a civil partner who, apart from the provisions of this Chapter—
- (a) is permitted by a third party to occupy a family home, or
  - (b) is entitled to occupy a family home along with an individual who is not the other civil partner whether or not that individual has waived a right of occupation in favour of the civil partner so entitled,
- (“non-entitled partner” being construed accordingly).
- (3) This section does not apply in any case where—
- (a) the non-entitled partner in writing either—
    - (i) consents or has consented to the dealing (any consent being in such form as the Scottish Ministers may, by regulations made by statutory instrument, prescribe), or

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- (ii) renounces or has renounced occupancy rights in relation to the family home or property to which the dealing relates,
  - (b) the court has made an order under section 107 dispensing with the consent of the non-entitled partner to the dealing,
  - (c) the dealing occurred, or implements a binding obligation entered into by the entitled partner, before the registration of the civil partnership,
  - (d) the dealing occurred, or implements a binding obligation entered into, before the commencement of this section,
  - (e) the dealing comprises a sale to a third party who has acted in good faith, if there is produced to the third party by the seller—
    - (i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not, or were not at the time of the dealing, a family home in relation to which a civil partner of the seller has or had occupancy rights,
    - (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled partner, or
  - (f) the entitled partner has permanently ceased to be entitled to occupy the family home, and at any time after that a continuous period of 5 years has elapsed during which the non-entitled partner has not occupied the family home.
- (4) For the purposes of subsection (3)(e), the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.

#### **107 Dispensation with civil partner's consent to dealing**

- (1) The court may, on the application of an entitled partner or any other person having an interest, make an order dispensing with the consent of a non-entitled partner to a dealing which has taken place or a proposed dealing, if—
- (a) such consent is unreasonably withheld,
  - (b) such consent cannot be given by reason of physical or mental disability, or
  - (c) the non-entitled partner cannot be found after reasonable steps have been taken to trace that partner.
- (2) For the purposes of subsection (1)(a), a non-entitled partner has unreasonably withheld consent to a dealing which has taken place or a proposed dealing, where it appears to the court either—
- (a) that the non-entitled partner—
    - (i) has led the entitled partner to believe that the non-entitled partner would consent to the dealing, and
    - (ii) would not be prejudiced by any change in the circumstances of the case since the conduct which gave rise to that belief occurred, or
  - (b) that the entitled partner has, having taken all reasonable steps to do so, been unable to obtain an answer to a request for consent.
- (3) The court, in considering whether to make an order under subsection (1), is to have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3).

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(4) Where—

- (a) an application is made for an order under this section, and
- (b) an action is or has been raised by a non-entitled partner to enforce occupancy rights,

the action is to be sisted until the conclusion of the proceedings on the application.

### **108 Interests of heritable creditors**

- (1) The rights of a third party with an interest in the family home as a creditor under a secured loan in relation to the non-performance of any obligation under the loan are not prejudiced by reason only of the occupancy rights of the non-entitled partner; but where a non-entitled partner has or obtains occupation of a family home and—

- (a) the entitled partner is not in occupation, and
- (b) there is a third party with such an interest in the family home,

the court may, on the application of the third party, make an order requiring the non-entitled partner to make any payment due by the entitled partner in respect of the loan.

- (2) This section does not apply to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) unless the third party in granting the secured loan acted in good faith and there was produced to the third party by the entitled partner—

- (a) an affidavit sworn or affirmed by the entitled partner declaring that there is no non-entitled partner, or
- (b) a renunciation of occupancy rights or consent to the taking of the loan which bears to have been properly made or given by the non-entitled partner.

- (3) This section does not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73) unless the third party in granting the secured loan acted in good faith and there was produced to the third party by the grantor—

- (a) an affidavit sworn or affirmed by the grantor declaring that the security subjects are not or were not at the time of the granting of the security a family home in relation to which a civil partner of the grantor has or had occupancy rights, or
- (b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been properly made or given by the non-entitled partner.

- (4) For the purposes of subsections (2) and (3), the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.

