



This Registers Update gives advice on the registration implications of the Civil Partnership Act 2004 ("the 2004 Act") which has effect from 5th December 2005. The 2004 Act creates civil partnership, a new form of legal relationship that may be formed by two persons of the same sex. The 2004 Act enables same-sex couples to obtain legal recognition of their relationship by forming and registering a civil partnership.

UPDATE: 19

Introduction

In terms of section 101 of the 2004 Act, where one civil partner ("the entitled partner") is entitled, or permitted by a third party, to occupy a family home of the civil partnership, and the other civil partner ("the non-entitled partner") is not so entitled or permitted, the non-entitled partner has occupancy rights in the family home.

A "family home" is defined in section 135 of the 2004 Act as "any house, caravan, houseboat or other structure which has been provided or has been made available by one or both of the civil partners as, or has become, a family residence and includes any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure but does not include a residence provided or made available by one civil partner for that civil partner to reside in, whether with any child of the family or not, separately from the other civil partner".

Implications for Land Registration

Section 106 of the 2004 Act allows for the subsistence of an occupancy right of a non-entitled partner beyond the divestiture of the entitled partner. To ensure vacant possession, a purchaser must find out if an occupancy right of a non-entitled partner subsists. Since a title sheet in the Land Register discloses only the current registered proprietor, it is not possible to identify from it details of former proprietors. To avoid the need to retain and refer to a progress of titles for that purpose after registration, the Keeper will, if he is satisfied that there are no such subsisting rights, insert in the proprietorship section of the title sheet a statement that:

'there are in respect of the interest in land no subsisting occupancy rights, in terms of the Civil Partnership Act 2004, of civil partners of persons who were formerly entitled to the interest in land.'

The Keeper will insert the above statement only if an application for registration is supported by evidence that no occupancy rights of civil partners of former proprietors exist. In order to be satisfied that there are no such subsisting rights, the Keeper will require to see one of the documents listed below.



Evidence for Keeper's examination

The documents the Keeper will require to examine ("Civil Partnership Act evidence") are:

- a consent by the non-entitled partner to the dealing by the entitled partner; **or**
- an affidavit by the entitled person that there is no non-entitled partner; **or**, an affidavit by the entitled person that the subjects of sale are not a family home in relation to which a civil partner of the entitled person has occupancy rights (a combined affidavit referring to both matrimonial homes and family homes and non-entitled spouses and non-entitled partners will be acceptable); **or**





- a duly stamped renunciation of the occupancy right by the non-entitled partner; **or**
- a written assurance that the dealing implements a binding obligation entered into before 5th December 2005 (the date for commencement of the legislation); **or**
- an order of the court dispensing with consent, in terms of section 107 of the 2004 Act; **or**
- evidence of the death of the entitled partner; **or**
- a written assurance that the dealing implements a binding obligation entered into by the entitled partner before registration of the civil partnership; **or**
- as regards a sale by an executor, either a written assurance that more than one person was entitled to succeed to the property or a written assurance that the sale was not instructed or requested by the person entitled to succeed (for example where the executor requires to sell to meet the debts of the deceased) or one of the foregoing items.



If the Keeper is satisfied with the Civil Partnership Act evidence submitted to him, he will enter in the proprietorship section of the title sheet the statement referred to above, indicating that there are no subsisting occupancy rights of non-entitled partners in the subjects. Should appropriate Civil Partnership Act evidence not be submitted, the Keeper will insert a statement, noting the deficiency in evidence which has prevented him inserting an unqualified statement.

Applications for Registration in the Land Register

In the case of an application for first registration in the Land Register, evidence is required in respect of every person, other than the applicant, who has been entitled to the interest since the coming into force of the legislation on 5th December 2005.

In the case of a dealing of a registered interest or a transfer of part of a registered interest, evidence is required in respect of the proprietor disclosed in the title sheet, and any person, other than the applicant, who was subsequently entitled to the interest.

As noted above, the statement regarding occupancy rights under the 2004 Act entered in the title sheet is in respect of persons who were formerly entitled to the subjects. The Keeper gives no such assurances as regards the current registered proprietor and consequently does not require sight of any documentary evidence for the applicant.

Further Information

All previous Registers Updates are available on our website www.ros.gov.uk/updates. Our pre-Registration Enquiries Section will be pleased to offer registration guidance to solicitors on specific matters of concern in connection with an application for registration affected by the issues raised in this update. The service is free of charge.

Pre-Registration Enquiries at:
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This is the latest in a series of updates to keep you informed on the various aspects of Registers of Scotland's services, policies and procedures. More details can be found at www.ros.gov.uk/updates, or by contacting Customer Relations on 0131 200 3944.

