

Family Law (Scotland) Bill

[AS PASSED]

CONTENTS

Section

Marriage

- 1 Marriage to parent of former spouse: removal of special requirements
- 2 Void marriages
- 2A Abolition of marriage by cohabitation with habit and repute
- 3 Extension of jurisdiction of sheriff

Matrimonial homes

- 4 Occupancy rights: duration
- 5 Occupancy rights: dealings with third parties
- 6 Occupancy rights: proposed dealings with third parties
- 6A Occupancy rights: effect of court action
- 7 Amendment of definition of “matrimonial home”

Matrimonial interdicts

- 8 Matrimonial interdicts

Divorce

- 10 Divorce: reduction in separation periods
- 11 Irretrievable breakdown of marriage: desertion no longer to be ground
- 12 Non-cohabitation without consent: removal of bar to divorce
- 13 Collusion no longer to be bar to divorce
- 13A Postponement of decree of divorce where religious impediment to remarry exists

Financial provision

- 14 Financial provision: valuation of matrimonial property
- 14A Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund
- 15 Financial provision: incidental orders

Special destinations: revocation on divorce or annulment

- 15ZA Special destinations: revocation on divorce or annulment

Aliment

- 15A Variations of agreements on aliment: powers of court

Abolition of status of illegitimacy

- 15B Abolition of status of illegitimacy

Domicile of persons under 16

16 Domicile of persons under 16

Unmarried fathers: rights in relation to children

17 Parental responsibilities and parental rights of unmarried fathers

Protection of children from abuse

17A Orders under section 11 of the Children (Scotland) Act 1995: protection from abuse

Cohabitation

18 Meaning of “cohabitant” in sections 19 to 22

19 Rights in certain household goods

20 Rights in certain money and property

21 Financial provision where cohabitation ends otherwise than by death

22 Application to court by survivor for provision on intestacy

23 Administration of Justice Act 1982: extension of definition of “relative”

Cohabitation: domestic interdicts

24 Domestic interdicts

Attachment of powers of arrest to interdicts ancillary to exclusion orders

24A Amendment of Protection from Abuse (Scotland) Act 2001: powers of arrest

Amendments of Civil Partnership Act 2004

25 Amendments of Civil Partnership Act 2004

Application of 1981 Act to cohabiting couples of same sex

26 Application of 1981 Act to cohabiting couples of same sex

Amendments of Damages (Scotland) Act 1976

26A Amendments of Damages (Scotland) Act 1976

Amendments of Adults with Incapacity (Scotland) Act 2000

26B Termination of power of attorney on separation, dissolution or nullity of civil partnership

Jurisdiction

27 Jurisdiction: actions for declarator of recognition of certain foreign decrees

Private international law

28 Validity of marriages

29 Matrimonial property

30 Aliment

30A Effect of parents’ marriage in determining status to depend on law of domicile

Declarator of freedom and putting to silence: action no longer competent

31 Action for declarator of freedom and putting to silence to cease to be competent

General

32 Interpretation

32A Ancillary provision

- 33 Minor and consequential amendments and repeals
- 34 Short title and commencement

Schedule 1—Amendments of the Civil Partnership Act 2004
Schedule 2—Minor and consequential amendments
Schedule 3—Repeals

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Family Law (Scotland) Bill

[AS PASSED]

5 An Act of the Scottish Parliament to amend the law in relation to marriage, divorce and the jurisdiction of the courts in certain consistorial actions; to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1981; to amend the law relating to the domicile of persons who are under 16 years of age; to make further provision as respects responsibilities and rights in relation to children; to make provision conferring rights in relation to property, succession and claims in damages for persons living, or having lived, together as if husband and wife or civil partners; to amend Part 3 of the Civil Partnership Act 2004; to make further provision in relation to persons entitled to damages under the Damages (Scotland) Act 1976; to make provision in relation to certain rules of private international law relating to family law; to make incompetent actions for declarator of freedom and putting to silence; and for connected purposes.

Marriage

1 Marriage to parent of former spouse: removal of special requirements

In the Marriage (Scotland) Act 1977 (c.15)—

- 15 (a) in section 2 (marriage of related persons)—
- (i) in subsection (1), for “subsections (1A) and (1B)” there shall be substituted “subsection (1A)”; and
 - (ii) subsection (1B) shall be repealed; and
- (b) in Schedule 1 (relationships by affinity referred to in section 2(1B)), paragraph 2A shall be repealed.

2 Void marriages

20 After section 20 of the Marriage (Scotland) Act 1977 (c.15) there shall be inserted—

“Void marriages

20A Grounds on which marriage void

- 25 (1) Where subsection (2) or (3) applies in relation to a marriage solemnised in Scotland, the marriage shall be void.
- (2) This subsection applies if at the time of the marriage ceremony a party to the marriage who was capable of consenting to the marriage purported to give consent but did so by reason only of duress or error.

- (3) This subsection applies if at the time of the marriage ceremony a party to the marriage was incapable of—
- (a) understanding the nature of marriage; and
 - (b) consenting to the marriage.
- 5 (4) If a party to a marriage purported to give consent to the marriage other than by reason only of duress or error, the marriage shall not be void by reason only of that party's having tacitly withheld consent to the marriage at the time when it was solemnised.
- (5) In this section “error” means—
- 10 (a) error as to the nature of the ceremony; or
 - (b) a mistaken belief held by a person (“A”) that the other party at the ceremony with whom A purported to enter into a marriage was the person whom A had agreed to marry.”.

2A Abolition of marriage by cohabitation with habit and repute

- 15 (1) The rule of law by which marriage may be constituted by cohabitation with habit and repute shall cease to have effect.
- (2) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where the cohabitation with habit and repute—
- 20 (a) ended before the commencement of this section (“commencement”);
 - (b) began before, but ended after, commencement; or
 - (c) began before, and continues after, commencement.
- (3) Nothing in subsection (1) shall affect the application of the rule in relation to cohabitation with habit and repute where—
- 25 (a) the cohabitation with habit and repute began after commencement; and
 - (b) the conditions in subsection (4) are met.
- (4) Those conditions are—
- 30 (a) that the cohabitation with habit and repute was between two persons, one of whom, (“A”), is domiciled in Scotland;
 - (b) that the person with whom A was cohabiting, (“B”), died domiciled in Scotland;
 - (c) that, before the cohabitation with habit and repute began, A and B purported to enter into a marriage (“the purported marriage”) outwith the United Kingdom;
 - (d) that, in consequence of the purported marriage, A and B believed themselves to be married to each other and continued in that belief until B's death;
 - 35 (e) that the purported marriage was invalid under the law of the place where the purported marriage was entered into; and
 - (f) that A became aware of the invalidity of the purported marriage only after B's death.

