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SCHEDULES

VALID FROM 05/12/2005

SCHEDULE 9 **E+W**

Section 82

FAMILY HOMES AND DOMESTIC VIOLENCE

PART 1 **E+W**

AMENDMENTS OF THE FAMILY LAW ACT 1996 (C. 27)

- 1 (1) Amend section 30 (rights concerning matrimonial home where one spouse has no estate, etc.) as follows.
- (2) In subsection (1)—
- (a) in paragraph (a)—
 - (i) after “one spouse” insert “ or civil partner (“A”) ”, and
 - (ii) for “that spouse” substitute “ A ”.
 - (b) in paragraph (b), after “other spouse” insert “ or civil partner (“B”) ”.
- (3) In subsection (2)—
- (a) for “the spouse not so entitled” substitute “ B ”,
 - (b) for “(“matrimonial home rights”)” substitute “ (“home rights”) ”, and
 - (c) in paragraph (a), for “the other spouse” substitute “ A ”.
- (4) In subsection (3)—
- (a) for “a spouse” and for “that spouse” substitute “ B ”, and
 - (b) for “the other spouse” (in both places) substitute “ A ”.
- (5) In subsection (4)—
- (a) for “A spouse's” substitute “ B's ”,
 - (b) in paragraph (a), for “by the other spouse as the other spouse's” substitute “ by A as A's ”, and
 - (c) in paragraph (b)—
 - (i) for “the spouse occupies the dwelling-house as that spouse's” substitute “ B occupies the dwelling-house as B's ”, and
 - (ii) for “by the other spouse as the other spouse's” substitute “ by A as A's ”.
- (6) In subsection (5)—
- (a) for “a spouse (“the first spouse”)” substitute “ B ”, and
 - (b) in paragraph (b), for “the other spouse (“the second spouse”)” substitute “ A ”,
 - (c) for “the second spouse” substitute “ A ”, and

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- (d) for “the first spouse against the second spouse” substitute “ B against A ”.
- (7) In subsection (6)—
- (a) for “a spouse” substitute “ B ”, and
 - (b) for “the other spouse” (in both places) substitute “ A ”.
- (8) In subsection (7), for the words from first “which” to the end substitute “which—
- (a) in the case of spouses, has at no time been, and was at no time intended by them to be, a matrimonial home of theirs; and
 - (b) in the case of civil partners, has at no time been, and was at no time intended by them to be, a civil partnership home of theirs.”
- (9) In subsection (8)—
- (a) for “A spouse’s matrimonial home rights” substitute “ B’s home rights ”,
 - (b) in paragraph (a), after “marriage” insert “ or civil partnership ”, and
 - (c) in paragraph (b), for “the other spouse” substitute “ A ”.
- (10) In subsection (9)—
- (a) for “a spouse” (in both places) substitute “ a person ”, and
 - (b) for “matrimonial home rights” substitute “ home rights ”.
- (11) In the heading to section 30, for “matrimonial home where one spouse” substitute “ home where one spouse or civil partner ” and, in the preceding cross-heading, after “matrimonial” insert “ or civil partnership ”.
- 2 (1) Amend section 31 (effect of matrimonial home rights as charge on dwelling-house) as follows.
- (2) In subsection (1) for “marriage, one spouse” substitute “ marriage or civil partnership, A ”.
- (3) In subsection (2) for “The other spouse’s matrimonial home rights” substitute “ B’s home rights ”.
- (4) In subsection (3)—
- (a) in paragraph (a), for “the spouse so entitled” substitute “ A ”, and
 - (b) in paragraph (b), after “marriage” insert “ or of the formation of the civil partnership ”.
- (5) In subsection (4)—
- (a) for “a spouse’s matrimonial home rights” substitute “ B’s home rights ”,
 - (b) for “the other spouse” substitute “ A ”, and
 - (c) for “either of the spouses” substitute “ A or B ”.
- (6) In subsection (5) for “the other spouse” substitute “ A ”.
- (7) In subsection (7) for “the spouses” substitute “ A and B ”.
- (8) In subsection (8)—
- (a) for “a spouse’s matrimonial home rights” substitute “ B’s home rights ”,
 - (b) in paragraph (a), for “the other spouse” substitute “ A ”, and
 - (c) in paragraph (b), after “marriage” insert “ or civil partnership ”.
- (9) In subsection (9)—