### **109 Provisions where both civil partners have title**

- (1) Subject to subsection (2), where, apart from the provisions of this Chapter, both civil partners are entitled to occupy a family home—

- (a) the rights in that home of one civil partner are not prejudiced by reason only of any dealing of the other civil partner, and
- (b) a third party is not by reason only of such a dealing entitled to occupy that home or any part of it.

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- (2) Sections 106(3) and 107 and the definition of “dealing” in section 106(2) apply for the purposes of subsection (1) as they apply for the purposes of section 106(1) but subject to the following modifications—
- (a) any reference to the entitled partner and to the non-entitled partner is to be construed as a reference to a civil partner who has entered into, or as the case may be proposes to enter into, a dealing and to the other civil partner respectively, and
  - (b) in paragraph (b) of section 107(4) the reference to occupancy rights is to be construed as a reference to any rights in the family home.

### **110 Rights of occupancy in relation to division and sale**

Where a civil partner brings an action for the division and sale of a family home owned in common with the other civil partner, the court, after having regard to all the circumstances of the case including—

- (a) the matters specified in paragraphs (a) to (d) of section 103(3), and
  - (b) whether the civil partner bringing the action offers or has offered to make available to the other civil partner any suitable alternative accommodation,
- may refuse to grant decree in that action or may postpone the granting of decree for such period as it considers reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.

### **111 Adjudication**

- (1) Where a family home as regards which there is an entitled partner and a non-entitled partner is adjudged, the Court of Session, on the application of the non-entitled partner made within 40 days after the date of the decree of adjudication, may—
- (a) order the reduction of the decree, or
  - (b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled partner,
- if satisfied that the purpose of the diligence was wholly or mainly to defeat the occupancy rights of the non-entitled partner.
- (2) Section 106(2) applies in construing “entitled partner” and “non-entitled partner” for the purposes of subsection (1).

VALID FROM 04/05/2006

#### **[<sup>F4</sup>111A Effect of court action under section 103, 104 or 105 on reckoning of periods in sections 101 and 106**

- (1) Subsection (2) applies where an application is made under section 103(1), 104(1) or 105(1).
- (2) In calculating the period of two years mentioned in section 101(6A)(a) or 106(3)(f), no account shall be taken of the period mentioned in subsection (3).
- (3) The period is the period beginning with the date on which the application is made and—

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- (a) in the case of an application under section 103(1) or 104(1), ending on the date on which—
  - (i) an order under section 103(3) or, as the case may be, 104(2) is made, or
  - (ii) the application is otherwise finally determined or abandoned,
- (b) in the case of an application under section 105(1), ending on the date on which—
  - (i) the order under section 103(3) or, as the case may be, 104(2) is varied or recalled, or
  - (ii) the application is otherwise finally determined or abandoned.]

#### Textual Amendments

- F4** S. 111A inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), Sch. 1 para. 7; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

### *Transfer of tenancy*

#### **112 Transfer of tenancy**

- (1) The court may, on the application of a non-entitled partner, make an order transferring the tenancy of a family home to that partner and providing, subject to subsection (12), for the payment by the non-entitled partner to the entitled partner of such compensation as seems to it to be just and reasonable in all the circumstances of the case.
- (2) In an action—
  - (a) for dissolution of a civil partnership, the Court of Session or the sheriff,
  - (b) for declarator of nullity of a civil partnership, the Court of Session,may, on granting decree or within such period as the court may specify on granting decree, make an order granting an application under subsection (1).
- (3) In determining whether to grant an application under subsection (1), the court is to have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 103(3) and the suitability of the applicant to become the tenant and the applicant's capacity to perform the obligations under the lease of the family home.
- (4) The non-entitled partner is to serve a copy of an application under subsection (1) on the landlord and, before making an order under subsection (1), the court is to give the landlord an opportunity of being heard by it.
- (5) On the making of an order granting an application under subsection (1), the tenancy vests in the non-entitled partner without intimation to the landlord, subject to all the liabilities under the lease (other than liability for any arrears of rent for the period before the making of the order).
- (6) The arrears mentioned in subsection (5) are to remain the liability of the original entitled partner.