3 Extension of jurisdiction of sheriff

In subsection (1) of section 5 of the Sheriff Courts (Scotland) Act 1907 (c.51) (extension of jurisdiction), the words “(except declarators of marriage or nullity of marriage)” shall be repealed.

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Matrimonial homes

4 Occupancy rights: duration

In section 1 of the 1981 Act (right of spouse without title to occupy matrimonial home), after subsection (6) there shall be added—

“(7) Subject to subsection (5), if—

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(a) there has been no cohabitation between an entitled spouse and a non-entitled spouse during a continuous period of two years; and

(b) during that period the non-entitled spouse has not occupied the matrimonial home,

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the non-entitled spouse shall, on the expiry of that period, cease to have occupancy rights in the matrimonial home.

(8) A non-entitled spouse who has ceased to have occupancy rights by virtue of subsection (7) may not apply to the court for an order under section 3(1).”.

5 Occupancy rights: dealings with third parties

20

(1) Section 6 of the 1981 Act (continued exercise of occupancy rights after dealing) shall be amended in accordance with subsections (2) and (3).

(2) After subsection (1), there shall be inserted—

“(1A) The occupancy rights of a non-entitled spouse in relation to a matrimonial home shall not be exercisable in relation to the home where, following a dealing of the entitled spouse relating to the home—

25

(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 spouse; or

(b) a person derives title to the home from a person who acquired title as mentioned in paragraph (a).”.

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(3) In subsection (3)—

(a) in paragraph (e)—

(i) for “sale”, where it first occurs, there shall be substituted “transfer for value”; and

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(ii) 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 matrimonial home in relation to which a spouse of the transferor has or had occupancy rights; or

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- (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled spouse or a person acting on behalf of the non-entitled spouse under a power of attorney or as a guardian (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).”; and

(b) in paragraph (f), for “5” there shall be substituted “2”.

6 Occupancy rights: proposed dealings with third parties

In section 7 of the 1981 Act (court’s power to dispense with spouse’s consent to dealing and proposed dealing)—

(a) in subsection (1), at the beginning there shall be inserted “Subject to subsections (1A) to (1D) below,”;

(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 spouse who is or becomes the occupier of the matrimonial home—

- (a) to make such payments to the owner of the home in respect of that spouse’s occupation of it as may be specified in the order;
 (b) to comply with such other conditions relating to that spouse’s occupation of the matrimonial home as may be so specified.”.

6A Occupancy rights: effect of court action

After section 9 of the 1981 Act (provisions where both spouses have title) there shall be inserted—

“Reckoning of non-cohabitation periods in sections 1 and 6

9A Effect of court action under section 3, 4 or 5 on reckoning of periods in sections 1 and 6

- 5 (1) Subsection (2) applies where an application is made under section 3(1), 4(1) or 5(1) of this Act.
- (2) In calculating the period of two years mentioned in section 1(7)(a) or 6(3)(f) of this Act, no account shall be taken of the period mentioned in subsection (3) below.
- 10 (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 3(1) or 4(1) of this Act, ending on the date on which—
- (i) an order under section 3(3) or, as the case may be, 4(2) of this Act is made; or
- 15 (ii) the application is otherwise finally determined or abandoned;
- (b) in the case of an application under section 5(1) of this Act, ending on the date on which—
- (i) the order under section 3(3) or, as the case may be, 4(2) is varied or recalled; or
- 20 (ii) the application is otherwise finally determined or abandoned.”.

7 Amendment of definition of “matrimonial home”

In section 22 of the 1981 Act (interpretation) (which shall become subsection (1) of that section)—

- 25 (a) in the definition of “matrimonial home”—
- (i) after “means” there shall be inserted “subject to subsection (2),”; and
- (ii) for the words “one spouse for that” there shall be substituted “a person for one”; and
- (b) at the end there shall be inserted—
- “**(2)** If—
- 30 (a) the tenancy of a matrimonial home is transferred from one spouse to the other by agreement or under any enactment; and
- (b) following the transfer, the spouse to whom the tenancy was transferred occupies the home but the other spouse does not,
- the home shall, on such transfer, cease to be a matrimonial home.”.

Matrimonial interdicts

8 Matrimonial interdicts

- (1) Section 14 of the 1981 Act (matrimonial interdicts) shall be amended in accordance with subsections (2) and (3).
- (2) For paragraph (b) of subsection (2) there shall be substituted—

“(b) subject to subsection (3), prohibits a spouse from entering or remaining in—

- (i) a matrimonial home;
- (ii) any other residence occupied by the applicant spouse;
- (iii) any place of work of the applicant spouse;
- (iv) any school attended by a child in the permanent or temporary care of the applicant spouse.”.

(3) After subsection (2) there shall be added—

“(3) Subsection (4) applies if in relation to a matrimonial home the non-applicant spouse—

- (a) is an entitled spouse; or
- (b) has occupancy rights.

(4) Except where subsection (5) applies, the court may not grant a matrimonial interdict prohibiting the non-applicant spouse from entering or remaining in the matrimonial home.

(5) This subsection applies if—

- (a) the interdict is ancillary to an exclusion order; or
- (b) by virtue of section 1(3), the court refuses leave to exercise occupancy rights.

(6) In this section and in sections 15 to 17, “applicant spouse” means the spouse who has applied for the interdict; and “non-applicant spouse” shall be construed accordingly.”.

Divorce

10 Divorce: reduction in separation periods

In subsection (2) of section 1 of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce)—

- (a) in paragraph (d), for “two years” there shall be substituted “one year”; and
- (b) in paragraph (e), for “five” there shall be substituted “two”.

11 Irretrievable breakdown of marriage: desertion no longer to be ground

Paragraph (c) of section 1(2) of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce) shall be repealed.

