

Implications for Bankers

The Civil Partnership Act 2004 came into force on the 5th December 2005 and gives legal rights to same sex couples.

Same sex couples who go through the statutory civil registration procedure effectively have the same rights in law as married couples.

The couples who wish to register as civil partners must both be;

- Of the same sex
- Not already in a civil partnership or marriage
- 16 years of age or older, and
- Not within the prohibited degrees of relationship (i.e. related)

One of the ramifications of this Act for lending transactions is that where a house is owned by one party to a civil partnership, the other party will have the same occupancy rights as a non-entitled spouse in terms of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981* as amended.

In the case of a Standard Security granted by an individual (male or female) third parties such as lenders acting in good faith who have exhibited to them an affidavit will be protected. The affidavit will be in the same terms as the Matrimonial Homes Affidavit with the exception of a reference to the *Civil Partnership Act 2004*. In many cases of course lenders will not know whether the single person is married or in same sex relationship regulated by a civil partnership. An affidavit in the following form will now be required;-

"The Security Subjects known as.....are neither a matrimonial home in relation to which a spouse of mine has occupancy rights under the *Matrimonial Homes (Family Protection) (Scotland) Act 1981* as amended nor a family home in relation to which a Civil Partner of mine has occupancy rights under the *Civil Partnership Act 2004*." or

Common clauses in missives relating to Matrimonial Homes Act will also have to be amended to take civil partners' into account.

Where there is a civil partner then the civil partner will require to consent if title is in single name. Normally the consent will be embodied in the Security just before the grant of security or alternatively in a separate consent. The consent will of course be for the purposes of the *Civil Partnership Act 2004* rather than the *Matrimonial Homes (Family Protection)(Scotland) Act 1981* and will be required in the following form:-

"I, ...residing at...Spouse or Civil Partner of, ...also residing at...CONSENT to the Standard Security by the said.....in favour of...for the purposes of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981* as amended, and the *Civil Partnership Act 2004*."

Other Areas affected by this Act Include;

- Stamp Duty Land Tax—Civil Partners are to be treated as “connected persons” for SDLT purposes.
- Death, Incapacity and Intestacy
- IHT Planning and Lifetime Gifts—Civil Partners will be able to make gifts or bequests to their partners with the benefit of IHT exemption
- Pensions Schemes and Life Policies—Civil Partners will be entitled to equal treatment as spouses for pensions scheme benefits.

Proposals for the Future

There are also proposals to amend the Matrimonial Homes Act to extend rights to cohabiting same sex couples that are not in a civil partnership, where, as is common, opposite sex partners who co-habit can apply to the court for occupancy rights in terms of Section 18 of the Act.

These proposals are contained in the Family Law (Scotland) Bill, which is currently placed before the Scottish Parliament.

**For further information on Civil Partnerships, please contact
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