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- (7) The clerk of court is to notify the landlord of the making of an order granting an application under subsection (1).
- (8) It is not competent for a non-entitled partner to apply for an order under subsection (1) where the family home—
- (a) is let to the entitled partner by the entitled partner’s employer as an incident of employment, and the lease is subject to a requirement that the entitled partner must reside there,
  - (b) is or is part of an agricultural holding,
  - (c) is on, or pertains to—
    - (i) a croft,
    - (ii) the subject of a cottar, or
    - (iii) the holding of a landholder or of a statutory small tenant,
  - (d) is let on a long lease, or
  - (e) is part of the tenancy land of a tenant-at-will.
- (9) In subsection (8)—
- “agricultural holding” has the same meaning as in section 1 of the Agricultural Holdings (Scotland) Act 1991 (c. 55),
- “cottar” has the same meaning as in section 12(5) of the Crofters (Scotland) Act 1993 (c. 44),
- “croft” has the same meaning as in that Act of 1993,
- “holding”, in relation to a landholder and a statutory small tenant, “landholder” and “statutory small tenant” have the same meanings respectively as in sections 2(1), 2(2) and 32(1) of the Small Landholders (Scotland) Act 1911 (c. 49),
- “long lease” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979 (c. 33), and
- “tenant-at-will” has the same meaning as in section 20(8) of that Act of 1979.
- (10) Where both civil partners are joint or common tenants of a family home, the court may, on the application of one of the civil partners, make an order vesting the tenancy in that civil partner solely and providing, subject to subsection (12), for the payment by the applicant to the other partner of such compensation as seems just and reasonable in the circumstances of the case.
- (11) Subsections (2) to (9) apply for the purposes of an order under subsection (10) as they apply for the purposes of an order under subsection (1) but subject to the following modifications—
- (a) in subsection (3), for “tenant” there is substituted “sole tenant”;
  - (b) in subsection (4), for “non-entitled” there is substituted “applicant”;
  - (c) in subsection (5), for “non-entitled” there is substituted “applicant”;
  - (d) in subsection (6), for “liability of the original entitled partner” there is substituted “joint and several liability of both partners”;
  - (e) in subsection (8)—
    - (i) for “a non-entitled” there is substituted “an applicant”;
    - (ii) for paragraph (a) there is substituted—
      - “(a) is let to both partners by their employer as an incident of employment, and the lease is subject to a

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requirement that both partners must reside there;”,  
and

(iii) paragraphs (c) and (e) are omitted.

- (12) Where the family home is a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10), no account is to be taken, in assessing the amount of any compensation to be awarded under subsection (1) or (10), of the loss, by virtue of the transfer of the tenancy of the home, of a right to purchase the home under Part 3 of the Housing (Scotland) Act 1987 (c. 26).

VALID FROM 05/12/2005

## CHAPTER 4

### INTERDICTS

#### 113 Civil partners: competency of interdict

- (1) It shall not be incompetent for the Court of Session or the sheriff to entertain an application by one civil partner in a civil partnership for a relevant interdict by reason only that the civil partners are living together in civil partnership.
- (2) In subsection (1) and in section 114, “relevant interdict” means an interdict, including an interim interdict, which—
- (a) restrains or prohibits any conduct of one civil partner towards the other civil partner or a child of the family, or
  - (b) prohibits a civil partner from entering or remaining in a family home or in a specified area in the vicinity of a family home.

#### 114 Attachment of powers of arrest to relevant interdicts

- (1) Subject to subsection (2), the court is, on the application of an applicant civil partner, to attach a power of arrest—
- (a) to any relevant interdict which is ancillary to an exclusion order (including an interim order under section 104(6));
  - (b) to any other relevant interdict where the non-applicant civil partner has had the opportunity of being heard by or represented before the court, unless it appears to the court that in all the circumstances of the case such a power is unnecessary.
- (2) The court may attach a power of arrest to an interdict by virtue of subsection (1) only if satisfied that attaching the power would not result in the non-applicant civil partner being subject, in relation to the interdict, to a power of arrest under both this Chapter and the Protection from Abuse (Scotland) Act 2001 (asp 14).
- (3) A power of arrest attached to an interdict by virtue of subsection (1) does not have effect until such interdict together with the attached power of arrest is served on the non-applicant civil partner; and such a power of arrest, unless previously recalled, ceases to have effect upon the dissolution of the civil partnership.

