



Civil Partnership Act 2004

2004 CHAPTER 33

PART 3

CIVIL PARTNERSHIP: SCOTLAND

CHAPTER 3

OCCUPANCY RIGHTS AND TENANCIES

Occupancy rights

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) [F1a written declaration signed] 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.

Changes to legislation: Civil Partnership Act 2004, Section 108 is up to date with all changes known to be in force on or before 03 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

- (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) [^{F2}a written declaration signed] 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.

Textual Amendments

- F1** Words in s. 108(2)(a) substituted (30.6.2006) by [The Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), [art. 9](#)
- F2** Words in s. 108(3)(a) substituted (30.6.2006) by [The Family Law \(Scotland\) Act 2006 \(Consequential Modifications\) Order 2006 \(S.S.I. 2006/384\)](#), [art. 9](#)

Changes to legislation:

Civil Partnership Act 2004, Section 108 is up to date with all changes known to be in force on or before 03 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.

[View outstanding changes](#)

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\(2\)](#)