

CIVIL PARTNERSHIP ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Civil Partnerships: Scotland

Introduction

Chapter 3 – Occupancy Rights and Tenancies

Section 101: Occupancy rights

196. This section sets out the rights that civil partners have to occupy the family home of the civil partnership. The section applies where one of the civil partners is either entitled to occupy the family home, or permitted to do so by a third party, and the other civil partner has no such entitlement or permission. An example of this would be where the family home is owned or leased in the name of one civil partner only. The civil partner who is entitled to occupancy or permitted occupancy by a third party is called the “entitled partner”. The civil partner who is not entitled to occupancy or permitted occupancy by a third party is called the “non-entitled partner”.
197. *Subsection (1)* sets out that non-entitled partners have the right to continue to occupy the family home (if they are already doing so), or have the right to enter and occupy the family home (if they are not already doing so). If the entitled partner has occupancy rights by virtue of permission of a third party, the non-entitled partner does not require the permission of the third party to exercise the rights conferred by *subsection (1)*.
198. *Subsection (2)* means that this right also extends to any child of the family.
199. *Subsection (3)* covers a situation whereby the entitled partner shares a right of occupancy with another person who is not the civil partner. In this situation, the rights explained in *subsection (1)* only apply if that other person waives their right to occupy the family home in favour of the entitled partner.
200. *Subsection (4)* provides recourse to the court, if the entitled partner refuses to let their civil partner enter the home. The latter can apply to the court for an order, as explained in section 103.
201. *Subsection (5)* allows the non-entitled partner to renounce their rights under this section in writing in certain circumstances. *Subsection (6)* provides that such a statement must be made before a notary public and made without coercion.
202. *Subsection (7)* provides definitions of “child of the family” and “family” and *Subsection (8)* defines what a notary public is.