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- (4) If, by virtue of subsection (1), a power of arrest is attached to an interdict, a constable may arrest without warrant the non-applicant civil partner if the constable has reasonable cause for suspecting that civil partner of being in breach of the interdict.
- (5) If, by virtue of subsection (1), a power of arrest is attached to an interdict, the applicant civil partner is, as soon as possible after service of the interdict, to ensure that there is delivered—
- (a) to the chief constable of the police area in which the family home is situated, and
  - (b) if the applicant civil partner resides in another police area, to the chief constable of that other police area,
- a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict and, where the application to attach the power of arrest to the interdict was made after the interdict was granted, a copy of that application and of the interlocutor granting it and a certificate of service of the interdict together with the attached power of arrest.
- (6) Where any relevant interdict to which, by virtue of subsection (1), there is attached a power of arrest, is varied or recalled, the civil partner who applied for the variation or recall is to ensure that there is delivered—
- (a) to the chief constable of the police area in which the family home is situated, and
  - (b) if the applicant civil partner resides in another police area, to the chief constable of that other police area,
- a copy of the application for variation or recall and of the interlocutor granting the variation or recall.
- (7) In this section and in sections 115 and 116—
- “applicant civil partner” means the civil partner who has applied for the interdict, and
- “non-applicant civil partner” is to be construed accordingly.

## **115 Police powers after arrest**

- (1) Where a person has been arrested under section 114(4), the officer in charge of a police station may—
- (a) if satisfied that there is no likelihood of violence to the applicant civil partner or any child of the family, liberate that person unconditionally, or
  - (b) refuse to liberate that person.
- (2) For such refusal and the detention of that person until appearance in court by virtue of section 116(2) or of any provision of the Criminal Procedure (Scotland) Act 1975 (c. 21) the officer is not to be subjected to any claim whatsoever.
- (3) Where a person arrested under section 114(4) is liberated under subsection (1), the facts and circumstances which gave rise to the arrest are to be reported forthwith to the procurator fiscal who, if he decides to take no criminal proceedings in respect of those facts and circumstances, is at the earliest opportunity to take all reasonable steps to intimate his decision to the persons mentioned in paragraphs (a) and (b) of section 116(5).



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## 116 Procedure after arrest

- (1) The provisions of this section apply only where—
  - (a) the non-applicant civil partner has not been liberated under section 115(1), and
  - (b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.
- (2) The non-applicant civil partner who has been arrested under section 114(4) is wherever practicable to be brought before the sheriff sitting as a court of summary criminal jurisdiction for the district in which that civil partner was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 8 of the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (3) Nothing in subsection (2) prevents the non-applicant civil partner being brought before the sheriff on a Saturday, a Sunday or such a court holiday when the sheriff is, in pursuance of that section of that Act, sitting for the disposal of criminal business.
- (4) Subsections (1) to (3) of section 15 of that Act (intimation to a named person) apply to a non-applicant civil partner who has been arrested under section 114(4) as they apply to a person who has been arrested in respect of any offence.
- (5) The procurator fiscal is at the earliest opportunity, and in any event prior to the non-applicant civil partner being brought before the sheriff under subsection (2), to take all reasonable steps to intimate—
  - (a) to the applicant civil partner, and
  - (b) to the solicitor who acted for that civil partner when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that civil partner,that the criminal proceedings referred to in subsection (1) will not be taken.
- (6) On the non-applicant civil partner being brought before the sheriff under subsection (2) (as read with subsection (3)), the following procedures apply—
  - (a) the procurator fiscal is to present to the court a petition containing—
    - (i) a statement of the particulars of the non-applicant civil partner,
    - (ii) a statement of the facts and circumstances which gave rise to the arrest, and
    - (iii) a request that the non-applicant civil partner be detained for a further period not exceeding 2 days,
  - (b) if it appears to the sheriff that—
    - (i) the statement referred to in paragraph (a)(ii) ostensibly discloses a breach of interdict by the non-applicant civil partner,
    - (ii) proceedings for breach of interdict will be taken, and
    - (iii) there is a substantial risk of violence by the non-applicant civil partner against the applicant civil partner or any child of the family,he may order the non-applicant civil partner to be detained for a further period not exceeding 2 days, and
  - (c) in any case to which paragraph (b) does not apply, the non-applicant civil partner is, unless in custody in respect of any other matter, to be released from custody.

