



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

## 1981 CHAPTER 59

### *Protection of occupancy rights of one spouse against the other*

#### **1 Right of spouse without title to occupy matrimonial home.**

- (1) Where, apart from the provisions of this Act, one spouse is entitled, or permitted by a third party, to occupy a matrimonial home (an “entitled spouse”) and the other spouse is not so entitled or permitted (a “non-entitled spouse”), the non-entitled spouse shall, subject to the provisions of this Act, have the following rights—
- (a) if in occupation, a right [<sup>F1</sup>to continue to occupy the matrimonial home;]
  - (b) if not in occupation, a right to enter into and occupy the matrimonial home.

[<sup>F2</sup>(1A) The rights conferred by subsection (1) above to continue to occupy or, as the case may be, to enter and occupy the matrimonial home include, without prejudice to their generality, the right to do so together with any child of the family.]

- (2) In subsection (1) above, an “entitled spouse” includes a spouse who is entitled, or permitted by a third party, to occupy a matrimonial home along with an individual who is not the other spouse only if that individual has waived his or her right of occupation in favour of the spouse so entitled or permitted.
- (3) If the entitled spouse refuses to allow the non-entitled spouse to exercise the right conferred by subsection (1)(b) above, the non-entitled spouse may exercise that right only with the leave of the court under section 3(3) or (4) of this Act.
- (4) In this Act, the rights mentioned in paragraphs (a) and (b) of subsection (1) above are referred to as occupancy rights.
- (5) A non-entitled spouse may renounce in writing his or her occupancy rights only—
- (a) in a particular matrimonial home; or
  - (b) in a particular property which it is intended by the spouses will become a matrimonial home.

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- (6) A renunciation under subsection (5) above shall have effect only if at the time of making the renunciation, the non-entitled spouse has sworn or affirmed before a notary public that it was made freely and without coercion of any kind.

[<sup>F3</sup> In this subsection, “ notary public ” includes any person duly authorised by the law of the country (other than Scotland) in which the swearing or affirmation takes place to administer oaths or receive affirmations in that other country. ]

[<sup>F4</sup>(7) Subject to subsection (5), if—

- (a) there has been no cohabitation between an entitled spouse and a non-entitled spouse during a continuous period of two years; and
- (b) during that period the non-entitled spouse has not occupied the matrimonial home,

the non-entitled spouse shall, on the expiry of that period, cease to have occupancy rights in the matrimonial home.

- (8) A non-entitled spouse who has ceased to have occupancy rights by virtue of subsection (7) may not apply to the court for an order under section 3(1).]

#### Textual Amendments

- F1** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), [ss. 13\(2\)](#), 60(6)
- F2** By [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), [ss. 13\(3\)](#), 60(6) it is provided that s. 1(1A) is inserted after s. 1.
- F3** Words added by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), [ss. 13\(4\)](#), 60(6)
- F4** [S. 1\(7\)\(8\)](#) added (4.5.2006) by [Family Law \(Scotland\) Act 2006 \(asp 2\)](#), [ss. 5](#), 46(2); [S.S.I. 2006/212](#), [art. 2](#) (with [art. 3](#))

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

- C1** [S. 1\(5\)\(6\)](#) modified (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), [ss. 14\(2\)\(a\)](#), 21(2); [S.S.I. 2003/384](#), [art. 2\(a\)](#)

## 2 Subsidiary and consequential rights.

- (1) For the purpose of securing the occupancy rights of a non-entitled spouse, that spouse shall, in relation to a matrimonial home, be entitled without the consent of the entitled spouse—

- (a) to make any payment due by the entitled spouse in respect of rent, rates, secured loan instalments, interest or other outgoings (not being outgoings on repairs or improvements);
- (b) to perform any other obligation incumbent on the entitled spouse (not being an obligation in respect of non-essential repairs or improvements);
- (c) to enforce performance of an obligation by a third party which that third party has undertaken to the entitled spouse to the extent that the entitled spouse may enforce such performance;
- (d) to carry out such essential repairs as the entitled spouse may carry out;
- (e) to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the entitled

