

*Draft Order laid before the Scottish Parliament under section 259(8)(b) of the Civil Partnership Act 2004, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2005 No.**

**CIVIL PARTNERSHIP**

**The Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005**

*Made* - - - - 2005  
*Coming into force* - - 5th December 2005

The Scottish Ministers, in exercise of the powers conferred by section 259(1) to (3) of the Civil Partnership Act 2004<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has in accordance with section 259(8)(b) of that Act been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and extent**

1. This Order may be cited as the Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 and shall come into force on 5th December 2005.
2. This Order shall extend to Scotland only.

**Amendment of the Human Tissue Act 1961**

3. In section 1(2)(b) of the Human Tissue Act 1961<sup>(2)</sup>, after “spouse” insert “, surviving civil partner”.

**Amendment of the Conveyancing (Scotland) Act 1970**

4. In section 19 (10B)(b)(ii) of the Conveyancing (Scotland) Act 1970<sup>(3)</sup>—
  - (a) after “matrimonial” insert “or family”; and
  - (b) after “spouse” insert “or civil partner”.

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(1) 2004 c. 33.  
(2) 1961 c. 54; section 1 was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 7; the Health Authorities Act 1997 (c. 17) Schedule 1, paragraph 92; S.I.2000/90 and the Regulation of Care (Scotland) Act 2001 (asp 8) Schedule 3, paragraph 1.  
(3) c.35. Section 19 (10B) was inserted by the Mortgage Rights (Scotland) Act 2001 (asp 11) section 1(8).

### **Amendment of the Marriage (Scotland) Act 1977**

5. The Marriage (Scotland) Act 1977(4) is amended as follows.
6. In section 2(1B), after paragraph (d) insert–
- “(e) in the case of a man marrying the mother of a former civil partner of his, after the death of both the former civil partner and the former civil partner’s father;
- (f) in the case of a man marrying the former civil partner of his daughter, after the death of both his daughter and his daughter’s mother;
- (g) in the case of a woman marrying the father of her former civil partner, after the death of both the former civil partner and the former civil partner’s mother;
- (h) in the case of a woman marrying a former civil partner of her son, after the death of both her son and her son’s father.”
7. In Schedule 1, for paragraphs 2 and 2A to that Schedule , substitute the following–

“Relationships by affinity referred to in section 2(1A)

Daughter of former wife	Son of former husband
Daughter of former civil partner	Son of former civil partner
Former wife of father	Former husband of mother
Former civil partner of mother	Former civil partner of father
Former wife of father’s father	Former husband of father’s mother
Former civil partner of mother’s mother	Former civil partner of mother’s father
Former wife of mother’s father	Former husband of mother’s mother
Former civil partner of father’s mother	Former civil partner of father’s father
Daughter of son of former wife	Son of son of former husband
Daughter of son of former civil partner	Son of son of former civil partner
Daughter of daughter of former wife	Son of daughter of former husband
Daughter of daughter of former civil partner	Son of daughter of former civil partner

Relationships by affinity referred to in section 2(1B)

Mother of former wife	Father of former husband
Mother of former civil partner	Father of former civil partner
Former wife of son	Former husband of daughter
Former civil partner of daughter	Former civil partner of son”

### **Amendment of the Land Registration (Scotland) Act 1979**

8. The Land Registration (Scotland) Act 1979(5) is amended as follows.

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(4) 1977 c. 15; section 2 was amended by the Gender Regulation Act 2004 c. 7, Schedule 4, paragraph 7.

(5) 1979 c. 33; sections 6 was amended by the Title Conditions (Scotland) Act 2003 (asp 9), section 112 and Schedule 14, paragraph 7 and the Abolition of Feudal Tenure etc. (Scotland) Act 2000, (asp 5); section 76 and Schedule 12, paragraph 39 and Schedule 13, Part 1; Section 9 was amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 section 3 and the

9. In section 6(4), in the definition of “overriding interest”–
- (a) leave out “and”; and
  - (b) after “1981” insert–
    - “; and
    - (iii) a non entitled civil partner within the meaning of section 106 of the Civil Partnership Act 2004.”.
10. In section 9(4), in the definition of “overriding interest”–
- (a) leave out “and”; and
  - (b) after “1981” insert–
    - “; and
    - (iii) a non entitled civil partner within the meaning of section 106 of the Civil Partnership Act 2004.”.
11. In section 28, in the definition of “overriding interest” after paragraph (gg) insert–
- “(gh) the non entitled civil partner within the meaning of section 106 of the Civil Partnership Act 2004;”.

