

Status: Point in time view as at 07/07/2011.

Changes to legislation: There are currently no known outstanding effects for the Family Law (Scotland) Act 2006. (See end of Document for details)

SCHEDULE 1

(introduced by section 33)

AMENDMENTS OF THE CIVIL PARTNERSHIP ACT 2004

- 1 The Civil Partnership Act 2004 (c. 33) shall be amended in accordance with this schedule.

Commencement Information

II Sch. 1 para. 1 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 2 In section 86 (eligibility to register in Scotland as civil partners)—
- (a) in subsection (2), for “subsections (3) and (4)” there shall be substituted “subsection (3)”; and
 - (b) for subsections (4) and (5) there shall be substituted—
 - “(4) Paragraph 2 of Schedule 10 has effect subject to the modifications specified in subsection (5) in the case of a person (here the “relevant person”) whose gender has become the acquired gender under the Gender Recognition Act 2004 (c. 7).
 - (5) The reference in that paragraph to—
 - (a) a former wife of the relevant person includes any former husband of the relevant person, and
 - (b) a former husband of the relevant person includes any former wife of the relevant person.”.

Commencement Information

I2 Sch. 1 para. 2 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 3 In section 101 (right of civil partner without title to occupy family home)—
- (a) after subsection (6) there shall be inserted—
 - “(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).”; and
 - (b) in subsection (7)—
 - (i) in the definition of “child of the family”, for the words from “a”, where it first occurs, to “family”, there shall be substituted “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

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- were a child of that partner, whatever the age of such a child, grandchild or person”; and
- (ii) in the definition of “family”, for “so accepted”, there shall be substituted “, grandchild or person so treated”.

Commencement Information

I3 Sch. 1 para. 3 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 3)

- 4 In subsection (1) of section 103 (regulation by court of rights of occupancy of family home), at the beginning there shall be inserted “ Subject to section 101(6A), ”.

Commencement Information

I4 Sch. 1 para. 4 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 3)

- 5 In section 106 (continued exercise of occupancy rights after dealing)—
- (a) after subsection (1) there shall be inserted—
- “(1A) The occupancy rights of a non-entitled partner in relation to a family home shall not be exercisable in relation to the home where, following a dealing of the entitled partner relating to the home—
- (a) a person acquires the home, or an interest in it, in good faith and for value from a person other than the person who is or, as the case may be, was the entitled partner, or
- (b) a person derives title to the home from a person who acquired title as mentioned in paragraph (a).”; and
- (b) in subsection (3)—
- (i) in paragraph (e), for “sale”, where it first occurs, there shall be substituted “ transfer for value ”;
- (ii) in paragraph (e), for the words from “seller”, where it first occurs, to the end of the paragraph there shall be substituted “transferor—
- (i) a written declaration signed by the transferor, or a person acting on behalf of the transferor under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)), that the subjects of the transfer are not, or were not at the time of the dealing, a family home in relation to which a civil partner of the transferor has or had occupancy rights, or
- (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 a person acting on behalf of the non-entitled partner under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).”; and
- (iii) in paragraph (f), for “5” there shall be substituted “ 2 ”.

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Commencement Information

I5 Sch. 1 para. 5 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 3)

- 6 In section 107 (dispensation with civil partner's consent to dealing)—
- (a) in subsection (1), at the beginning there shall be inserted “ Subject to subsections (1A) and (1C), ”;
 - (b) after that subsection there shall be inserted—
 - “(1A) Subsection (1B) applies if, in relation to a proposed sale—
 - (a) negotiations with a third party have not begun, or
 - (b) negotiations have begun but a price has not been agreed.
 - (1B) An order under subsection (1) dispensing with consent may be made only if—
 - (a) the price agreed for the sale is no less than such amount as the court specifies in the order, and
 - (b) the contract for the sale is concluded before the expiry of such period as may be so specified.
 - (1C) Subsection (1D) applies if the proposed dealing is the grant of a heritable security.
 - (1D) An order under subsection (1) dispensing with consent may be made only if—
 - (a) the heritable security is granted for a loan of no more than such amount as the court specifies in the order, and
 - (b) the security is executed before the expiry of such period as may be so specified.”; and
 - (c) after subsection (3) there shall be inserted—
 - “(3A) If the court refuses an application for an order under subsection (1), it may make an order requiring a non-entitled partner who is or becomes the occupier of the family home—
 - (a) to make such payments to the owner of the home in respect of that partner's occupation of it as may be specified in the order,
 - (b) to comply with such other conditions relating to that partner's occupation of the family home as may be so specified.”.

