



Civil Partnership Act 2004

2004 CHAPTER 33

PART 3

CIVIL PARTNERSHIP: SCOTLAND

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 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.

Changes to legislation: Civil Partnership Act 2004, Section 101 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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.

[^{F1}(6A) Subject to subsection (5), if—

- (a) there has been no cohabitation between an entitled partner and a non-entitled partner during a continuous period of two years, and
- (b) during that period the non-entitled partner has not occupied the family home, the non-entitled partner shall, on the expiry of that period, cease to have occupancy rights in the family home.

(6B) A non-entitled partner who has ceased to have occupancy rights by virtue of subsection (6A) may not apply to the court for an order under section 103(1).]

(7) In this Part—

“child of the family” means [^{F2}any child or grandchild of either civil partner, and any person who has been brought up or treated by either civil partner as if the person were a child of that partner, whatever the age of such a child, grandchild or person], and

“family” means the civil partners in the civil partnership, together with any child [^{F3}, grandchild or person so treated] 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.

Textual Amendments

- F1** S. 101(6A)(6B) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(a)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F2** Words in s. 101(7) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(b)(i)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)
- F3** Words in s. 101(7) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 33, 46(2), **Sch. 1 para. 3(b)(ii)**; S.S.I. 2006/212, **art. 2** (subject to arts. 3-13)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 103(10) inserted by [2023 asp 3 s. 56\(5\)](#)
- s. 108(5) inserted by [2023 asp 3 s. 56\(8\)](#)
- s. 213(1A) inserted by [2013 c. 30 Sch. 2 para. 5\(2\)](#)