12 Non-cohabitation without consent: removal of bar to divorce

Subsection (5) of section 1 of the 1976 Act (irretrievable breakdown of marriage to be sole ground of divorce) shall be repealed.

13 Collusion no longer to be bar to divorce

- (1) Any rule of law by which collusion between parties is a bar to their divorce shall cease to have effect.

- (2) Section 9 of the 1976 Act (abolition of the oath of calumny) shall be repealed.

13A Postponement of decree of divorce where religious impediment to remarry exists

After section 3 of the Divorce (Scotland) Act 1976 (c.39) (action for divorce following on decree of separation) there shall be inserted—

“3A Postponement of decree of divorce where religious impediment to remarry exists

- (1) Notwithstanding that irretrievable breakdown of a marriage has been established in an action for divorce, the court may—

(a) on the application of a party (“the applicant”); and

(b) if satisfied—

(i) that subsection (2) applies; and

(ii) that it is just and reasonable to do so,

postpone the grant of decree in the action until it is satisfied that the other party has complied with subsection (3).

- (2) This subsection applies where—

(a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage; and

(b) the other party can act so as to remove, or enable or contribute to the removal of, the impediment which prevents that marriage.

- (3) A party complies with this subsection by acting in the way described in subsection (2)(b).

- (4) The court may, whether or not on the application of a party and notwithstanding that subsection (2) applies, recall a postponement under subsection (1).

- (5) The court may, before recalling a postponement under subsection (1), order the other party to produce a certificate from a relevant religious body confirming that the other party has acted in the way described in subsection 2(b).

- (6) For the purposes of subsection (5), a religious body is “relevant” if the applicant considers the body competent to provide the confirmation referred to in that subsection.

- (7) In this section—

“religious marriage” means a marriage solemnised by a marriage celebrant of a prescribed religious body, and “religion of that marriage” shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Scottish Ministers.

- (8) Any reference in this section to a marriage celebrant of a prescribed religious body is a reference to—

(a) a minister, clergyman, pastor or priest of such a body;

(b) a person who has, on the nomination of such a body, been registered under section 9 of the Marriage (Scotland) Act 1977 (c.15) as empowered to solemnise marriages; or

(c) any person who is recognised by such a body as entitled to solemnise marriages on its behalf.

(9) Regulations under subsection (7) shall be made by statutory instrument; and any such instrument shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

Financial provision

14 Financial provision: valuation of matrimonial property

In section 10 of the Family Law (Scotland) Act 1985 (c.37) (which provides for the sharing of the value of matrimonial property and fixes the date of its valuation)—

(a) in subsection (2), at the beginning there shall be inserted “Subject to subsection (3A) below,”; and

(b) after subsection (3), there shall be inserted—

“(3A) In its application to property transferred by virtue of an order under section 8(1)(aa) of this Act this section shall have effect as if—

(a) in subsection (2) above, for “relevant date” there were substituted “appropriate valuation date”;

(b) after that subsection there were inserted—

“(2A) Subject to subsection (2B), in this section the “appropriate valuation date” means—

(a) where the parties to the marriage or, as the case may be, the partners agree on a date, that date;

(b) where there is no such agreement, the date of the making of the order under section 8(1)(aa).

(2B) If the court considers that, because of the exceptional circumstances of the case, subsection (2A)(b) should not apply, the appropriate valuation date shall be such other date (being a date as near as may be to the date referred to in subsection (2A)(b)) as the court may determine.”; and

(c) subsection (3) did not apply.”.

14A Financial provision on divorce and dissolution of civil partnership: Pension Protection Fund

(1) The Family Law (Scotland) Act 1985 (c.37) shall be amended in accordance with subsections (2) to (5).

(2) In section 8 (orders for financial provision), after subsection (4) there shall be inserted—

“(4A) The court shall not make a pension sharing order, or an order under section 12A(2) or (3) of this Act, in relation to matrimonial property, or partnership property, consisting of compensation such as is mentioned in section 10(5A).”.

(3) In section 10 (sharing of value of property)—

(a) in each of subsections (4) and (4A), for “subsection (5)” there shall be substituted “subsections (5) and (5A)”;

(b) in subsection (5), after “(4)(b)” there shall be inserted “or (4A)(b)”;

(c) after subsection (5) there shall be inserted—

5 “(5A) Where either person is entitled to compensation payable under Chapter 3 of Part 2 of the Pensions Act 2004 (c.35) or any provision in force in Northern Ireland corresponding to that Chapter, the proportion of the compensation which is referable to the period to which subsection (4)(b) or (4A)(b) above refers shall be taken to form part of the matrimonial property or partnership property.”;

(d) after subsection (8A) there shall be inserted—

10 “(8B) The Scottish Ministers may by regulations make provision for or in connection with the verification, or apportionment, of compensation such as is mentioned in subsection (5A).”; and

15 (e) in subsection (9), after “(8)” there shall be inserted “or (8B)”.

(4) In section 12A (orders for payment of capital sum: pensions lump sum)—

(a) after subsection (7) there shall be inserted—

“(7A) Where—

(a) the court makes an order under subsection (3); and

20 (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the Pensions Act 2004 (c.35) (“the 2004 Act”), or the Northern Ireland provision, in relation to the scheme,

the order shall, on the giving of such notice, be recalled.

25 (7B) Subsection (7C) applies where—

(a) the court makes an order under subsection (2) imposing requirements on the trustees or managers of an occupational pension scheme; and

30 (b) after the making of the order the Board gives the trustees or managers of the scheme a notice under section 160 of the 2004 Act, or the Northern Ireland provision, in relation to the scheme.

(7C) The order shall have effect from the time when the notice is given—

(a) as if—

(i) references to the trustees or managers of the scheme were references to the Board; and

35 (ii) references to any lump sum to which the person with benefits under a pension arrangement is or might become entitled under the scheme were references to the amount of any compensation payable under that Chapter of the 2004 Act, or the Northern Ireland provision, to which that person is or might become entitled in respect of the lump sum; and

40 (b) subject to such other modifications as may be prescribed by regulations by the Scottish Ministers.”;

(b) in subsection (9), for “subsection” there shall be substituted “subsections (7C)(b) and”; and

(c) after subsection (10) there shall be added—

“(11) In subsections (7A) to (7C) “the Northern Ireland provision”, in relation to a provision of the 2004 Act, means any provision in force in Northern Ireland corresponding to the provision of that Act.”.