Commencement Information

I6 Sch. 1 para. 6 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 7 After section 111 there shall be inserted—

“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).

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- (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—
- (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.”.

Commencement Information

I7 Sch. 1 para. 7 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 3)

- 8 In section 113 (civil partnerships: competency of interdict)—
- (a) in subsection (2), for paragraph (b) there shall be substituted—
- “(b) subject to subsection (3), prohibits a civil partner from entering or remaining in—
- (i) a family home,
- (ii) any other residence occupied by the applicant civil partner,
- (iii) any place of work of the applicant civil partner,
- (iv) any school attended by a child in the permanent or temporary care of the applicant civil partner”; and
- (b) after that subsection, there shall be added—
- “(3) Subsection (4) applies if in relation to a family home the non-applicant civil partner—
- (a) is an entitled partner, or
- (b) has occupancy rights.
- (4) Except where subsection (5) applies, the court may not grant a relevant interdict prohibiting the non-applicant civil partner from entering or remaining in the family home.
- (5) This subsection applies if—
- (a) the interdict is ancillary to an exclusion order, or
- (b) by virtue of section 101(4), the court refuses leave to exercise occupancy rights.

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- (6) In this section and in sections 114 to 116, “applicant civil partner” means the civil partner who has applied for the interdict; and “non-applicant civil partner” is to be construed accordingly.”.

Commencement Information

I8 Sch. 1 para. 8 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 9 In subsection (3) of section 117 (dissolution of civil partnerships)—
- (a) in paragraph (c), for “two years” there shall be substituted “ one year ”; and
 - (b) in paragraph (d), for “5” there shall be substituted “ two ”.

Commencement Information

I9 Sch. 1 para. 9 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 10 In section 123 (nullity) (which shall become subsection (1) of that section)—
- (a) the word “or”, which occurs immediately after paragraph (a), shall be repealed;
 - (b) the word “validly” in paragraph (b) shall be repealed;
 - (c) at the end of paragraph (b) there shall be inserted “, or
 - (c) at the time of registration one of them who was capable of consenting to the formation of the civil partnership purported to give consent but did so by reason only of duress or error.”; and
 - (d) at the end, there shall be added—
 - “(2) In this section “error” means—
 - (a) error as to the nature of civil partnership, or
 - (b) a mistaken belief held by a person (“A”) that the other person with whom A purported to register a civil partnership was the person with whom A had agreed to register a civil partnership.”.

Commencement Information

I10 Sch. 1 para. 10 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

- 11 After section 124 there shall be inserted—

“Special destinations: revocation on dissolution or annulment

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,

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- (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.”.

Commencement Information

I11 Sch. 1 para. 11 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 5)

- 12 Section 135 (interpretation of Part 3) shall become subsection (1) of that section and—
- (a) in the definition of “family home”—
 - (i) after “means” there shall be inserted “ , subject to subsection (2), ”; and
 - (ii) for the words “one civil partner for that” there shall be substituted “ a person for one ”; and
 - (b) at the end there shall be inserted—
 - “(2) If—
 - (a) the tenancy of a family home is transferred from one civil partner to the other by agreement or under any enactment, and
 - (b) following the transfer, the civil partner to whom the tenancy was transferred occupies the home but the other civil partner does not,
 the home shall, on such transfer, cease to be a family home.”.

