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SCHEDULES

SCHEDULE 28

CONSEQUENTIAL AMENDMENTS: SCOTLAND

PART 4

MISCELLANEOUS AMENDMENTS

PROSPECTIVE

Damages (Scotland) Act 1976 (c. 13)

42 F1

Textual Amendments

F1 Sch. 28 para. 42 repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), ss. 45(2), 46(2), Sch. 3; S.S.I. 2006/212, art. 2 (subject to arts. 3-13)

Marriage (Scotland) Act 1977 (c. 15)

- 43 Amend section 3 (notice of intention to marry) as follows—
- (a) in subsection (1), after paragraph (a) insert—
 - “(aa) if he has previously been in civil partnership and the civil partnership has been dissolved, a copy of the decree of dissolution or annulment;”, and
 - (b) in subsection (2), after “paragraph (a)” insert “, (aa)”.
- 44 In section 5(4)(b) (ground on which there is a legal impediment to a marriage), at the end insert “ or in civil partnership ”.

Presumption of Death (Scotland) Act 1977 (c. 27)

- 45 (1) Amend section 1(3) (jurisdiction of Court of Session to entertain action of declarator) as follows.
- (2) In paragraph (b)(i), after “spouse” insert “ or civil partner ”.
 - (3) After paragraph (b) insert “; or
 - (c) in a case where the pursuer in the action is the civil partner of the missing person, the following conditions are met—
 - (i) the two people concerned registered as civil partners of each other in Scotland; and

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(ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.”

46 (1) Amend section 3 (effect of decree) as follows.

(2) In subsection (1), after “marriage” insert “ or of a civil partnership ”.

(3) In subsection (3)—

(a) after first “marriage” insert “ or civil partnership ”, and

(b) for “the dissolution of the marriage” substitute “ its dissolution ”.

Administration of Justice Act 1982 (c. 53)

47 In section 13(1) (interpretation), in the definition of “relative”, after paragraph (a) insert—

“(aa) the civil partner or former civil partner;”.

Rent (Scotland) Act 1984 (c. 58)

48 In Schedule 1 (statutory tenants by succession)—

(a) in paragraph 2, after “spouse” (in both places) insert “ or civil partner ” and after “spouse's” insert “ or civil partner's ”, and

(b) in paragraph 6, after “spouse” (in both places) insert “ or civil partner ”.

49 In Schedule 1A (statutory or statutory assured tenants by succession: certain cases), in paragraph 2—

(a) in sub-paragraph (1), after “spouse” (in both places) insert “ or civil partner ” and after “spouse's” insert “ or civil partner's ”,

(b) in sub-paragraph (2), at the end insert “ and a person who was living with the original tenant in a relationship which had the characteristics of the relationship between civil partners shall be treated as the civil partner of the original tenant ”, and

(c) in sub-paragraph (3), after “couples” insert “ or under section 101 of the Civil Partnership Act 2004 ” and after “spouse” insert “ , or as the case may be as the surviving civil partner, ”.

Mental Health (Scotland) Act 1984 (c. 36)

50 (1) Amend section 53 (definition of “relative” and “nearest relative”) as follows.

(2) In subsection (1)(a), at the end insert “ or civil partner ”.

(3) In subsection (4)—

(a) in paragraph (b), for “or wife” substitute “ , wife or civil partner ” and after “spouse” insert “ or civil partner ”, and

(b) in paragraph (c), after “wife,” insert “ civil partner, ”.

(4) After subsection (5) insert—

“(5A) In this section “civil partner” includes a person who is living with the patient in a relationship which has the characteristics of the relationship between civil partners (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than 6 months; but a person shall not be treated

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by virtue of this subsection as the nearest relative of a partner in a civil partnership unless the civil partner of the patient is disregarded by virtue of paragraph (b) of subsection (4) of this section.”

(5) In subsection (6)(b)—

- (a) after “married patient” insert “ or of a partner in a civil partnership ”, and
- (b) after “wife” insert “ , or as the case may be the civil partner, ”.

51 In section 54 (children and young persons in care of local authority), for “or wife” substitute “ , wife or civil partner ”.

Housing Associations Act 1985 (c. 69)

52 (1) Amend section 105 (meaning of “member of a person’s family”) as follows.

(2) In subsection (1)(a)—

- (a) after “spouse” insert “ or civil partner ”, and
- (b) at the end insert “ or in a relationship which has the characteristics of the relationship between civil partners ”.

(3) In subsection (2)(a), after “a relationship by marriage” insert “ or civil partnership ”.

Debtors (Scotland) Act 1987 (c. 18)

53 In section 106 (interpretation), in paragraph (a) of the definition of “maintenance order”—

- (a) after “divorce” insert “ or on dissolution of a civil partnership ”, and
- (b) after “marriage” insert “ or of nullity of a civil partnership ”.

Housing (Scotland) Act 1987 (c. 26)

54 In section 83 (“members of a person’s family”)—

- (a) in subsection (1)(a), after “spouse” insert “ or civil partner ”,
- (b) in subsection (2)(a), after “marriage” insert “ or by virtue of civil partnership ”, and
- (c) in subsection (3), after “references to” insert “ that person’s civil partner or to ”.

Civil Evidence (Scotland) Act 1988 (c. 32)

55 (1) Amend section 8 (evidence in actions concerning family relationships, etc.) as follows.

(2) In subsection (2), for “separation or declarator of marriage, nullity of marriage” substitute “ for dissolution of civil partnership, for separation of spouses or of civil partners, for declarator of marriage or of nullity of marriage or of civil partnership or for ”.