(5) In section 16 (agreements on financial provision), after subsection (2A) there shall be inserted—

“(2B) Subsection (2C) applies where—

(a) the parties to a marriage or the partners in a civil partnership have entered into an agreement as to financial provision to be made on divorce or on dissolution of the civil partnership; and

(b) the agreement includes provision in respect of a person’s rights or interests or benefits under an occupational pension scheme.

(2C) The Board of the Pension Protection Fund’s subsequently assuming responsibility for the occupational pension scheme in accordance with Chapter 3 of Part 2 of the Pension Act 2004 (c.35) or any provision in force in Northern Ireland corresponding to that Chapter shall not affect—

(a) the power of the court under subsection (1)(b) to make an order setting aside or varying the agreement or any term of it;

(b) on an appeal, the powers of the appeal court in relation to the order.”.

15 Financial provision: incidental orders

In subsection (2) of section 14 of the Family Law (Scotland) Act 1985 (c.37) (incidental orders), after paragraph (j) there shall be inserted—

“(ja) in relation to a deed relating to moveable property, an order dispensing with the execution of the deed by the grantor and directing the sheriff clerk to execute the deed;”.

Special destinations: revocation on divorce or annulment

15ZA Special destinations: revocation on divorce 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 spouse (“B”) and the survivor of them;

(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 marriage is terminated by divorce or annulment; and

(c) after the divorce 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 marriage by divorce or annulment.

Aliment

15A Variations of agreements on aliment: powers of court

- (1) Section 7 of the Family Law (Scotland) Act 1985 (c.37) (agreements on aliment) shall be amended as follows.
- (2) After subsection (2) there shall be inserted—
- “(2ZA) On an application under subsection (2) above, the court may—
- (a) pending determination of the application, make such interim order as it thinks fit;
 - (b) make an order backdating a variation of the amount payable under the agreement to—
 - (i) the date of the application or such later date as the court thinks fit; or
 - (ii) on special cause shown, a date prior to the date of the application.
- (2ZB) Where the court makes an order under subsection (2ZA)(b) above, it may order any sums paid under the agreement to be repaid on such terms (including terms relating to repayment by instalments) as the court thinks fit.
- (2ZC) Nothing in subsection (2ZA) shall empower the court to substitute a lump sum for a periodical payment.”.
- (3) In subsection (4), for “subsection (2) above” there shall be substituted “this section”.

Abolition of status of illegitimacy

15B Abolition of status of illegitimacy

- (1) The Law Reform (Parent and Child) (Scotland) Act 1986 (c.9) shall be amended in accordance with subsections (2) to (4).
- (2) In section 1 (legal equality of children)—
- (a) for subsection (1) there shall be substituted—

“(1) No person whose status is governed by Scots law shall be illegitimate; and accordingly the fact that a person's parents are not or have not been married to each other shall be left out of account in—

 - (a) determining the person's legal status; or
 - (b) establishing the legal relationship between the person and any other person.”;
 - (b) in subsection (4), in paragraph (a), for the words from “this”, where it first occurs, to the end of that paragraph there shall be substituted “section 15B of the Family Law (Scotland) Act 2005 (asp 00)”; and
 - (c) after that subsection there shall be added—

“(5) In subsection (4), “enactment” includes an Act of the Scottish Parliament.

(6) It shall no longer be competent to bring an action for declarator of legitimacy, legitimation or illegitimacy.”.

(3) The title of section 1 shall become “Abolition of status of illegitimacy”.

(4) In subsection (1) of section 9 (savings and supplementary provisions)—

(a) in paragraph (c), at the end, there shall be inserted “(including, in particular, the competence of bringing an action of declarator of legitimacy, legitimation or illegitimacy in connection with such succession or devolution)”; and

(b) after that paragraph, there shall be inserted—

“(ca) affect the functions of the Lord Lyon King of Arms so far as relating to the granting of arms;”.

Domicile of persons under 16

16 Domicile of persons under 16

(1) Subsection (2) applies where—

(a) the parents of a child are domiciled in the same country as each other; and

(b) the child has a home with a parent or a home (or homes) with both of them.

(2) The child shall be domiciled in the same country as the child’s parents.

(3) Where subsection (2) does not apply, the child shall be domiciled in the country with which the child has for the time being the closest connection.

(4) In this section, “child” means a person under 16 years of age.

Unmarried fathers: rights in relation to children

17 Parental responsibilities and parental rights of unmarried fathers

(1) Section 3 of the Children (Scotland) Act 1995 (c.36) (provisions relating both to parental responsibilities and parental rights) shall be amended in accordance with subsections (2) and (3).

(2) In paragraph (b) of subsection (1) (cases in which parents have parental responsibilities and parental rights)—

(a) the words from “married” to the end shall become sub-paragraph (i) of that paragraph; and

(b) at the end there shall be added “or

(ii) where not married to the mother at that time or subsequently, the father is registered as the child’s father under any of the enactments mentioned in subsection (1A).”.

(3) After subsection (1) there shall be inserted—

“(1A) Those enactments are—

(a) section 18(1)(a), (b)(i) and (c) and (2)(b) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49);

(b) sections 10(1)(a) to (e) and 10A(1)(a) to (e) of the Births and Deaths Registration Act 1953 (c.20); and

(c) article 14(3)(a) to (e) of the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041).”.

- (4) Paragraph (b)(ii) of subsection (1) of section 3 of the Children (Scotland) Act 1995 (c.36) (which is inserted by subsection (2)(b)) shall not confer parental responsibilities or parental rights on a man who, before the coming into force of subsections (2) and (3), was registered under any of the enactments mentioned in subsection (1A) of that section (which is inserted by subsection (3)).

Protection of children from abuse

17A Orders under section 11 of the Children (Scotland) Act 1995: protection from abuse

After subsection (7) of section 11 of the Children (Scotland) Act 1995 (c.36) (court orders relating to parental responsibilities etc.) there shall be inserted—

“(7A) In carrying out the duties imposed by subsection (7)(a) above, the court shall have regard in particular to the matters mentioned in subsection (7B) below.