Commencement Information

I12 Sch. 1 para. 12 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

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SCHEDULE 2

(introduced by section 45(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Domicile and Matrimonial Proceedings Act 1973 (c. 45)

- 1 In section 7 of the Domicile and Matrimonial Proceedings Act 1973 (jurisdiction of Court of Session)—
- (a) in paragraph (a) of subsection (1)—
 - (i) after “marriage”, where it first occurs, there shall be inserted “ or ”; and
 - (ii) the words “declarator of freedom and putting to silence” shall be repealed;
 - (b) subsection (2) shall be repealed; and
 - (c) in subsection (5)—
 - (i) after “marriage”, where it secondly occurs, there shall be inserted “ or ”; and
 - (ii) “or declarator of freedom and putting to silence” shall be repealed.

Commencement Information

I13 Sch. 2 para. 1 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 4)

The Damages (Scotland) Act 1976 (c. 13)

^{F12}

Textual Amendments

F1 Sch. 2 para. 2 repealed (7.7.2011) by Damages (Scotland) Act 2011 (asp 7), s. 19(3), Sch. 2 (with ss. 17, 19(2)); S.S.I. 2011/268, art. 3 (with art. 4)

Commencement Information

I14 Sch. 2 para. 2 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

The Land Registration (Scotland) Act 1979 (c. 33)

- 3 In subsection (3) of section 12 of the Land Registration (Scotland) Act 1979 (Keeper's indemnity in respect of loss), at the end there shall be added—
- “(r) the loss is suffered by the estate of a deceased former spouse in respect of heritable property falling to it where the title to the property or to any interest in the property has been acquired by another person and is unchallengeable by virtue of section 19 of the Family Law (Scotland) Act 2006 (asp 2);
 - (s) the loss is suffered by the estate of a deceased former civil partner in respect of heritable property falling to it where the title to the property or to any interest in the property has been acquired by another person and is unchallengeable by virtue of section 124A of the Civil Partnership Act 2004 (c. 33).”

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Commencement Information

I15 Sch. 2 para. 3 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)

- 4 (1) The Matrimonial Homes (Family Protection) (Scotland) Act 1981 shall be amended as follows.
- (2) In subsection (1) of section 3 (regulation by court of rights of occupancy of matrimonial home), at the beginning there shall be inserted “ Subject to section 1(7) of this Act, ”.
- (3) In the proviso to section 17(2), for “10” there shall be substituted “ 8 ”.

Commencement Information

I16 Sch. 2 para. 4 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

The Family Law (Scotland) Act 1985 (c. 37)

- 5 (1) The Family Law (Scotland) Act 1985 shall be amended as follows.
- (2) In subsection (2) of section 12A (orders for payment of capital sum: pensions lump sum), for “party”, where it first occurs, there shall be substituted “ person ”.
- (3) In subsection (2) of section 16 (agreements on financial provision), after “divorce”, wherever it occurs, there shall be inserted “ or of dissolution of the civil partnership ”.
- (4) In subsection (1) of section 27 (interpretation), in the definition of “partner”, for “has”, where it first occurs, there shall be substituted “ was ”.

Commencement Information

I17 Sch. 2 para. 5 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

The Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9)

- 6 (1) The Law Reform (Parent and Child) (Scotland) Act 1986 shall be amended as follows.
- (2) In subsections (1) and (5) of section 7 (actions for declarator), for the words “non-parentage, legitimacy, legitimation or illegitimacy”, in each place where they occur there shall be substituted “ or non-parentage ”.
- (3) In section 9 (savings and supplementary provisions)—
- (a) in paragraph (b) of subsection (1), at the beginning there shall be inserted “ subject to subsection (1A) below, ”; and
- (b) after that subsection, there shall be inserted—
- “(1A) Subsections (1) and (2) of section 1 of this Act shall apply in relation to adopted children.”.