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- (7) In computing the period of 2 days referred to in paragraphs (a) and (b) of subsection (6), no account is to be taken of a Saturday or Sunday or of any holiday in the court in which the proceedings for breach of interdict will require to be raised.

## CHAPTER 5

### DISSOLUTION, SEPARATION AND NULLITY

#### *Dissolution and separation*

VALID FROM 05/12/2005

#### **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) 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) the defender has wilfully and without reasonable cause deserted the pursuer and during a continuous period of two years immediately succeeding the defender's desertion—
    - (i) there has been no cohabitation between the parties, and
    - (ii) the pursuer has not refused a genuine and reasonable offer by the defender to adhere,
  - (c) there has been no cohabitation between the civil partners at any time during a continuous period of two years after the date of registration of the civil partnership and immediately preceding the bringing of the action and 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 5 years after that date and immediately preceding the bringing of the action.
- (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

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- (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) In an action to which paragraph (d) of subsection (3) relates, even though irretrievable breakdown of the civil partnership is established the court is not bound to grant decree if in its opinion to do so would result in grave financial hardship to the defender.
- (7) For the purposes of subsection (6), hardship includes the loss of the chance of acquiring any benefit.
- (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.

VALID FROM 05/12/2005

#### **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.

VALID FROM 05/12/2005

#### **119 Effect of resumption of cohabitation**

- (1) In an action to which paragraph (b) of section 117(3) relates, the irretrievable breakdown of a civil partnership is not to be taken to be established if, after the expiry of the period mentioned in that paragraph—
- (a) the pursuer resumes cohabitation with the defender, and
  - (b) cohabits with the defender at any time after the end of a period of 3 months commencing with the date of such resumption.
- (2) Subsection (1) is subject to section 118(2).
- (3) In considering whether any period mentioned in paragraph (b), (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

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one another is to count as part of the period of non-cohabitation required by any of those paragraphs.

VALID FROM 05/12/2005

### **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.

VALID FROM 05/12/2005

### **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.

### **122 Registration of dissolution of civil partnership**

- (1) The Registrar General is to maintain at the General Register Office a register of decrees of dissolution 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 to which it relates.
- (6) The Registrar General may—
  - (a) delete,
  - (b) amend, or

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- (c) substitute another entry for,  
any entry in the register.

#### Commencement Information

- 18** 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)

VALID FROM 05/12/2005

### *Nullity*

#### **123 Nullity**

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, or
- (b) though they were so eligible, either of them did not validly consent to its formation.

#### **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”).
- (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

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- (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.

VALID FROM 04/05/2006

*<sup>F5</sup>Special destinations: revocation on dissolution or annulment*

#### Textual Amendments

- F5** 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](#))

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#### **124A Special destination: revocation on dissolution or annulment**

- (1) Subsections (2) and (3) apply where—
  - (a) heritable property is held in the name of—
    - (i) a person (“A”) and A's civil partner (“B”) and the survivor of them,
    - (ii) A, B and another person and the survivor or survivors of them,
    - (iii) A with a special destination on A's death, in favour of B,
  - (b) A and B's civil partnership is terminated by dissolution or annulment, and
  - (c) after the dissolution or annulment A dies.
- (2) In relation to the succession to A's heritable property (or part of it) under the destination, B shall be deemed to have failed to survive A.
- (3) If a person has in good faith and for value (whether by purchase or otherwise) acquired title to the heritable property, the title so acquired shall not be challengeable on the ground that, by virtue of subsection (2), the property falls to the estate of A.
- (4) Subsection (2) shall not apply if the destination specifies that B is to take under the destination despite the termination of A and B's civil partnership by dissolution or annulment.]