(7B) Those matters are—

(a) the need to protect the child from—

(i) any abuse; or

(ii) the risk of any abuse,

which affects, or might affect, the child;

(b) the effect such abuse, or the risk of such abuse, might have on the child;

(c) the ability of a person—

(i) who has carried out abuse which affects or might affect the child; or

(ii) who might carry out such abuse,

to care for, or otherwise meet the needs of, the child; and

(d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

(7C) In subsection (7B) above—

“abuse” includes —

(a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;

(b) abuse of a person other than the child; and

(c) domestic abuse;

“conduct” includes—

(a) speech; and

(b) presence in a specified place or area.

(7D) Where—

- (a) the court is considering making an order under subsection (1) above; and
 - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child,
- the court shall consider whether it would be appropriate to make the order.

(7E) In subsection (7D) above, “relevant person”, in relation to a child, means—

- (a) a person having parental responsibilities or parental rights in respect of the child; or
- (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.”.

Cohabitation

18 Meaning of “cohabitant” in sections 19 to 22

- (1) In sections 19 to 22, “cohabitant” means either member of a couple consisting of—
 - (a) a man and a woman who are (or were) living together as if they were husband and wife; or
 - (b) two persons of the same sex who are (or were) living together as if they were civil partners.
- (4) In determining for the purposes of any of sections 19 to 22 whether a person (“A”) is a cohabitant of another person (“B”), the court shall have regard to—
 - (a) the length of the period during which A and B have been living together (or lived together);
 - (b) the nature of their relationship during that period; and
 - (c) the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.
- (5) In subsection (4) and section 21, “court” means Court of Session or sheriff.

19 Rights in certain household goods

- (1) Subsection (2) applies where any question arises (whether during or after the cohabitation) as to the respective rights of ownership of cohabitants in any household goods.
- (2) It shall be presumed that each cohabitant has a right to an equal share in household goods acquired (other than by gift or succession from a third party) during the period of cohabitation.
- (3) The presumption in subsection (2) shall be rebuttable.
- (4) In this section, “household goods” means any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include—
 - (a) money;
 - (b) securities;
 - (c) any motor car, caravan or other road vehicle; or

- (d) any domestic animal.

20 Rights in certain money and property

- (1) Subsection (2) applies where, in relation to cohabitants, any question arises (whether during or after the cohabitation) as to the right of a cohabitant to—
 - 5 (a) money derived from any allowance made by either cohabitant for their joint household expenses or for similar purposes; or
 - (b) any property acquired out of such money.
- (2) Subject to any agreement between the cohabitants to the contrary, the money or property shall be treated as belonging to each cohabitant in equal shares.
- 10 (3) In this section “property” does not include a residence used by the cohabitants as the sole or main residence in which they live (or lived) together.

21 Financial provision where cohabitation ends otherwise than by death

- (1) Subsection (2) applies where cohabitants cease to cohabit otherwise than by reason of the death of one (or both) of them.
- 15 (2) On the application of a cohabitant (the “applicant”), the appropriate court may, after having regard to the matters mentioned in subsection (3)—
 - (a) make an order requiring the other cohabitant (the “defender”) to pay a capital sum of an amount specified in the order to the applicant;
 - 20 (b) make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;
 - (c) make such interim order as it thinks fit.
- (3) Those matters are—
 - 25 (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
 - (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—
 - (i) the defender; or
 - (ii) any relevant child.
- 30 (3A) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (3B) and (3C).
- (3B) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—
 - 35 (a) the applicant; or
 - (b) any relevant child.
- (3C) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—
 - (a) the defender; or

(b) any relevant child,

is offset by any economic advantage the applicant has derived from contributions made by the defender.

(4) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—

(a) on such date as may be specified;

(b) in instalments.

(5) Any application under this section shall be made not later than one year after the day on which the cohabitants cease to cohabit.

(6) In this section—

“appropriate court” means—

(a) where the cohabitants are a man and a woman, the court which would have jurisdiction to hear an action of divorce in relation to them if they were married to each other;

(b) where the cohabitants are of the same sex, the court which would have jurisdiction to hear an action for the dissolution of the civil partnership if they were civil partners of each other;

“child” means a person under 16 years of age;

“contributions” includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and

“economic advantage” includes gains in—

(a) capital;

(b) income; and

(c) earning capacity;

and “economic disadvantage” shall be construed accordingly.

(7) For the purposes of this section, a child is “relevant” if the child is—

(a) a child of whom the cohabitants are the parents;

(b) a child who is or was accepted by the cohabitants as a child of the family.

22 Application to court by survivor for provision on intestacy

(1) This section applies where—

(a) a cohabitant (the “deceased”) dies intestate; and

(b) immediately before the death the deceased was—

(i) domiciled in Scotland; and

(ii) cohabiting with another cohabitant (the “survivor”).

(2) Subject to subsection (4), on the application of the survivor, the court may—

(a) after having regard to the matters mentioned in subsection (3), make an order—

(i) for payment to the survivor out of the deceased’s net intestate estate of a capital sum of such amount as may be specified in the order;

(ii) for transfer to the survivor of such property (whether heritable or moveable) from that estate as may be so specified;

(b) make such interim order as it thinks fit.

(3) Those matters are—

(a) the size and nature of the deceased's net intestate estate;

(b) any benefit received, or to be received, by the survivor—

(i) on, or in consequence of, the deceased's death; and

(ii) from somewhere other than the deceased's net intestate estate;

(c) the nature and extent of any other rights against, or claims on, the deceased's net intestate estate; and

(d) any other matter the court considers appropriate.

(4) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor an amount which would exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased.

(5) An application under this section may be made to—

(a) the Court of Session;

(b) a sheriff in the sheriffdom in which the deceased was habitually resident at the date of death;

(c) if at the date of death it is uncertain in which sheriffdom the deceased was habitually resident, the sheriff at Edinburgh.

(6) Any application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died.

(8) In making an order under paragraph (a)(i) of subsection (2), the court may specify that the capital sum shall be payable—

(a) on such date as may be specified;

(b) in instalments.

(9) In making an order under paragraph (a)(ii) of subsection (2), the court may specify that the transfer shall be effective on such date as may be specified.

