



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

## 1981 CHAPTER 59

### *Occupancy rights in relation to dealings with third parties*

#### **6 Continued exercise of occupancy rights after dealing.**

(1) Subject to subsection (3) below—

- (a) the continued exercise of the rights conferred on a non-entitled spouse by the provisions of this Act in respect of a matrimonial home shall not be prejudiced by reason only of any dealing of the entitled spouse relating to that home; and
- (b) a third party shall not by reason only of such a dealing be entitled to occupy that matrimonial home or any part of it.

(2) In this section and section 7 of this Act—

“dealing” includes the grant of a heritable security and the creation of a trust but does not include a conveyance under section 80 of the <sup>M</sup>Lands Clauses Consolidation (Scotland) Act 1845;

“entitled spouse” does not include a spouse who, apart from the provisions of this Act,—

- (a) is permitted by a third party to occupy a matrimonial home; or
- (b) is entitled to occupy a matrimonial home along with an individual who is not the other spouse, whether or not that individual has waived his or her right of occupation in favour of the spouse so entitled;

and “non-entitled spouse” shall be construed accordingly.

(3) This section shall not apply in any case where—

- (a) the non-entitled spouse in writing either—
  - (i) consents or has consented to the dealing, and any consent shall be in such form as the Secretary of State may, by regulations made by statutory instrument, prescribe; or
  - (ii) renounces or has renounced his or her occupancy rights in relation to the matrimonial home or property to which the dealing relates;

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**Changes to legislation:** *Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Occupancy rights in relation to dealings with third parties is up to date with all changes known to be in force on or before 07 October 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)*

- (b) the court has made an order under section 7 of this Act dispensing with the consent of the non-entitled spouse to the dealing;
  - (c) the dealing occurred, or implements, a binding obligation entered into by the entitled spouse before his or her marriage to the non-entitled spouse;
  - (d) the dealing occurred, or implements, a binding obligation entered into before the commencement of this Act; . . . <sup>F1</sup>
  - (e) the dealing comprises [<sup>F2</sup>a sale to] a third party who has acted in good faith, if . . . <sup>F3</sup> there is produced to the third party by the [<sup>F4</sup>seller—
    - (i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not [<sup>F5</sup>or were not at the time of the dealing] a matrimonial home in relation to which a spouse of the seller has [<sup>F5</sup>or had] occupancy rights;]
    - (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled spouse

<sup>F6</sup>For the purposes of this paragraph, the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.][<sup>F7</sup>; or]
  - [<sup>F8</sup>(f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of 5 years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.]
- (4) The Land Registration (Scotland) Act 1979 <sup>M2</sup> shall be amended as follows—
- (a) in section 6(4)—
    - (i) after the words “the interest of” there shall be inserted “(i)”; and
    - (ii) after the words “is not a long lease” there shall be inserted—
      - “and
      - (ii) a non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”;
  - (b) in paragraph (b) section 9(4)—
    - (i) after the words “the interest of” there shall be inserted “(i)”; and
    - (ii) after the words “is not a long lease” there shall be inserted—
      - “and
      - (ii) a non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”; and
  - (c) in section 28 in the definition of overriding interest after paragraph (g) there shall be inserted the following—
    - “the non-entitled spouse within the meaning of section 6 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.”;

#### Textual Amendments

**F1** Word repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(6)(a), 60(6)**

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- F2** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(b)(i)**, 60(6)
- F3** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, Sch. 8 para. 31(1)(a), **Sch. 9**
- F4** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(iii)**, 60(6)
- F5** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, **Sch. 8 para. 31(b)**
- F6** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(iv)**, 60(6)
- F7** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(c)**, 60(6)
- F8** S. 6(3)(f) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(c)**, 60(6)

#### **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

#### **Marginal Citations**

- M1** 1845 c. 19.  
**M2** 1979 c. 33.

