



# Matrimonial Homes (Family Protection) (Scotland) Act 1981

## 1981 CHAPTER 59

### *Miscellaneous and General*

#### **19 Rights of occupancy in relation to division and sale.**

Where a spouse brings an action for the division and sale of a matrimonial home which the spouses own in common, the court, after having regard to all the circumstances of the case including—

- (a) the matters specified in paragraphs (a) to (d) of section 3(3) of this Act; and
- (b) whether the spouse bringing the action offers or has offered to make available to the other spouse any suitable alternative accommodation,

may refuse to grant decree in that action or may postpone the granting of decree for such period as it may consider reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.

#### **20 Spouse's consent in relation to calling up of standard securities over matrimonial homes.**

Section 19(10) of the Conveyancing and Feudal Reform (Scotland) Act 1970 <sup>M1</sup> shall have effect as if at the end there were added the following proviso—

“Provided that, without prejudice to the foregoing generality, if the standard security is over a matrimonial home as defined in section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the spouse on whom the calling-up notice has been served may not dispense with or shorten the said period without the consent in writing of the other spouse.”.

#### **Modifications etc. (not altering text)**

- C1** The text of ss. 6(4), 13(12)(a), 20 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

**Changes to legislation:** *Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Miscellaneous and General is up to date with all changes known to be in force on or before 20 September 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*

### Marginal Citations

M1 1970 c. 35.

## <sup>F1</sup>21 Procedural provision

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### Textual Amendments

F1 S. 21 repealed (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), s. 46(2), [Sch. 3](#); S.S.I. 2006/212, art. 2

## 22 Interpretation.

<sup>F2</sup>(1) In this Act—

“caravan” means a caravan which is mobile or affixed to the land;

“child of the family” includes any child or grandchild of either spouse, and any person who has been brought up or [<sup>F3</sup>treated] by either spouse as if he or she were a child of that spouse, whatever the age of such a child, grandchild or person may be;

“the court” means the Court of Session or the sheriff;

“furniture and plenishings” means any article situated in a matrimonial home which—

- (a) is owned or hired by either spouse or is being acquired by either spouse under a hire-purchase agreement or conditional sale agreement; and
- (b) is reasonably necessary to enable the home to be used as a family residence,

but does not include any vehicle, caravan or houseboat, or such other structure as is mentioned in the definition of “matrimonial home”;

“matrimonial home” means [<sup>F4</sup>subject to subsection (2),]any house, caravan, houseboat or other structure which has been provided or has been made available by one or both of the spouses as, or has become, a family residence and includes any garden or other ground or building <sup>F5</sup>... usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure; [<sup>F6</sup>but does not include a residence provided or made available by [<sup>F7</sup>a person for one] spouse to reside in, whether with any child of the family or not, separately from the other spouse.]

“occupancy rights” has, subject to section 18(6) of this Act, the meaning assigned by section 1(4) of this Act;

“the sheriff” includes the sheriff having jurisdiction in the district where the matrimonial home is situated;

“tenant” includes sub-tenant and a statutory tenant as defined in section 3 of the [<sup>F8</sup>Rent (Scotland) Act 1984 and a statutory assured tenant as defined in section 16(1) of the Housing (Scotland) Act 1988] and “tenancy” shall be construed accordingly;

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“entitled spouse” and “non-entitled spouse”, subject to sections 6(2) and 12(2) of this Act, have the meanings respectively assigned to them by section 1 of this Act.

[<sup>F9</sup>(2) If—

- (a) the tenancy of a matrimonial home is transferred from one spouse to the other by agreement or under any enactment; and
  - (b) following the transfer, the spouse to whom the tenancy was transferred occupies the home but the other spouse does not,
- the home shall, on such transfer, cease to be a matrimonial home.]

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**Textual Amendments**

- F2** S. 22(1): s. 22 renumbered as s. 22(1) (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 9, 46(2)**; S.S.I. 2006/212, art. 2
- F3** Word in s. 22 substituted (1.11.1996) by 1995 c. 36, s. 105(4), **Sch. 4 para. 30** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F4** Words in s. 22(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 9(a)(i), 46(2)**; S.S.I. 2006/212, art. 2
- F5** Words in s. 22(1) repealed (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 3**; S.S.I. 2006/212, art. 2
- F6** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(10), 60(6)**
- F7** Words in s. 22(1) substituted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 9(a)(ii), 46(2)**; S.S.I. 2006/212, art. 2
- F8** Words substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), s. 72(2), **Sch. 9 para. 3**
- F9** S. 22(2) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 9(b), 46(2)**; S.S.I. 2006/212, art. 2

**23 Short title, commencement and extent.**

- (1) This Act may be cited as the Matrimonial Homes (Family Protection) (Scotland) Act 1981.
- (2) This Act (except this section) shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions and for different purposes.
- (3) This Act extends to Scotland only.

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**Modifications etc. (not altering text)**

- C2** Power of appointment conferred by s. 23(2) fully exercised: 1.9.1982 appointed by S.I. 1982/972, **art. 2**

**Changes to legislation:**

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**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\(7\)](#)