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- (a) in paragraph (a), for “a spouse’s matrimonial home rights” substitute “B’s home rights”, and
- (b) for “the other spouse” (in both places) substitute “A”.
- (10) In subsection (10)—
- (a) for “a spouse” and for “that spouse” substitute “A”, and
- (b) in paragraph (b), for “a spouse’s matrimonial home rights” substitute “B’s home rights”.
- (11) For subsection (12)(a) substitute—
- “(a) B’s home rights are a charge on the estate of A or of trustees of A, and”.
- (12) In the heading to section 31, for “matrimonial home rights” substitute “home rights”.
- 3 For section 32 (further provisions relating to matrimonial home rights) substitute—
- “32 Further provisions relating to home rights**
- Schedule 4 (provisions supplementary to sections 30 and 31) has effect.”
- 4 (1) Amend section 33 (occupation orders where applicant has estate or interest etc. or has matrimonial home rights) as follows.
- (2) In subsection (1)(a)(ii), for “matrimonial home rights” substitute “home rights”.
- (3) After subsection (2) insert—
- “(2A) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.”
- (4) In subsection (3)(e)—
- (a) for “matrimonial home rights” substitute “home rights”, and
- (b) after “spouse” insert “or civil partner”.
- (5) In subsection (4), for “matrimonial home rights” substitute “home rights”.
- (6) In subsection (5)—
- (a) for “matrimonial home rights” substitute “home rights”,
- (b) after “is the other spouse” insert “or civil partner”,
- (c) after “during the marriage” insert “or civil partnership”,
- (d) in paragraph (a), after “spouse” insert “or civil partner”, and
- (e) in paragraph (b), after “marriage” insert “or civil partnership”.
- (7) In the heading to section 33, for “matrimonial home rights” substitute “home rights”.
- 5 In section 34 (effect of order under section 33 where rights are charge on dwelling-house), in subsection (1)—

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- (a) for “a spouse’s matrimonial home rights” substitute “ B’s home rights ”, and
- (b) for “the other spouse” (in each place) substitute “ A ”.
- 6 (1) Amend section 35 (one former spouse with no existing right to occupy) as follows.
- (2) In subsection (1)(a) and (b), after “former spouse” insert “ or former civil partner ”.
- (3) For subsection (1)(c) substitute—
- “ (c) the dwelling-house—
- (i) in the case of former spouses, was at any time their matrimonial home or was at any time intended by them to be their matrimonial home, or
- (ii) in the case of former civil partners, was at any time their civil partnership home or was at any time intended by them to be their civil partnership home.”
- (4) In subsection (2), after “former spouse” (in both places) insert “ or former civil partner ”.
- (5) In subsection (6)(f), after “marriage” insert “ or civil partnership ”.
- (6) After subsection (6)(g)(i), insert—
- “ (ia) for a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004; ”.
- (7) In subsection (9)(a), after “former spouses” insert “ or former civil partners ”.
- (8) In subsections (11) and (12), after “former spouse” insert “ or former civil partner ”.
- (9) For subsection (13)(a) and (b) substitute—
- “ (a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
- (b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section). ”
- (10) In the heading to section 35, after “former spouse” insert “ or former civil partner ”.
- 7 In section 36 (one cohabitant or former cohabitant with no existing right to occupy), for subsection (13)(a) and (b) substitute—
- “ (a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
- (b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section). ”
- 8 (1) Amend section 37 (neither spouse entitled to occupy) as follows.
- (2) After subsection (1) insert—
- “ (1A) This section also applies if—
- (a) one civil partner or former civil partner and the other civil partner or former civil partner occupy a dwelling-house which is or was the civil partnership home; but
- (b) neither of them is entitled to remain in occupation—
- (i) by virtue of a beneficial estate or interest or contract; or

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- (ii) by virtue of any enactment giving him the right to remain in occupation.”
- (3) In subsection (3)(b), for “spouses” substitute “ parties ”.
- (4) In the heading to section 37, after “spouse” insert “ or civil partner ”.
- 9 In section 42 (non-molestation orders), after subsection (4) insert—
- “(4ZA) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.”
- 10 (1) In section 44 (evidence of agreement to marry), after subsection (2) insert—
- “(3) Subject to subsection (4), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(eza) unless there is produced to it evidence in writing of the existence of the civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004).
- (4) Subsection (3) does not apply if the court is satisfied that the civil partnership agreement was evidenced by—
- (a) a gift by one party to the agreement to the other as a token of the agreement, or
- (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.”
- (2) In the heading to section 44, after “marry” insert “ or form a civil partnership ”.
- 11 In section 49 (variation and discharge of orders), in subsection (3)—
- (a) for “a spouse’s matrimonial home rights” substitute “ B’s home rights are, under section 31, ”, and
- (b) for “the other spouse” (in each place) substitute “ A ”.
- 12 (1) Amend section 54 (dwelling-house subject to mortgage) as follows.
- (2) In subsections (3)(a) and (4), for “matrimonial home rights” substitute “ home rights ”.
- (3) In subsection (5), after “spouse, former spouse” insert “ , civil partner, former civil partner ”.
- 13 (1) Amend section 62 (meaning of “cohabitants”, “relevant child” and “associated persons”) as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship;” substitute “ two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners; ”, and
- (b) in paragraph (b), after “have subsequently married each other” insert “ or become civil partners of each other ”.