VALID FROM 05/12/2005

#### *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.

### **CHAPTER 6**

#### **MISCELLANEOUS AND INTERPRETATION**

#### *Miscellaneous*

#### **126 Regulations**

- (1) In this Chapter and in Chapters 2 and 5, “prescribed” means prescribed by regulations made by the Registrar General.
- (2) Regulations so made may make provision (including provision as to fees) supplementing, in respect of the provision of services by or on behalf of the Registrar General or by local registration authorities (as defined by section 5(3) of the 1965 Act), the provisions of Chapter 2 of this Part.

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- (3) Any power to make regulations under subsection (1) or (2) is exercisable by statutory instrument; and no such regulations are to be made except with the approval of the Scottish Ministers.
- (4) A statutory instrument containing regulations under subsection (1) or (2), or regulations under section 106(3)(a)(i), is subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 05/12/2005

**127 Attachment**

Where an attachment has been executed of furniture and plenishings of which the debtor's civil partner has the possession or use by virtue of an order under section 103(3) or (4), the sheriff, on the application of that civil partner made within 40 days after the execution of the attachment, may—

- (a) declare the attachment null, or
- (b) make such order as he thinks appropriate to protect such possession or use by that civil partner,

if satisfied that the purpose of the attachment was wholly or mainly to prevent such possession or use.

VALID FROM 05/12/2005

**128 Promise or agreement to enter into civil partnership**

No promise or agreement to enter into civil partnership creates any rights or obligations under the law of Scotland; and no action for breach of such a promise or agreement may be brought in any court in Scotland, whatever the law applicable to the promise or agreement.

VALID FROM 05/12/2005

**129 Lord Advocate as party to action for nullity or dissolution of civil partnership**

- (1) The Lord Advocate may enter appearance as a party in any action—
  - (a) of declarator of nullity of a civil partnership, or
  - (b) for dissolution of a civil partnership,
 and he may lead such proof and maintain such pleas as he thinks fit.
- (2) The Court, whenever it considers it necessary for the proper disposal of any such action, is to direct that the action be brought to the notice of the Lord Advocate for him to determine whether to enter appearance.
- (3) No expenses are claimable by or against the Lord Advocate in any such action in which he enters appearance.



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VALID FROM 05/12/2005

### 130 Civil partner of accused a competent witness

- (1) The civil partner of an accused may be called as a witness—
  - (a) by the accused, or
  - (b) without the consent of the accused, by a co-accused or by the prosecutor.
- (2) But the civil partner is not a compellable witness for the co-accused or for the prosecutor and is not compelled to disclose any communication made, while the civil partnership subsists, between the civil partners.
- (3) The failure of a civil partner of an accused to give evidence is not to be commented on by the defence or the prosecutor.

VALID FROM 05/12/2005

### 131 Succession: legal rights arising by virtue of civil partnership

- (1) Where a person dies survived by a civil partner then, unless the circumstance is as mentioned in subsection (2), the civil partner has right to half of the moveable net estate belonging to the deceased at the time of death.
- (2) That circumstance is that the person is also survived by issue, in which case the civil partner has right to a third of that moveable net estate and those issue have right to another third of it.
- (3) In this section—
  - “issue” means issue however remote, and
  - “net estate” has the meaning given by section 36(1) (interpretation) of the Succession (Scotland) Act 1964 (c. 41).
- (4) Every testamentary disposition executed after the commencement of this section by which provision is made in favour of the civil partner of the testator and which does not contain a declaration to the effect that the provision so made is in full and final satisfaction of the right to any share in the testator’s estate to which the civil partner is entitled by virtue of subsection (1) or (2), has effect (unless the disposition contains an express provision to the contrary) as if it contained such a declaration.
- (5) In section 36(1) of the Succession (Scotland) Act 1964 (c. 41), in the definition of “legal rights”, for “and legitim” substitute “legitim and rights under section 131 of the Civil Partnership Act 2004”.

VALID FROM 05/12/2005

### 132 Assurance policies

Section 2 of the Married Women’s Policies of Assurance (Scotland) Act 1880 (c. 26) (which provides that a policy of assurance may be effected in trust for a

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person's spouse, children or spouse and children) applies in relation to a policy of assurance—

- (a) effected by a civil partner (in this section referred to as “A”) on A's own life, and
- (b) expressed upon the face of it to be for the benefit of A's civil partner, or of A's children, or of A's civil partner and children,

as it applies in relation to a policy of assurance effected as, and expressed upon the face of it to be for such benefit as, is mentioned in that section.