#### **Amendment of the Anatomy Act 1984**

12. In sections 4(3)(b) and 6(3)(b) of the Anatomy Act 1984(6), after “spouse” insert “, surviving civil partner”.

#### **Amendment of the Family Law Act 1986**

13. The Family Law Act 1986(7) is amended as follows.
14. In sections 8, 9 and 10, after “matrimonial” insert “or civil partnership”.
- 15.—(1) Amend section 11 as follows.
- (2) In subsection (1)–
    - (a) after “matrimonial” insert “or civil partnership”; and
    - (b) after “marriage” insert “or civil partnership”.
  - (3) In subsection (2), after “matrimonial” insert “or civil partnership”.
- 16.—(1) Amend section 13 as follows.
- (2) In subsection (1), after “matrimonial” insert “or civil partnership”.
  - (3) For subsection (2), substitute–
    - “(2) A court in Scotland shall not have jurisdiction–

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[Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#) section 112; section 28 was amended by the Electricity Act 1989, Schedule 16, paragraph 23, the Coal Industry Act 1994 (c. 21), Schedule 9, paragraph 20, the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#) section 76, Schedule 12, paragraph 39 and Schedule 13, the [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), section 22 and the [Title Conditions \(Scotland\) Act 2003 asp 9](#), Schedule 14, paragraph 7.

(6) [1984 c. 14](#); section 4 was modified by the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#), section 79 and Schedule 3, paragraph 10.

(7) [1986 c. 55](#); sections 8, 9, 10, 18 and 42 were amended by the Children Act 1989, c. 41, section 108, Schedule 13, paragraph 62(2)(a); sections 10, 11 and 13 were amended by the British Overseas Territories Act 2002 c. 8, section 1(2); sections 13 and 42 were also amended by the Children (Scotland) Act 1995 (c. 36), section 105(4) and Schedule 4, paragraph 41; section 18 was also amended by the Age of Legal Capacity (Scotland) Act 1991 (c. 50), section 10(1) and Schedule 1, paragraph 46.

- (a) after the dismissal of matrimonial proceedings or after decree of absolvitor is granted therein; or
  - (b) after the dismissal of civil partnership proceedings,
- to entertain an application for a Part 1 order in those proceedings unless the application therefor was made on or before such dismissal or the granting of the decree of absolvitor.”.
- (4) In subsection (3)–
    - (a) after “nullity of marriage” insert “or proceedings for dissolution or nullity of civil partnership”; and
    - (b) after “the marriage” insert “or civil partnership”.
  - (5) In subsection (4)–
    - (a) after each occurrence of “matrimonial” insert “or civil partnership”; and
    - (b) after “marriage” insert “or civil partnership”.
  - (6) In subsection (6), after “matrimonial” insert “or civil partnership”.
- 17.** In section 18(1), after the definition of “child” insert–
- ““civil partnership proceedings” means proceedings for dissolution or nullity of a civil partnership or for the separation of the partners in a civil partnership;”.
- 18.**—(1) Amend section 42 as follows.
- (2) In subsection (3), after “matrimonial” insert “or civil partnership”; and
  - (3) In subsection (4), after each occurrence of “marriage” insert “or civil partnership”.

#### **Amendment of the Local Government Finance Act 1992**

- 19.** In section 77 of the Local Government Finance Act 1992(**8**)–
- (a) in subsection (1)(a), after “is married to” insert “or in a civil partnership with”; and
  - (b) after subsection (3), insert–
    - “(4) For the purposes of this section two persons are in a civil partnership if they are two persons of the same gender–
      - (a) who have formed a civil partnership; or
      - (b) who have not formed a civil partnership but are living together as if civil partners.”.

#### **Amendment of the Crofters (Scotland) Act 1993**

- 20.** In section 11 of the Crofters (Scotland) Act 1993(**9**), after each occurrence of “spouse” insert “or civil partner”.

#### **Amendment of the Mortgage Rights (Scotland) Act 2001**

- 21.** The Mortgage Rights (Scotland) Act 2001(**10**) is amended as follows.
- 22.**—(1) Amend section 1 as follows.

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(**8**) 1992 c. 14. Section 77 was amended by S.I. 1992/1203, the [Education \(Graduate Endowment and Student Support\) \(Scotland\) Act 2001 \(asp 6\)](#), section 4 and [S.S.I. 2001/191](#).

(**9**) 1993 c. 44. Section 61 was amended by the [Planning \(Consequential Provisions\) \(Scotland\) Act 1997 c. 11](#), section 4 and Schedule 2, paragraph 55(3)(a).

(**10**) [asp 11](#).

(2) In subsection 2(b)–

(i) after each occurrence of “spouse” insert “or civil partner”; and

(ii) after “matrimonial” insert “or family”.

(3) In subsection 2(c), for “in a relationship which has the characteristics of the relationship between husband and wife, except that the persons are of the same sex,” substitute “as civil partners”.

(4) In subsection 5(b)–

(i) after “matrimonial” insert “or family”; and

(ii) after “spouse” insert “or civil partner”.

**23.** In section 2(7) after the definition of “matrimonial home” and “non-entitled spouse”, insert–  
““family home” and “civil partner” are to be construed in accordance with the Civil Partnership Act 2004 (c. 33).”.

### **Amendment of the Land Reform (Scotland) Act 2003**

**24.** In section 40(4)(c) of the Land Reform (Scotland) Act 2003(**11**), after “spouses” insert “or civil partners”.

St Andrew’s House,  
Edinburgh  
2005

Authorised to sign by the Scottish Ministers

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 No. 623

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision consequential on the Civil Partnership Act 2004.

It amends primary legislation to ensure that civil partners are given parity of treatment with spouses in areas of the law that are not contained within that Act.