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(3) After subsection (3)(a) insert—

“(aa) they are or have been civil partners of each other;”.

(4) After subsection (3)(e) insert—

“(eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);”.

Commencement Information

II Sch. 9 para. 13 wholly in force at 5.12.2005; Sch. 9 para. 13 not in force at Royal Assent see s. 263; Sch. 9 para. 13(1)(2)(b)(3)(4) in force at 5.12.2005 by S.I. 2005/3175, art. 2(1), Sch. 1; Sch. 9 para. 13(2)(a) in force at 5.12.2005 immediately after s. 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) by S.I. 2005/3175, art. 2(8)

14 (1) Amend section 63 (interpretation of Part 4) as follows.

(2) In subsection (1), after the definition of “health” insert—

““home rights” has the meaning given by section 30;”.

(3) Omit the definition of “matrimonial home rights” in that subsection.

(4) In the definition of relative in that subsection—

- (a) in paragraphs (a) and (b), for “spouse or former spouse” substitute “ spouse, former spouse, civil partner or former civil partner ”,
- (b) in paragraph (b), for “by affinity)” substitute “ by marriage or civil partnership) ”, and
- (c) after “were married to each other” insert “ or were civil partners of each other ”.

(5) After subsection (2)(i) insert—

“(j) Schedules 5 to 7 to the Civil Partnership Act 2004.”

15 (1) Amend Schedule 4 (provisions supplementary to sections 30 and 31) as follows.

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

(3) In paragraph 3(1) and (3), after “spouse” insert “ or civil partner ”.

(4) In paragraph 4(1), for “spouse’s matrimonial home rights” substitute “ spouse’s or civil partner’s home rights ”.

(5) For paragraphs 4(1)(a) to (c) substitute—

- “(a) in the case of a marriage—
 - (i) by the production of a certificate or other sufficient evidence, that either spouse is dead,
 - (ii) by the production of an official copy of a decree or order of a court, that the marriage has been terminated otherwise than by death, or
 - (iii) by the production of an order of the court, that the spouse’s home rights constituting the charge have been terminated by the order, and
- (b) in the case of a civil partnership—

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- (i) by the production of a certificate or other sufficient evidence, that either civil partner is dead,
 - (ii) by the production of an official copy of an order or decree of a court, that the civil partnership has been terminated otherwise than by death, or
 - (iii) by the production of an order of the court, that the civil partner's home rights constituting the charge have been terminated by the order."
- (6) In paragraph 4(2)—
- (a) in paragraph (a)—
 - (i) after "marriage" insert " or civil partnership ", and
 - (ii) after "spouse" insert " or civil partner ", and
 - (b) in paragraph (b), after "spouse" insert " or civil partner ".
- (7) In paragraph 4(3), after "spouse" insert " or civil partner ".
- (8) In the heading to paragraph 4, after "marriage" insert " or civil partnership ".
- (9) In paragraph 5(1), for "spouse entitled to matrimonial home rights" substitute " spouse or civil partner entitled to home rights ".
- (10) In paragraph 5(2)—
- (a) for "matrimonial home rights" substitute " home rights ", and
 - (b) in paragraph (a), after "spouse" insert " or civil partner ".
- (11) In the heading to paragraph 5, for "matrimonial home rights" substitute " home rights ".
- (12) In paragraph 6, after "spouse" (in both places) insert " or civil partner ".
- 16 (1) Amend Schedule 7 (transfer of certain tenancies on divorce etc. or on separation of cohabitants) as follows.
- (2) In paragraph 1, before the definition of "cohabitant" insert—

““civil partner”, except in paragraph 2, includes (where the context requires) former civil partner;”.
 - (3) In paragraph 2(1), after "spouse" (in both places) insert " or civil partner ".
 - (4) For paragraph 2(2) substitute—

“(2) The court may make a Part II order—

 - (a) on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), or
 - (b) at any time when it has power to make a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004 with respect to the civil partnership.”
 - (5) Omit "or" at the end of paragraph 4(a) and insert—

“(aa) in the case of civil partners, a civil partnership home; or”.
 - (6) In paragraph 5(a), after "spouses" insert " , civil partners ".