(10) If the court makes an order in accordance with subsection (8), it may, on an application by any party having an interest, vary the date or method of payment of the capital sum.

(11) In this section—

“intestate” shall be construed in accordance with section 36(1) of the Succession (Scotland) Act 1964 (c.41);

“legal rights” has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c.41);

“net intestate estate” means so much of the intestate estate as remains after provision for the satisfaction of—

(a) inheritance tax;

(b) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse or surviving civil partner; and

- (c) the legal rights, and the prior rights, of any surviving spouse or surviving civil partner; and

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

5 **23 Administration of Justice Act 1982: extension of definition of “relative”**

In section 13 of the Administration of Justice Act 1982 (c.53) (supplementary provisions and definitions in relation to Part 2), in the definition of relative, after paragraph (b) insert—

- 10 “(ba) any person, not being the civil partner of the injured person, who was, at the time of the act or omission giving rise to liability in the responsible person, living with the injured person as the civil partner of the injured person;”.

Cohabitation: domestic interdicts

15 **24 Domestic interdicts**

- (1) The 1981 Act shall be amended in accordance with subsections (2) and (3).
- (2) In subsection (3) of section 18 (cohabiting couples: occupancy rights and application of certain provisions of Act), for the words from “sections”, where it first occurs, to “17” there shall be substituted “section 13”.
- (3) After section 18 there shall be inserted—

20 *“Domestic interdicts*

18A Meaning of “domestic interdict”

- (1) In section 18B, “domestic interdict” means—
- 25 (a) an interdict granted on the application of a person (“A”) who is (or was) living with another person (“B”) as if they were husband and wife against B for any of the purposes mentioned in subsection (2); or
- (b) an interdict granted on the application of a person (“C”) who is (or was) living with another person (“D”) as if they were civil partners against D for any of the purposes mentioned in subsection (2).
- (2) Those purposes are—
- 30 (a) restraining or prohibiting such conduct of the defender towards—
- (i) the pursuer; or
- (ii) any child in the permanent or temporary care of the pursuer, as the court may specify;
- (b) prohibiting the defender from entering or remaining in—
- 35 (i) a family home occupied by the pursuer and the defender;
- (ii) any other residence occupied by the pursuer;
- (iii) any place of work of the pursuer;
- (iv) any school attended by a child in the permanent or temporary care of the pursuer.

(3) In this section and in section 18B—

“family home” means, subject to subsection (4), any house, caravan, houseboat or other structure which has been provided or has been made available by the pursuer or the defender (or both of them) as (or has become) a family residence for them and includes any garden or other ground or building 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 any person for the pursuer or, as the case may be, the defender to reside in (whether or not with any child of the pursuer and the defender) separately from the defender or, as the case may be, the pursuer; and

“interdict” includes interim interdict.

(4) If the tenancy of a family home is transferred from a pursuer to a defender (or, as the case may be, from a defender to a pursuer) by agreement or under any enactment, the home shall, on such transfer, cease to be a family home.

(5) In subsection (3), “child of the pursuer and the defender” includes any child or grandchild of the pursuer or the defender, and any person who has been brought up or treated by the pursuer or the defender as if the person were a child of the pursuer or, as the case may be, the defender, whatever the age of such a child, grandchild or person.

18B Domestic interdicts: further provision

(1) Subsection (2) applies if the defender—

- (a) is entitled to occupy a family home;
- (b) is permitted by a third party to occupy it; or
- (c) has, by virtue of section 18(1), occupancy rights in it.

(2) Except where subsection (3) applies, the court may not grant a domestic interdict prohibiting the defender from entering or remaining in the family home.

(3) This subsection applies if—

- (a) the interdict is ancillary to an exclusion order; or
- (b) an order under section 18(1) granting or extending occupancy rights is recalled.”.

Attachment of powers of arrest to interdicts ancillary to exclusion orders

24A Amendment of Protection from Abuse (Scotland) Act 2001: powers of arrest

(1) Section 1 of the Protection from Abuse (Scotland) Act 2001 (asp 14) (attachment of power of arrest to interdict) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“(1A) In the case of an interdict which is—

- (a) a matrimonial interdict (as defined by section 14(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)) which is ancillary to—

- (i) an exclusion order within the meaning of section 4(1) of that Act; or
- (ii) an interim order under section 4(6) of that Act; or
- (b) a relevant interdict (as defined by section 113(2) of the Civil Partnership Act 2004 (c.33)) which is ancillary to—
 - (i) an exclusion order within the meaning of section 104(1) of that Act; or
 - (ii) an interim order under section 104(6) of that Act,

the court must, on an application under subsection (1), attach a power of arrest to the interdict.”.

- (3) In subsection (2), at the beginning there shall be inserted “In the case of any other interdict,”.

Amendments of Civil Partnership Act 2004

25 Amendments of Civil Partnership Act 2004

Schedule 1, which contains amendments of the Civil Partnership Act 2004 (c.33), shall have effect.

Application of 1981 Act to cohabiting couples of same sex

26 Application of 1981 Act to cohabiting couples of same sex

- (1) Section 18 of the 1981 Act (occupancy rights of cohabiting couples) shall be amended in accordance with subsections (2) and (3).
- (2) In subsection (1)—
 - (a) after “wife” there shall be inserted “or two persons of the same sex are living together as if they were civil partners”;
 - (b) after “wife (”, there shall be inserted “in either case”; and
 - (c) for “man and the woman” there shall be substituted “entitled partner and the non-entitled partner”.
- (3) In subsection (2)—
 - (a) for “a man and a woman” there shall be substituted “two persons”; and
 - (b) in paragraph (b), for the words from “are” to the end of that paragraph there shall be substituted “is any child—
 - (i) of whom they are the parents; or
 - (ii) who they have treated as a child of theirs.”.

Amendments of Damages (Scotland) Act 1976

26A Amendments of Damages (Scotland) Act 1976

- (1) The Damages (Scotland) Act 1976 (c.13) shall be amended in accordance with subsections (2) to (5).
- (2) In subsection (4) of section 1 (rights of relatives of deceased person), at the beginning there shall be inserted “Subject to subsection (4A),”.

