



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Cohabiting couples

18 Occupancy rights of cohabiting couples.

- (1) If a man and a woman are living with each other as if they were man and wife^[F1] or two persons of the same sex are living together as if they were civil partners] (“^[F2]in either case]a cohabiting couple”) in a house which, apart from the provisions of this section—
 - (a) one of them (an “entitled partner”) is entitled, or permitted by a third party, to occupy; and
 - (b) the other (a “non-entitled partner”) is not so entitled or permitted to occupy, the court may, on the application of the non-entitled partner, if it appears that the ^[F3]entitled partner and the non-entitled partner] are a cohabiting couple in that house, grant occupancy rights therein to the applicant for such period, not exceeding ^[F4]6 months, as the court may specify:
Provided that the court may extend the said period for a further period or periods, no such period exceeding 6 months.
- (2) In determining whether for the purpose of subsection (1) above ^[F5]two persons] are a cohabiting couple the court shall have regard to all the circumstances of the case including—
 - (a) the time for which it appears they have been living together; and
 - (b) whether there ^[F6]is any child—
 - (i) of whom they are the parents; or
 - (ii) who they have treated as a child of theirs.]
- (3) While an order granting an application under subsection (1) above or an extension of such an order is in force, or where both partners of a cohabiting couple are entitled, or permitted by a third party, to occupy the house where they are cohabiting, the following provisions of this Act shall subject to any necessary modifications—

Changes to legislation: *Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Cohabiting couples is up to date with all changes known to be in force on or before 08 August 2023. 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. (See end of Document for details) View outstanding changes*

- (a) apply to the cohabiting couple as they apply to parties to a marriage;
 - and
 - (b) have effect in relation to any child residing with the cohabiting couple as they have effect in relation to a child of the family,
 - section 2;
 - section 3, except subsection (1)(a);
 - section 4;
 - in section 5(1), the words from the beginning to “Act” where it first occurs;
 - [^{F7}section 13]
 - and
 - section 22,
 and any reference in these provisions to a matrimonial home shall be construed as a reference to a house.
- (4) Any order under section 3 or 4 of this Act as applied to a cohabiting couple by subsection (3) above shall have effect—
- (a) if one of them is a non-entitled partner, for such a period, not exceeding the period or periods which from time to time may be specified in any order under subsection (1) above for which occupancy rights have been granted under that subsection, as may be specified in the order;
 - (b) if they are both entitled, or permitted by a third party, to occupy the house, until a further order of the court.
- (5) Nothing in this section shall prejudice the rights of any third party having an interest in the house referred to in subsection (1) above.
- (6) In this section—
- “house” includes a caravan, houseboat or other structure in which the couple are cohabiting and 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;
- “occupancy rights” means the following rights of a non-entitled partner—
- (a) if in occupation, a right [^{F8}to continue to occupy the house;]
 - (b) if not in occupation, a right to enter into and occupy the house [^{F9}and, without prejudice to the generality of these rights, includes the right to continue to occupy or, as the case may be, to enter and occupy the house together with any child residing with the cohabiting couple];
- “entitled partner” includes a partner who is entitled, or permitted by a third party, to occupy the house along with an individual who is not the other partner only if that individual has waived his or her right of occupation in favour of the partner so entitled or permitted.

Textual Amendments

- F1** Words in s. 18(1) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 34(2)(a)**, 46(2); [S.S.I. 2006/212](#), art. 2
- F2** Words in s. 18(1) inserted (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), **ss. 34(2)(b)**, 46(2); [S.S.I. 2006/212](#), art. 2

Changes to legislation: *Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Cohabiting couples is up to date with all changes known to be in force on or before 08 August 2023. 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. (See end of Document for details) View outstanding changes*

- F3** Words in s. 18(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 34(2)(c), 46(2)**; S.S.I. 2006/212, art. 2
- F4** By the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(9)(a), 60(6)**
- F5** Words in s. 18(2) substituted (4.5.2006) by virtue of Family Law (Scotland) Act 2006 (asp 2), **ss. 34(3)(a), 46(2)**; S.S.I. 2006/212, art. 2
- F6** Words in s. 18(2)(b) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 34(3)(b), 46(2)**; S.S.I. 2006/212, art. 2
- F7** Words in s. 18(3) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 31(2), 46(2)**; S.S.I. 2006/212, art. 2
- F8** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(9)(b)(i), 60(6)**
- F9** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(9)(b)(ii), 60(6)**

Changes to legislation:

Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Cohabiting couples is up to date with all changes known to be in force on or before 08 August 2023. 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.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 2(8A) inserted by [2023 asp 3 s. 56\(2\)](#)
- s. 3(9) inserted by [2023 asp 3 s. 56\(4\)](#)
- s. 8(2C) inserted by [2023 asp 3 s. 56\(7\)](#)