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- (7) In paragraph 6—
- (a) after “spouse” (in the first place) insert “, a civil partner”, and
 - (b) after “spouse” (in the second place) insert “, civil partner”.
- (8) In paragraph 7(1) and (2), after “spouse” (in each place) insert “, civil partner”.
- (9) For paragraph 7(3) to (4) substitute—
- “(3) If the spouse, civil partner or cohabitant so entitled is a successor within the meaning of Part 4 of the Housing Act 1985—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
 - (b) his former civil partner (or, if a separation order is in force, his civil partner), or
 - (c) his former cohabitant,
- is to be deemed also to be a successor within the meaning of that Part.
- (3A) If the spouse, civil partner or cohabitant so entitled is a successor within the meaning of section 132 of the Housing Act 1996—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
 - (b) his former civil partner (or, if a separation order is in force, his civil partner), or
 - (c) his former cohabitant,
- is to be deemed also to be a successor within the meaning of that section.
- (4) If the spouse, civil partner or cohabitant so entitled is for the purposes of section 17 of the Housing Act 1988 a successor in relation to the tenancy or occupancy—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
 - (b) his former civil partner (or, if a separation order is in force, his civil partner), or
 - (c) his former cohabitant,
- is to be deemed to be a successor in relation to the tenancy or occupancy for the purposes of that section.”
- (10) In paragraph 7(5)(a), after “spouse” insert “, civil partner”.
- (11) Omit paragraph 7(6).
- (12) In paragraph 8(1) and (2)(a) and (b), after “spouse” insert “, civil partner”.
- (13) In paragraph 8(3), after “surviving spouse” insert “ or surviving civil partner”.
- (14) In paragraphs 9(1), (2)(a) and (b) and (3) (in both places) and 10(1) (in both places), after “spouse” insert “, civil partner”.
- (15) In paragraph 11(1), after “spouses” insert “, civil partners”.
- (16) In paragraph 11(2), after “spouse” insert “, civil partner”.
- (17) For paragraph 12 and the heading preceding it, substitute—

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“Date when order made between spouses or civil partners takes effect

- 12 The date specified in a Part II order as the date on which the order is to take effect must not be earlier than—
- (a) in the case of a marriage in respect of which a decree of divorce or nullity has been granted, the date on which the decree is made absolute;
 - (b) in the case of a civil partnership in respect of which a dissolution or nullity order has been made, the date on which the order is made final.”

(18) For paragraph 13 and the heading preceding it substitute—

“Effect of remarriage or subsequent civil partnership

- 13 (1) If after the grant of a decree dissolving or annulling a marriage either spouse remarries or forms a civil partnership, that spouse is not entitled to apply, by reference to the grant of that decree, for a Part II order.
- (2) If after the making of a dissolution or nullity order either civil partner forms a subsequent civil partnership or marries, that civil partner is not entitled to apply, by reference to the making of that order, for a Part II order.
- (3) In sub-paragraphs (1) and (2)—
- (a) the references to remarrying and marrying include references to cases where the marriage is by law void or voidable, and
 - (b) the references to forming a civil partnership include references to cases where the civil partnership is by law void or voidable.”

(19) In paragraph 15(1)—

- (a) after “spouse” insert “ or civil partner ”, and
- (b) for “spouse’s matrimonial home rights” substitute “ spouse’s or civil partner’s home rights ”.

(20) In paragraph 15(2), after “spouse” insert “ , civil partner ”.

PART 2 **E+W**

CONSEQUENTIAL AMENDMENTS

Land Compensation Act 1973 (c. 26)

- 17 (1) Amend section 29A (spouses having statutory rights of occupation) as follows.
- (2) In subsection (1)—
- (a) for “one spouse (“A”)” substitute “ one spouse or civil partner (“A”) ”, and
 - (b) for “the other spouse (“B”) acquires matrimonial home rights” substitute “ the other spouse or civil partner (“B”) acquires home rights ”.
- (3) In subsection (2) for “matrimonial home rights” substitute “ home rights ”.
- (4) In the heading to section 29A, after “spouses” insert “ and civil partners ”.

