



Civil Partnership Act 2004

2004 CHAPTER 33

PART 3

CIVIL PARTNERSHIP: SCOTLAND

CHAPTER 3

OCCUPANCY RIGHTS AND TENANCIES

Occupancy rights

103 Regulation by court of rights of occupancy of family home

- (1) [^{F1}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.

Changes to legislation: *Civil Partnership Act 2004, Section 103 is up to date with all changes known to be in force on or before 14 March 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*

- (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.
- (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 messenger-at-arms or sheriff 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.

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- (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.

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Textual Amendments

- F1** 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)

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 103(2) words inserted by [2023 asp 3 s. 56\(3\)](#)
- s. 103(6) words substituted by [2007 asp 3 Sch. 5 para. 33](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 33 repealed (31.1.2011) by 2010 asp 8, sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1), Sch. 1)

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\(2\)](#)