(3) After that subsection, there shall be inserted—

“(4A) Notwithstanding section 10(2) of, and Schedule 1 to, this Act, no award of damages under subsection (4) above shall be made to a person related by affinity to the deceased.

(4B) In subsection (4A), a “person related by affinity to the deceased” includes—

- (a) a stepchild, step-parent, stepbrother or stepsister of the deceased; and
- (b) any person who was an ascendant or descendant of any of the step-relatives mentioned in paragraph (a).”.

(4) In subsection (2) of section 10 (interpretation), for the words from “sub-paragraph” to “or (c)”, there shall be substituted “any of sub-paragraphs (a) to (cc)”.

(5) In paragraph 1 of Schedule 1 (definition of relative)—

- (a) in sub-paragraph (c), for “paragraph” there shall be substituted “sub-paragraph”;
- (b) after that sub-paragraph, there shall be inserted—

“(ca) any person not falling within sub-paragraph (b) above who accepted the deceased as a child of the person’s family;

(cb) any person who—

- (i) was the brother or sister of the deceased; or
- (ii) was brought up in the same household as the deceased and who was accepted as a child of the family in which the deceased was a child;

(cc) any person who was a grandparent or grandchild of the deceased;”;

(c) in sub-paragraph (d), after “person” there shall be inserted “not falling within sub-paragraph (b) or (cc) above”; and

(d) in sub-paragraph (e), after “person” there shall be inserted “not falling within sub-paragraph (cb)(i) above”.

Amendments of Adults with Incapacity (Scotland) Act 2000

26B Termination of power of attorney on separation, dissolution or nullity of civil partnership

Section 24 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (termination of continuing or welfare power of attorney) shall be amended as follows—

(a) after subsection (1), there shall be inserted—

“(1A) If the granter and the continuing or welfare attorney are in civil partnership with each other the power of attorney shall, unless the document conferring it provides otherwise, come to an end on the granting of—

- (a) a decree of separation of the partners in the civil partnership;
- (b) a decree of dissolution of the civil partnership;
- (c) a declarator of nullity of the civil partnership.”;

(b) in subsection (4), after “(1)” there shall be inserted “or subsection (1A)”.

*Jurisdiction***27 Jurisdiction: actions for declarator of recognition of certain foreign decrees**

(1) The Domicile and Matrimonial Proceedings Act 1973 (c.45) shall be amended in accordance with subsections (2) and (3).

(2) In section 7 (jurisdiction of Court of Session in certain consistorial causes)—

(a) in subsection (1)—

(i) for “(2) to (8)” there shall be substituted “(2A) to (10)”; and

(ii) at the end there shall be inserted—

“(aa) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.”;

(b) in subsection (3A), after “marriage”, where it first occurs, there shall be inserted “or for declarator of recognition, or non-recognition, of a relevant foreign decree”; and

(c) after subsection (8) there shall be added—

“(9) In this section, “relevant foreign decree” means a decree of divorce, nullity or separation granted outwith a member state of the European Union.

(10) References in subsection (3A) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.”.

(3) In section 8 (jurisdiction of sheriff court in certain consistorial causes)—

(a) in subsection (1)—

(i) for “(4)” there shall be substituted “(6)”; and

(ii) the words from “an” to the end shall become paragraph (a) of that subsection; and

(iii) at the end there shall be added “and

(b) an action for declarator of recognition, or non-recognition, of a relevant foreign decree.”;

(b) in subsection (2), after “divorce” there shall be inserted “or for declarator of recognition, or non-recognition, of a relevant foreign decree”; and

(c) after subsection (4) there shall be added—

“(5) In this section, “relevant foreign decree” has the meaning given by section 7(9).

(6) References in subsection (2) to a marriage shall, in the case of an action for declarator of recognition, or non-recognition, of a relevant foreign decree, be construed as references to the marriage to which the relevant foreign decree relates.”.

*Private international law***28 Validity of marriages**

- 5 (1) Subject to the Foreign Marriage Act 1892 (c.23), the question whether a marriage is formally valid shall be determined by the law of the place where the marriage was celebrated.
- (2) The question whether a person who enters into a marriage—
- (a) had capacity; or
 - (b) consented,
- 10 to enter into it shall, subject to subsections (3) and (3A) and to section 50 of the Family Law Act 1986 (c.55) (non-recognition of divorce or annulment in another jurisdiction no bar to remarriage), be determined by the law of the place where, immediately before the marriage, that person was domiciled.
- (3) If a marriage entered into in Scotland is void under a rule of Scots internal law, then, notwithstanding subsection (2), that rule shall prevail over any law under which the marriage would be valid.
- 15 (3A) The capacity of the person to enter into the marriage shall not be determined under the law of the place where, immediately before the marriage, the person was domiciled in so far as it would be contrary to public policy in Scotland for such capacity to be so determined.
- 20 (4) If the law of the place in which a person is domiciled requires a person under a certain age to obtain parental consent before entering into a marriage, that requirement shall not be taken to affect the capacity of a person to enter into a marriage in Scotland unless failure to obtain such consent would render invalid any marriage that the person purported to enter into in any form anywhere in the world.

29 Matrimonial property

- 25 (1) Any question in relation to the rights of spouses to each other's immoveable property arising by virtue of the marriage shall be determined by the law of the place in which the property is situated.
- 30 (2) Subject to subsections (4) and (5), if spouses are domiciled in the same country, any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage shall be determined by the law of that country.
- (3) Subject to subsections (4) and (5), if spouses are domiciled in different countries then, for the purposes of any question in relation to the rights of the spouses to each other's moveable property arising by virtue of the marriage, the spouses shall be taken to have the same rights to such property as they had immediately before the marriage.
- 35 (4) Any question in relation to—
- (a) the use or occupation of a matrimonial home which is moveable; or
 - (b) the use of the contents of a matrimonial home (whether the home is moveable or immoveable),
- 40 shall be determined by the law of the country in which the home is situated.
- (5) A change of domicile by a spouse (or both spouses) shall not affect a right in moveable property which, immediately before the change, has vested in either spouse.

- (6) This section shall not apply—
- (a) in relation to the law on aliment, financial provision on divorce, transfer of property on divorce or succession;
 - (b) to the extent that spouses agree otherwise.