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- spouse may carry out and which the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
- (f) to take such other steps, for the purpose of protecting the occupancy rights of the non-entitled spouse, as the entitled spouse may take to protect the occupancy rights of the entitled spouse.
- (2) Any payment made under subsection (1)(a) above or any obligation performed under subsection (1)(b) above shall have effect in relation to the rights of a third party as if the payment were made or the obligation were performed by the entitled spouse; and the performance of an obligation which has been enforced under subsection (1)(c) above shall have effect as if it had been enforced by the entitled spouse.
- (3) Where there is an entitled and a non-entitled spouse, the court, on the application of either of them, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse—
- (a) without the consent of the other spouse, on any of the items mentioned in paragraphs (a) and (d) of subsection (1) above;
- (b) with the consent of the other spouse, on anything relating to a matrimonial home.
- (4) Where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home—
- (a) either spouse shall be entitled, without the consent of the other spouse, to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the court considers to be appropriate for the reasonable enjoyment of the occupancy rights;
- (b) the court, on the application of either spouse, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse, with or without the consent of the other spouse, on anything relating to the matrimonial home.
- (5) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a matrimonial home—
- (a) the other spouse may, without the consent of the first mentioned spouse—
- (i) make any payment due by the first mentioned spouse which is necessary, or take any other step which the first mentioned spouse is entitled to take, to secure the possession or use of any such furniture and plenishings (and any such payment shall have effect in relation to the rights of a third party as if it were made by the first mentioned spouse); or
- (ii) carry out such essential repairs to the furniture and plenishings as the first mentioned spouse is entitled to carry out;
- (b) the court, on the application of either spouse, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse—
- (i) without the consent of the other spouse, in making payments under a hire, hire-purchase or conditional sale agreement, or in paying interest charges in respect of the furniture and plenishings, or in carrying out essential repairs to the furniture and plenishings; or

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- (ii) with the consent of the other spouse, on anything relating to the furniture and plenishings.
- (6) An order under subsection (3), (4)(b) or (5)(b) above may require one spouse to make a payment to the other spouse in implementation of the apportionment.
- (7) Any application under subsection (3), (4)(b) or (5)(b) above shall be made within five years of the date on which any payment in respect of such incurred expenditure was made.
- (8) Where—
  - (a) the entitled spouse is a tenant of a matrimonial home; and
  - (b) possession thereof is necessary in order to continue the tenancy; and
  - (c) the entitled spouse abandons such possession,
 the tenancy shall be continued by such possession by the non-entitled spouse.
- (9) In this section “improvements” includes alterations and enlargement.

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

- C2** S. 2(1)(2)(5)(a)(9) applied with modifications by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), [ss.14\(5\)\(a\)](#), 29(4)

**3 Regulation by court of rights of occupancy of matrimonial home.**

- (1) [<sup>F5</sup>Subject to section 1(7) of this Act,] Where there is an entitled and a non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse may apply to the court for an order—
  - (a) declaring the occupancy rights of the applicant spouse;
  - (b) enforcing the occupancy rights of the applicant spouse;
  - (c) restricting the occupancy rights of the non-applicant spouse;
  - (d) regulating the exercise by either spouse of his or her occupancy rights;
  - (e) protecting the occupancy rights of the applicant spouse in relation to the other spouse.
- (2) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a matrimonial home, the other spouse, if he or she has occupancy rights in that home, may apply to the court for an order granting to the applicant the possession or use in the matrimonial home of any such furniture and plenishings; but, subject to section 2 of this Act, an order under this subsection shall not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.
- (3) The court shall grant an application under subsection (1) (a) above if it appears to the court that the application relates to a matrimonial home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2) above, the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—
  - (a) the conduct of the spouses in relation to each other and otherwise;
  - (b) the respective needs and financial resources of the spouses;
  - (c) the needs of any child of the family;

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- (d) the extent (if any) to which—
    - (i) the matrimonial home; and
    - (ii) in relation only to an order under subsection (2) above, any item of furniture and plenishings referred to in that subsection,is used in connection with a trade, business or profession of either spouse; and
  - (e) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation.
- (4) Pending the making of an order under subsection (3) above, the court, on the application of either spouse, may make such interim order as it may consider necessary or expedient in relation to—
- (a) the residence of either spouse in the home to which the application relates;
  - (b) the personal effects of either spouse or of any child of the family; or
  - (c) the furniture and plenishings:
- Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.
- (5) The court shall not make an order under subsection (3) or (4) above if it appears that the effect of the order would be to exclude the non-applicant spouse from the matrimonial home.
- (6) If the court makes an order under subsection (3) or (4) above which requires the delivery to one spouse of anything which has been left in or removed from the matrimonial home, it may also grant a warrant authorising a messenger-at-arms or sheriff officer to enter the matrimonial home or other premises occupied by the other spouse and to search for and take possession of the thing required to be delivered, if need be by opening shut and lockfast places, and to deliver the thing in accordance with the said order:
- Provided that a warrant granted under this subsection shall be executed only after expiry of the period of a charge, being such period as the court shall specify in the order for delivery.
- (7) Where it appears to the court—
- (a) on the application of a non-entitled spouse, that that spouse has suffered a loss of occupancy rights or that the quality of the non-entitled spouse's occupation of a matrimonial home has been impaired; or
  - (b) on the application of a spouse who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3) above, that the applicant has suffered a loss of such possession or use or that the quality of the applicant's possession or use of the furniture and plenishings has been impaired,
- in consequence of any act or default on the part of the other spouse which was intended to result in such loss or impairment, it may order that other spouse to pay to the applicant such compensation as the court in the circumstances considers just and reasonable in respect of that loss or impairment.
- (8) A spouse may renounce in writing the right to apply under subsection (2) above for the possession or use of any item of furniture and plenishings.