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Housing Act 1985 (c. 68)

- 18 (1) Amend section 85 (extended discretion of court in certain proceedings for possession) as follows.
- (2) In subsection (5)—
- (a) in paragraph (a) for “tenant’s spouse or former spouse, having matrimonial home rights” substitute “tenant’s spouse or former spouse, or civil partner or former civil partner, having home rights”,
 - (b) after “the spouse or former spouse” insert “, or the civil partner or former civil partner,”, and
 - (c) for “those matrimonial home rights” substitute “those home rights”.
- (3) In subsection (5A)—
- (a) in paragraph (a), for “former spouse of the tenant” substitute “former spouse or former civil partner of the tenant”, and
 - (b) in paragraph (b) and in the words following paragraph (c) after “former spouse,” insert “former civil partner,”.
- 19 In section 99B (persons qualifying for compensation) in subsection (2)(f), after “spouse, former spouse,” insert “civil partner, former civil partner,”.
- 20 In section 101 (rent not to be increased on account of tenant’s improvements) in subsection (3)(d), after “spouse, former spouse,” insert “civil partner, former civil partner,”.

Insolvency Act 1986 (c. 45)

- 21 (1) Amend section 336 (rights of occupation etc. of bankrupt’s spouse) as follows.
- (2) In subsection (1), for “matrimonial home rights” substitute “home rights”.
- (3) In subsection (2)—
- (a) for “a spouse’s matrimonial home rights” substitute “a spouse’s or civil partner’s home rights”, and
 - (b) after “the other spouse” (in each place) insert “or civil partner”.
- (4) In subsection (4)(b) and (c) after “spouse or former spouse” insert “or civil partner or former civil partner”.
- (5) In the heading to section 336 after “spouse” insert “or civil partner”.
- 22 (1) Amend section 337 (rights of occupation of bankrupt) as follows.
- (2) In subsection (2), for “spouse (if any) has matrimonial home rights” substitute “spouse or civil partner (if any) has home rights”.
- (3) In subsection (3)—
- (a) in paragraph (a), for “matrimonial home rights” substitute “home rights”, and
 - (b) in paragraph (c), after “spouse” insert “or civil partner”.

Housing Act 1988 (c. 50)

- 23 (1) Amend section 9 (extended discretion of court in possession claims) as follows.

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- (2) In subsection (5)—
- (a) for “tenant’s spouse or former spouse, having matrimonial home rights” substitute “tenant’s spouse or former spouse, or civil partner or former civil partner, having home rights”,
 - (b) after “the spouse or former spouse” insert “, or the civil partner or former civil partner”, and
 - (c) for “those matrimonial home rights” substitute “those home rights”.
- (3) In subsection (5A)—
- (a) for “former spouse of the tenant” substitute “former spouse or former civil partner of the tenant”,
 - (b) for “cohabitant, former cohabitant or former spouse” (in both places) substitute “former spouse, former civil partner, cohabitant or former cohabitant”.

Commonhold and Leasehold Reform Act 2002 (c. 15)

- 24 (1) Amend section 61 (matrimonial rights) as follows.
- (2) For “matrimonial home rights (within the meaning of section 30(2) of the Family Law Act 1996 (c. 27) (matrimonial home))” substitute “home rights (within the meaning of section 30(2) of the Family Law Act 1996 (c. 27) (rights in respect of matrimonial or civil partnership home))”.
- (3) In the heading to section 61 for “Matrimonial” substitute “Home”.

PART 3 E+W

TRANSITIONAL PROVISION

- 25 (1) Any reference (however expressed) in any enactment, instrument or document (whether passed or made before or after the passing of this Act)—
- (a) to rights of occupation under, or within the meaning of, the Matrimonial Homes Act 1983 (c. 19), or
 - (b) to matrimonial home rights under, or within the meaning of, Part 4 of the Family Law Act 1996 (c. 27),
- is to be construed, so far as is required for continuing the effect of the enactment, instrument or document, as being or as the case requires including a reference to home rights under, or within the meaning of, Part 4 of the 1996 Act as amended by this Schedule.
- (2) Any reference (however expressed) in Part 4 of the 1996 Act or in any other enactment, instrument or document (including any enactment amended by this Schedule) to home rights under, or within the meaning of, Part 4 of the 1996 Act is to be construed as including, in relation to times, circumstances and purposes before the commencement of this Schedule, references to rights of occupation under, or within the meaning of, the 1983 Act and to matrimonial home rights under, or within the meaning of, Part 4 of the 1996 Act without the amendments made by this Schedule.

Status:

Point in time view as at 15/04/2005. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation:

Civil Partnership Act 2004, SCHEDULE 9 is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.