5 (7) In this section, “matrimonial home” has the same meaning as in section 22 of the 1981 Act.

30 Aliment

Subject to the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18), a court in Scotland shall apply Scots internal law in any action for aliment which comes before it.

10 30A Effect of parents’ marriage in determining status to depend on law of domicile

Any question arising as to the effect on a person’s status of—

- (a) the person’s parents being, or having been, married to each other; or
- (b) the person’s parents not being, or not having been, married to each other,

15 shall be determined by the law of the country in which the person is domiciled at the time at which the question arises.

Declarator of freedom and putting to silence: action no longer competent

31 Action for declarator of freedom and putting to silence to cease to be competent

It shall not be competent to raise an action for declarator of freedom and putting to silence.

20 *General*

32 Interpretation

In this Act—

“the 1976 Act” means the Divorce (Scotland) Act 1976 (c.39); and

25 “the 1981 Act” means the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59).

32A Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such consequential, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

30 (2) An order under subsection (1) may modify any enactment (including this Act).

(3) The power conferred by subsection (1) on the Scottish Ministers to make orders may be exercised so as to make different provision for different purposes.

35 (4) A statutory instrument containing an order under subsection (1) shall, subject to subsection (5), be subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (5) A statutory instrument containing an order under subsection (1) which includes provision modifying an Act or an Act of the Scottish Parliament shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

5 **33 Minor and consequential amendments and repeals**

- (1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) shall have effect.
- (2) The enactments mentioned in the first column in schedule 3 (which include enactments that are spent) are repealed to the extent set out in the second column.

10 **34 Short title and commencement**

- (1) This Act may be cited as the Family Law (Scotland) Act 2005.
- (2) The provisions of this Act (except this section) shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (3) An order under subsection (2) may—

- 15 (a) appoint different days for different purposes; and
- (b) include such transitional or saving provision as the Scottish Ministers consider necessary or expedient in connection with the coming into force of the provisions brought into force.

SCHEDULE 1
(introduced by section 25)

AMENDMENTS OF THE CIVIL PARTNERSHIP ACT 2004

- 1 The Civil Partnership Act 2004 (c.33) shall be amended in accordance with this
5 schedule.
- 1A 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—
- 10 “(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—
- 15 (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.”.
- 2 In section 101 (right of civil partner without title to occupy family home)—
- 20 (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
25 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).”;
30 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
35 by either civil partner as if the person 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”.
- 3 In subsection (1) of section 103 (regulation by court of rights of occupancy of family
40 home), at the beginning there shall be inserted “Subject to section 101(6A),”.
- 4 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).”;

(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)).”;

(iii) in paragraph (f), for “5” there shall be substituted “2”.

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

5 (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—

- 10 (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.”.

5A After section 111 there shall be inserted—

15 **“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).
- (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).
- 20 (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—
 - 25 (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—
 - 30 (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.”.

6 In section 113 (civil partnerships: competency of interdict)—

(a) in subsection (2), for paragraph (b) there shall be substituted—

35 “(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,
- 40 (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.

(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.”.

8 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”.

8A 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.”.

8B 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,
 - (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.”.

9 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.”.

SCHEDULE 2

(introduced by section 33(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.

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

1A In paragraph 1 of Schedule 1 to the Damages (Scotland) Act 1976 (definition of “relative”)—

(a) in sub-paragraph (a), after “spouse” there shall be inserted “or civil partner”;

(b) in sub-paragraph (aa)—

(i) after “spouse” there shall be inserted “or civil partner”; and

(ii) at the end there shall be added “or in a relationship which had the characteristics of the relationship between civil partners”;

(c) after sub-paragraph (e), the word “and” shall be repealed; and

(d) after sub-paragraph (f), there shall be added “and

(g) any person who, having been a civil partner of the deceased, had ceased to be so by virtue of the dissolution of the civil partnership.”.

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

1B 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 15ZA of the Family Law (Scotland) Act 2005 (asp 00);

(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).”

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

2 (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”

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

2A(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”.

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

- 3 (1) The Law Reform (Parent and Child) (Scotland) Act 1986 shall be amended as follows
- 5 (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—
- 10 “(1A) Subsections (1) and (2) of section 1 of this Act shall apply in relation to adopted children.”.

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

- 3A 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)—
- 15 (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.”.

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

- 3B 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
- 25 (b) after the new paragraph (a), there shall be added “; or
- “(b) 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.”.

SCHEDULE 3
 (introduced by section 33(2))

REPEALS

	<i>Enactment</i>	<i>Extent of repeal</i>
5	The Conjugal Rights (Scotland) Amendment Act 1861 (c.86)	The whole Act.
	The Married Women’s Policies of Assurance (Scotland) Act 1880 (c.26)	In section 2, in the definition of “children”, the words “illegitimate or”.
10	The Sheriff Courts (Scotland) Act 1907 (c.51)	Section 38B.
	The Law Reform (Husband and Wife) Act 1962 (c.48)	The whole Act.
15	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.
20	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)”.
25	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,”.
30	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”.
35	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).

<i>Enactment</i>	<i>Extent of repeal</i>
The Civil Evidence (Scotland) Act 1988 (c.32)	In section 9(1), paragraph (a). In section 8, in subsection (2), the words “legitimacy, legitimation, illegitimacy,”.
5 The Court of Session Act 1988 (c.36)	Section 19.
The Age of Legal Capacity (Scotland) Act 1991 (c.50)	Section 7.
10 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. 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.
15 20	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).

Family Law (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to amend the law in relation to marriage, divorce and the jurisdiction of the courts in certain consistorial actions; to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1981; to amend the law relating to the domicile of persons who are under 16 years of age; to make further provision as respects responsibilities and rights in relation to children; to make provision conferring rights in relation to property, succession and claims in damages for persons living, or having lived, together as if husband and wife or civil partners; to amend Part 3 of the Civil Partnership Act 2004; to make further provision in relation to persons entitled to damages under the Damages (Scotland) Act 1976; to make provision in relation to certain rules of private international law relating to family law; to make incompetent actions for declarator of freedom and putting to silence; and for connected purposes.

Introduced by: Cathy Jamieson
On: 7 February 2005
Supported by: Peter Peacock, Malcolm Chisholm
Bill type: Executive Bill

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