## **7 Dispensation by court with spouse's consent to dealing.**

- (1) The court may, on the application of an entitled spouse or any other person having an interest, make an order dispensing with the consent of a non-entitled spouse to a dealing which has taken place or a proposed dealing, if—
- such consent is unreasonably withheld;
  - such consent cannot be given by reason of physical or mental disability;
  - the non-entitled spouse cannot be found after reasonable steps have been taken to trace him or her; or
  - the non-entitled spouse is a minor.
- (2) For the purposes of subsection (1)(a) above, a non-entitled spouse shall have unreasonably withheld consent to a dealing which has taken place or a proposed dealing, where it appears to the court—
- that the non-entitled spouse has led the entitled spouse to believe that he or she would consent to the dealing and that the non-entitled spouse would not be prejudiced by any change in the circumstances of the case since such apparent consent was given; or
  - that the entitled spouse has, having taken all reasonable steps to do so, been unable to obtain an answer to a request for consent.
- (3) The court, in considering whether to make an order under subsection (1) above, shall have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act.
- (4) Where—
- an application is made for an order under this section; and

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(b) an action is or has been raised by a non-entitled spouse to enforce occupancy rights,  
the action shall be sisted until the conclusion of the proceedings on the application.

(5) . . . . . F9

#### Textual Amendments

F9 S. 7(5) repealed by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(2), 29(4), [Sch. 2](#)

## 8 Interests of heritable creditors.

(1) The rights of a third party with an interest in the matrimonial home as a creditor under a secured loan in relation to the non-performance of any obligation under the loan shall not be prejudiced by reason only of the occupancy rights of the non-entitled spouse; but where a non-entitled spouse has or obtains occupation of a matrimonial home and—

(a) the entitled spouse is not in occupation; and

(b) there is a third party with such an interest in the matrimonial home,

the court may, on the application of the third party, make an order requiring the non-entitled spouse to make any payment due by the entitled spouse in respect of the loan.

(2) This section shall not apply [<sup>F10</sup>to secured loans in respect of which the security was granted prior to the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985] unless the third party in granting the secured loan acted in good faith and . . . <sup>F11</sup> there was produced to the third party by the entitled spouse—

(a) an affidavit sworn or affirmed by the entitled spouse declaring that there is no non-entitled spouse; or

(b) a renunciation of occupancy rights or consent to the taking of the loan which bears to have been properly made or given by the non-entitled spouse.

[<sup>F12</sup>(2A) This section shall not apply to secured loans in respect of which the security was granted after the commencement of section 13 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 unless the third party in granting the secured loan acted in good faith and . . . <sup>F13</sup> there was produced to the third party by the grantor—

(a) an affidavit sworn or affirmed by the grantor declaring that the security subjects are not [<sup>F14</sup>or were not at the time of the granting of the security] a matrimonial home in relation to which a spouse of the grantor has [<sup>F15</sup>or had] occupancy rights; or

(b) a renunciation of occupancy rights or consent to the granting of the security which bears to have been properly made or given by the non-entitled spouse.

(2B) for the purposes of subsections (2) and (2A) above, the time of granting a security, in the case of a heritable security, is the date of delivery of the deed creating the security.]

#### Textual Amendments

F10 Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), ss. [13\(7\)](#), [60\(6\)](#)

F11 Words repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, 68A:2\)](#), s. 74, [Sch. 8 para. 31\(2\)\(a\)](#), [Sch. 9](#)

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- F12** S. 8(2A)(2B) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(8), 60(6)**
- F13** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, Sch. 8 para. 31(2)(b)(i), **Sch. 9**
- F14** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, **Sch. 8 para. 31(2)(ii)**
- F15** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, **Sch. 8 para. 31(2)(iii)**

## **9 Provisions where both spouses have title.**

- (1) Subject to subsection (2) below, where, apart from the provisions of this Act, both spouses are entitled to occupy a matrimonial home—
  - (a) the rights in that home of one spouse shall not be prejudiced by reason only of any dealing of the other spouse; and
  - (b) a third party shall not by reason only of such a dealing be entitled to occupy that matrimonial home or any part of it.
- (2) The definition of “dealing” in section 6(2) of this Act and sections 6(3) and 7 of this Act shall apply for the purposes of subsection (1) above as they apply for the purposes of section 6(1) of this Act subject to the following modifications—
  - (a) any reference to the entitled spouse and to the non-entitled spouse shall be construed as a reference to a spouse who has entered into or, as the case may be, proposes to enter into a dealing and to the other spouse respectively; and
  - (b) in paragraph (b) of section 7(4) the reference to occupancy rights shall be construed as a reference to any rights in the matrimonial home.

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