



# Civil Partnership Act 2004

## 2004 CHAPTER 33

### PART 3

#### CIVIL PARTNERSHIP: SCOTLAND

### CHAPTER 6

#### MISCELLANEOUS AND INTERPRETATION

#### *Miscellaneous*

#### **126 Regulations**

- (1) In this Chapter and in Chapters 2 and 5, “prescribed” means prescribed by regulations made by the Registrar General.
- (2) Regulations so made may make provision (including provision as to fees) supplementing, in respect of the provision of services by or on behalf of the Registrar General or by local registration authorities (as defined by section 5(3) of the 1965 Act), the provisions of Chapter 2 of this Part.
- (3) Any power to make regulations under subsection (1) or (2) is exercisable by statutory instrument; and no such regulations are to be made except with the approval of the Scottish Ministers.
- (4) A statutory instrument containing regulations under subsection (1) or (2), or regulations under section 106(3)(a)(i), is subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **127 Attachment**

Where an attachment has been executed of furniture and plenishings of which the debtor’s civil partner has the possession or use by virtue of an order under

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*Status: This is the original version (as it was originally enacted).*

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section 103(3) or (4), the sheriff, on the application of that civil partner made within 40 days after the execution of the attachment, may—

- (a) declare the attachment null, or
- (b) make such order as he thinks appropriate to protect such possession or use by that civil partner,

if satisfied that the purpose of the attachment was wholly or mainly to prevent such possession or use.

### **128 Promise or agreement to enter into civil partnership**

No promise or agreement to enter into civil partnership creates any rights or obligations under the law of Scotland; and no action for breach of such a promise or agreement may be brought in any court in Scotland, whatever the law applicable to the promise or agreement.

### **129 Lord Advocate as party to action for nullity or dissolution of civil partnership**

- (1) The Lord Advocate may enter appearance as a party in any action—
  - (a) of declarator of nullity of a civil partnership, or
  - (b) for dissolution of a civil partnership,and he may lead such proof and maintain such pleas as he thinks fit.
- (2) The Court, whenever it considers it necessary for the proper disposal of any such action, is to direct that the action be brought to the notice of the Lord Advocate for him to determine whether to enter appearance.
- (3) No expenses are claimable by or against the Lord Advocate in any such action in which he enters appearance.

### **130 Civil partner of accused a competent witness**

- (1) The civil partner of an accused may be called as a witness—
  - (a) by the accused, or
  - (b) without the consent of the accused, by a co-accused or by the prosecutor.
- (2) But the civil partner is not a compellable witness for the co-accused or for the prosecutor and is not compelled to disclose any communication made, while the civil partnership subsists, between the civil partners.
- (3) The failure of a civil partner of an accused to give evidence is not to be commented on by the defence or the prosecutor.

### **131 Succession: legal rights arising by virtue of civil partnership**

- (1) Where a person dies survived by a civil partner then, unless the circumstance is as mentioned in subsection (2), the civil partner has right to half of the moveable net estate belonging to the deceased at the time of death.
- (2) That circumstance is that the person is also survived by issue, in which case the civil partner has right to a third of that moveable net estate and those issue have right to another third of it.
- (3) In this section—

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“issue” means issue however remote, and

“net estate” has the meaning given by section 36(1) (interpretation) of the Succession (Scotland) Act 1964 (c. 41).

- (4) Every testamentary disposition executed after the commencement of this section by which provision is made in favour of the civil partner of the testator and which does not contain a declaration to the effect that the provision so made is in full and final satisfaction of the right to any share in the testator’s estate to which the civil partner is entitled by virtue of subsection (1) or (2), has effect (unless the disposition contains an express provision to the contrary) as if it contained such a declaration.
- (5) In section 36(1) of the Succession (Scotland) Act 1964 (c. 41), in the definition of “legal rights”, for “and legitim” substitute “legitim and rights under section 131 of the Civil Partnership Act 2004”.