VALID FROM 05/12/2005

### 133 Council Tax: liability of civil partners

After section 77 of the Local Government Finance Act 1992 (c. 14), insert—

#### “77A Liability of civil partners

(1) Where—

- (a) a person who is liable to pay council tax in respect of any chargeable dwelling and any day is in civil partnership with another person or living with another person in a relationship which has the characteristics of the relationship between civil partners; and
- (b) that other person is also a resident of the dwelling on that day but would not, apart from this section, be so liable,

those persons shall be jointly and severally liable to pay the council tax payable in respect of that dwelling and that day.

(2) Subsection (1) above shall not apply as respects any day on which the other person there mentioned falls to be disregarded for the purposes of discount—

- (a) by virtue of paragraph 2 of Schedule 1 to this Act (the severely mentally impaired); or
- (b) being a student, by virtue of paragraph 4 of that Schedule.”

### 134 General provisions as to fees

(1) Subject to such exceptions as may be prescribed, a district registrar may refuse to comply with any application voluntarily made to him under this Part until the appropriate fee, if any, provided for by or under this Part is paid to him; and any such fee, if not prepaid, is recoverable by the registrar to whom it is payable.

(2) Circumstances, of hardship or otherwise, may be prescribed in which fees provided for by or under this Part may be remitted by the Registrar General.

#### Commencement Information

- 19** [S. 134](#) wholly in force at 5.12.2005; [s. 134](#) not in force at Royal Assent see [s. 263](#); [s. 134](#) 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\(b\)](#)

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## Interpretation

### 135 Interpretation of this Part

In this Part, unless the context otherwise requires—

“the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49);

“authorised registrar” has the meaning given by section 87;

“caravan” means a caravan which is mobile or affixed to land;

“child of the family” has the meaning given by section 101(7);

“civil partnership book” has the meaning given by section 89;

“civil partnership register” has the meaning given by section 95(2);

“civil partnership schedule” has the meaning given by section 94;

“the court” means the Court of Session or the sheriff;

“district” means a registration district as defined by section 5(1) of the 1965 Act;

“district registrar” has the meaning given by section 7(12) of the 1965 Act;

“entitled partner” and “non-entitled partner”, subject to sections 106(2) and 111(2), have the meanings respectively assigned to them by section 101(1);

“exclusion order” has the meaning given by section 104(1);

“family” has the meaning given by section 101(7);

“family home” means any house, caravan, houseboat or other structure which has been provided or has been made available by one or both of the civil partners as, or has become, a family residence and includes any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure but does not include a residence provided or made available by one civil partner for that civil partner to reside in, whether with any child of the family or not, separately from the other civil partner;

“furniture and plenishings” means any article situated in a family home of civil partners which—

- (a) is owned or hired by either civil partner or is being acquired by either civil partner under a hire-purchase agreement or conditional sale agreement, and
- (b) is reasonably necessary to enable the home to be used as a family residence,

but does not include any vehicle, caravan or houseboat or such other structure as is mentioned in the definition of “family home”;

“notice of proposed civil partnership” has the meaning given by section 88(1);

“occupancy rights” means the rights conferred by section 101(1);

“Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland;

“registration office” means a registration office provided under section 8(1) of the 1965 Act;

“tenant” includes—

- (a) a sub-tenant,

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- (b) a statutory tenant as defined in section 3 of the Rent (Scotland) Act 1984 (c. 58), and
  - (c) a statutory assured tenant as defined in section 16(1) of the Housing (Scotland) Act 1988 (c. 43),
- and “tenancy” is to be construed accordingly.

### **136 The expression “relative” in the 1965 Act**

In section 56(1) of the 1965 Act (interpretation), in the definition of “relative”, at the end insert “, a civil partner and anyone related to the civil partner of the person as regards whom the expression is being construed”.

**Status:**

Point in time view as at 14/09/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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