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### Textual Amendments

**F5** Words in s. 3(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 4(2)**; S.S.I. 2006/212, art. 2

## 4 Exclusion orders.

- (1) Where there is an entitled and non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse [<sup>F6</sup>whether or not that spouse is in occupation at the time of the application] may apply to the court for an order (in this Act referred to as “an exclusion order”) suspending the occupancy rights of the other spouse (“the non-applicant spouse”) in a matrimonial home.
- (2) Subject to subsection (3) below, the court shall make an exclusion order if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the non-applicant spouse which is or would be injurious to the physical or mental health of the applicant or child.
- (3) The court shall not make an exclusion order if it appears to the court that the making of the order would be unjustified or unreasonable—
  - (a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act; and
  - (b) where the matrimonial home—
    - (i) is or is part of an agricultural holding within the meaning of section 1 of the <sup>M1</sup>Agricultural Holdings (Scotland) Act 1949; or
    - (ii) is let, or is a home in respect of which possession is given, to the non-applicant spouse or to both spouses by an employer as an incident of employment,
 

subject to a requirement that the non-applicant spouse or, as the case may be, both spouses must reside in the matrimonial home, having regard to that requirement and the likely consequences of the exclusion of the non-applicant spouse from the matrimonial home.
- (4) In making an exclusion order the court shall, on the application of the applicant spouse,
  - (a) grant a warrant for the summary ejection of the non-applicant spouse from the matrimonial home;
  - (b) grant an interdict prohibiting the non-applicant spouse from entering the matrimonial home without the express permission of the applicant;
  - (c) grant an interdict prohibiting the removal by the non-applicant spouse, except with the written consent of the applicant or by a further order of the court, of any furniture and plenishings in the matrimonial home;

unless, in relation to paragraph (a) or (c) above, the non-applicant spouse satisfies the court that it is unnecessary for it to grant such a remedy.
- (5) In making an exclusion order the court may—
  - (a) grant an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the vicinity of the matrimonial home;
  - (b) where the warrant for the summary ejection of the non-applicant spouse has been granted in his or her absence, give directions as to the preservation of

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- the non-applicant spouse's goods and effects which remain in the matrimonial home;
- (c) on the application of either spouse, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) above or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe;
  - (d) on application as aforesaid, make such other order as it may consider necessary for the proper enforcement of an order made under subsection (4) above or paragraph (a), (b) or (c) of this subsection.
- (6) Pending the making of an exclusion order, the court may, on the application of the applicant spouse, make an interim order suspending the occupancy rights of the non-applicant spouse in the matrimonial home to which the application for the exclusion order relates; and subsections (4) and (5) above shall apply to such interim order as they apply to an exclusion order:  
Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.
- (7) Without prejudice to subsections (1) and (6) above, where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, it shall be incompetent for one spouse to bring an action of ejection from the matrimonial home against the other spouse.

#### Textual Amendments

- F6** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(5), 60(6)**

#### Marginal Citations

- M1** 1949 c. 75.

## 5 Duration of orders under ss. 3 and 4.

- (1) The court may, on the application of either spouse, vary or recall any order made by it under section 3 or 4 of this Act, but, subject to subsection (2) below, any such order shall, unless previously so varied or recalled, cease to have effect—
- (a) on the termination of the marriage; or
  - (b) subject to section 6(1) of this Act, where there is an entitled and non-entitled spouse, on the entitled spouse ceasing to be an entitled spouse in respect of the matrimonial home to which the order relates; or
  - (c) where both spouses are entitled, or permitted by a third party, to occupy the matrimonial home, on both spouses ceasing to be so entitled or permitted.
- (2) Without prejudice to the generality of subsection (1) above, an order under section 3(3) or (4) of this Act which grants the possession or use of furniture and plenishings shall cease to have effect if the furniture and plenishings cease to be permitted by a third party to be retained in the matrimonial home.

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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\(7\)](#)