### **132 Assurance policies**

Section 2 of the Married Women’s Policies of Assurance (Scotland) Act 1880 (c. 26) (which provides that a policy of assurance may be effected in trust for a person’s spouse, children or spouse and children) applies in relation to a policy of assurance—

- (a) effected by a civil partner (in this section referred to as “A”) on A’s own life, and
- (b) expressed upon the face of it to be for the benefit of A’s civil partner, or of A’s children, or of A’s civil partner and children,

as it applies in relation to a policy of assurance effected as, and expressed upon the face of it to be for such benefit as, is mentioned in that section.

### **133 Council Tax: liability of civil partners**

After section 77 of the Local Government Finance Act 1992 (c. 14), insert—

#### **“77A Liability of civil partners**

(1) Where—

- (a) a person who is liable to pay council tax in respect of any chargeable dwelling and any day is in civil partnership with another person or living with another person in a relationship which has the characteristics of the relationship between civil partners; and
- (b) that other person is also a resident of the dwelling on that day but would not, apart from this section, be so liable,

those persons shall be jointly and severally liable to pay the council tax payable in respect of that dwelling and that day.

(2) Subsection (1) above shall not apply as respects any day on which the other person there mentioned falls to be disregarded for the purposes of discount—

- (a) by virtue of paragraph 2 of Schedule 1 to this Act (the severely mentally impaired); or
- (b) being a student, by virtue of paragraph 4 of that Schedule.”

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### 134 General provisions as to fees

- (1) Subject to such exceptions as may be prescribed, a district registrar may refuse to comply with any application voluntarily made to him under this Part until the appropriate fee, if any, provided for by or under this Part is paid to him; and any such fee, if not prepaid, is recoverable by the registrar to whom it is payable.
- (2) Circumstances, of hardship or otherwise, may be prescribed in which fees provided for by or under this Part may be remitted by the Registrar General.

### *Interpretation*

### 135 Interpretation of this Part

In this Part, unless the context otherwise requires—

“the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49);

“authorised registrar” has the meaning given by section 87;

“caravan” means a caravan which is mobile or affixed to land;

“child of the family” has the meaning given by section 101(7);

“civil partnership book” has the meaning given by section 89;

“civil partnership register” has the meaning given by section 95(2);

“civil partnership schedule” has the meaning given by section 94;

“the court” means the Court of Session or the sheriff;

“district” means a registration district as defined by section 5(1) of the 1965 Act;

“district registrar” has the meaning given by section 7(12) of the 1965 Act;

“entitled partner” and “non-entitled partner”, subject to sections 106(2) and 111(2), have the meanings respectively assigned to them by section 101(1);

“exclusion order” has the meaning given by section 104(1);

“family” has the meaning given by section 101(7);

“family home” means any house, caravan, houseboat or other structure which has been provided or has been made available by one or both of the civil partners as, or has become, a family residence and includes any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure but does not include a residence provided or made available by one civil partner for that civil partner to reside in, whether with any child of the family or not, separately from the other civil partner;

“furniture and plenishings” means any article situated in a family home of civil partners which—

- (a) is owned or hired by either civil partner or is being acquired by either civil partner under a hire-purchase agreement or conditional sale agreement, and
- (b) is reasonably necessary to enable the home to be used as a family residence,

but does not include any vehicle, caravan or houseboat or such other structure as is mentioned in the definition of “family home”;

“notice of proposed civil partnership” has the meaning given by section 88(1);

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“occupancy rights” means the rights conferred by section 101(1);

“Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland;

“registration office” means a registration office provided under section 8(1) of the 1965 Act;

“tenant” includes—

- (a) a sub-tenant,
- (b) a statutory tenant as defined in section 3 of the Rent (Scotland) Act 1984 (c. 58), and
- (c) a statutory assured tenant as defined in section 16(1) of the Housing (Scotland) Act 1988 (c. 43),

and “tenancy” is to be construed accordingly.

### **136 The expression “relative” in the 1965 Act**

In section 56(1) of the 1965 Act (interpretation), in the definition of “relative”, at the end insert “, a civil partner and anyone related to the civil partner of the person as regards whom the expression is being construed”.