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Commencement Information

I18 Sch. 2 para. 6 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with art. 10)

The Civil Evidence (Family Mediation) (Scotland) Act 1995 (c. 6)

- 7 In subsection (7) of section 1 of the Civil Evidence (Family Mediation) (Scotland) Act 1995 (inadmissibility in civil proceedings of information as to what occurred during family mediation)—
- (a) the words from “a” to “wife” shall form paragraph (a) of that subsection; and
 - (b) after “wife” there shall be added “; or
(b) two persons who are not civil partners of each other but are living together as if they were civil partners.”.

Commencement Information

I19 Sch. 2 para. 7 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

The Children (Scotland) Act 1995 (c. 36)

- 8 In subsection (4) of section 12 of the Children (Scotland) Act 1995 (restrictions on decrees for divorce, separation or annulment affecting children)—
- (a) the existing words from “the parties” to the end shall become paragraph (a) (with the existing paragraphs (a) and (b) becoming sub-paragraphs (i) and (ii)); and
 - (b) after the new paragraph (a), there shall be added “; or
(“ the partners in a civil partnership, means a child who has been treated by both partners as a child of the family which their partnership constitutes.”.

Commencement Information

I20 Sch. 2 para. 8 in force at 4.5.2006 by S.S.I. 2006/212, art. 2

SCHEDULE 3
(introduced by section 45(2))

REPEALS

Commencement Information

I21 Sch. 3 in force at 4.5.2006 by S.S.I. 2006/212, art. 2 (with arts. 11-13)

Enactment

The Conjugal Rights (Scotland) Amendment Act 1861 (c. 86)

Extent of repeal

The whole Act.

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The Married Women's Policies of Assurance (Scotland) Act 1880 (c. 26)	In section 2, in the definition of “children”, the words “illegitimate or”.
The Sheriff Courts (Scotland) Act 1907 (c. 51)	Section 38B.
The Law Reform (Husband and Wife) Act 1962 (c. 48)	The whole Act.
The Industrial and Provident Societies Act 1965 (c. 12)	In section 25, in subsection (1), the words “subject to subsection (2) of this section,” and subsection (2).
The Legitimation (Scotland) Act 1968 (c. 22)	The whole Act.
The Domicile and Matrimonial Proceedings Act 1973 (c. 45)	Section 4.
The Friendly Societies Act 1974 (c. 46)	In section 68, subsection (2) and, in subsection (3), the words from “and” to the end.
The Damages (Scotland) Act 1976 (c. 13)	In Schedule 1, in paragraph 1(d), the words “(other than a parent or child)”.
The Divorce (Scotland) Act 1976 (c. 39)	In section 2, subsection (3) and, in subsection (4), the word “(c)”.
The Adoption (Scotland) Act 1978 (c. 28)	In section 39, in subsections (1) and (2), the word “legitimate”, wherever it occurs. In section 65, in the definition of “relative”, the words “, where the child is illegitimate,”.
The Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59)	In section 14(2), the words “and section 15”. Sections 15 to 17. Section 21. In section 22, in the definition of “matrimonial home”, the words “attached to, and”.
The Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9)	In section 1, in subsection (2), the words “Subject to subsection (4) below,”, subsection (3) and, in subsection (4), paragraph (c). In section 9(1), paragraph (a).
The Civil Evidence (Scotland) Act 1988 (c. 32)	In section 8, in subsection (2), the words “legitimacy, legitimation, illegitimacy,”.
The Court of Session Act 1988 (c. 36)	Section 19.
The Age of Legal Capacity (Scotland) Act 1991 (c. 50)	Section 7.
The Protection from Abuse (Scotland) Act 2001 (asp 14)	In section 1(2), paragraph (b). Section 6.
The Civil Partnership Act 2004 (c. 33)	Section 86(6) and (7). In section 113(2), the words “and in section 114”. Sections 114 to 116.

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In section 117, subsections (3)(b), (6) and (7).

In section 119, subsections (1) and (2) and, in subsection (3), the word “(b)”.

Section 129.

In section 135, in the definition of “family home”, the words “attached to, and”.

In Schedule 10, paragraph 3.

In Schedule 28, paragraphs 42 and 60(3).

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