(3) After subsection (3) insert—

“(3A) Subject to subsection (4) below, in any action for dissolution of civil partnership, separation of civil partners or declarator of nullity of civil partnership, the evidence referred to in subsection (1) above shall consist of

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or include evidence other than that of a partner in the civil partnership (or purported civil partnership).”

(4) In subsection (4), after “(3)” insert “ or (3A) ”.

Housing (Scotland) Act 1988 (c. 43)

56 (1) Amend section 31 (right of succession of spouse) as follows.

(2) In subsection (1), after “spouse” (in both places) insert “ or civil partner ”.

(3) In subsection (3)(b), after “spouse” insert “ or civil partner ”.

(4) In subsection (4)—

(a) the existing words from “as his” to the end become paragraph (a), and

(b) after that paragraph insert the following paragraph—

“(b) in a relationship which had the characteristics of the relationship between civil partners shall be treated as the tenant’s civil partner”.

57 In Part 1 of Schedule 5 (grounds on which sheriff must order possession), in paragraph (b) of ground 1, after “spouse’s” insert “ or civil partner’s ”.

Crofters (Scotland) Act 1993 (c. 44)

58 In section 61(2) (interpretation), for “or husband” substitute “ , husband or civil partner ”.

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

59 In section 1(2) (inadmissibility in civil proceedings of information as to what occurred during family mediation), after paragraph (c) insert the following paragraph—

“(cc) between partners in a civil partnership or persons in a purported civil partnership concerning matters arising out of the breakdown or termination of their relationship,”.

Children (Scotland) Act 1995 (c. 36)

60 (1) Amend section 12 (restrictions on decrees for divorce, separation or annulment affecting children) as follows.

(2) In subsection (1), the existing words “divorce, judicial separation, or declarator of nullity of marriage” become paragraph (a) and after that paragraph insert “ or ” and the following paragraph—

“(b) dissolution or declarator of nullity of a civil partnership or separation of civil partners,”.

(3) ^{F2}

Textual Amendments

F2 Sch. 28 para. 60(3) repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), ss. 45(2), 46(2), [Sch. 3](#); S.S.I. 2006/212, [art. 2](#) (subject to [arts. 3-13](#))

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Commencement Information

- II** Sch. 28 para. 60 partly in force; Sch. 28 para. 60 not in force at Royal Assent see s. 263; Sch. 28 para. 60(1)(2) in force at 5.12.2005 by S.S.I. 2005/604, arts. 2, 4

- 61 In section 54(2) (reference to the Principal Reporter by court), after paragraph (a) insert—

“(aa) an action for dissolution or declarator of nullity of a civil partnership or separation of civil partners;”.

Sexual Offences (Amendment) Act 2000 (c. 44)

- 62 In section 3(2)(c) (abuse of position of trust: defence), after “to” insert “, or in civil partnership with, ”.

Housing (Scotland) Act 2001 (asp 10)

- 63 In section 31(c) (effect of work on rent)—

- (a) after “spouse” insert “ or civil partner ”, and
- (b) for “husband and wife except that the persons are of the same sex” substitute “ civil partners ”.

- 64 (1) Amend section 108 (meaning of “family” etc.) as follows.

(2) In subsection (1)(a), after “spouse” insert “ or civil partner ”.

(3) In subsection (2)(a), after “marriage” insert “ or by virtue of civil partnership ”.

- 65 (1) Amend Schedule 2 (grounds for recovery of possession of house) as follows.

(2) In paragraph 5—

- (a) in sub-paragraph (a), after “spouse” insert “ or civil partner ”, and
- (b) in sub-paragraph (b), for “husband and wife except that the persons are of the same sex” substitute “ civil partners ”.

(3) In paragraph 15—

- (a) in sub-paragraph (a), for “(or former spouse)” substitute “ or civil partner (or former spouse or former civil partner) ”, and
- (b) in sub-paragraph (b), for “husband and wife except that the persons are of the same sex” substitute “ civil partners ”.

- 66 In Schedule 3 (succession: qualified persons), in paragraph 2(1)(a)—

- (a) in sub-head (i), after “spouse” insert “ or civil partner ”, and
- (b) in sub-head (ii), for “husband and wife except that the persons are of the same sex” substitute “ civil partners ”.

Criminal Justice (Scotland) Act 2003 (asp 7)

- 67 (1) Amend section 14 (victim statements) as follows.

(2) In subsection (10)(a), at the end insert “ or civil partner ”.

(3) For subsection (11) substitute—

“(11) In subsection (10)(b), “cohabitee” means a person who has lived with the victim—

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- (a) as if in a married relationship; or
 - (b) in a relationship which had the characteristics of the relationship between civil partners,
- for at least six months and was so living immediately before the offence (or apparent offence) was perpetrated.”

Agricultural Holdings (Scotland) Act 2003 (asp 11)

- 68 (1) Amend section 71 (meaning of “family”) as follows.
- (2) In subsection (2)(a), after “spouse” insert “ or civil partner ”, and
 - (3) In subsection (3)(a), after “marriage” insert “ or by virtue of civil partnership ”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

- 69 (1) Amend section 254 (meaning of “nearest relative”) as follows.
- (2) In subsection (2)(a), at the end insert “ or civil partner ”.
 - (3) In subsection (3), after “spouse” insert “ or civil partner ”.
 - (4) In subsection (7)(a)(ii), for “husband and wife except that the person and the relevant person are of the same sex” substitute “ civil partners ”.
- 70 In section 313(5)(a)(ii) (defence in respect of sexual offence), after “spouse” insert “ or civil partner ”.

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