



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

## 1981 CHAPTER 59

*Protection of rights of spouse against arrangements intended to defeat them*

### 10 Sequestration

- (1) After section 31 of the Bankruptcy (Scotland) Act 1913 there shall be inserted the following section—

**“31A Recall of sequestration by non-entitled spouse.**

- (1) If a debtor's sequestrated estate includes a matrimonial home of which the debtor, immediately before the act and warrant appointing the trustee was an entitled spouse and the other spouse is a non-entitled spouse, the Court of Session, on the application of the non-entitled spouse within 40 days of the date of the act and warrant, may—
- (a) recall the sequestration; or
  - (b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled spouse,
- if it is satisfied that the purpose of the application for sequestration was wholly or mainly to defeat the occupancy rights of the non-entitled spouse.
- (2) In section 30 of this Act, the words from " and the Lord Ordinary " to the end shall apply for the purposes of this section subject to the following modifications—
- (a) the words " in these several cases " shall be omitted;
  - (b) for the words " the recall" there shall be substituted the words " or make an order to protect the occupancy rights of a non-entitled spouse, the recall or order”.

- (3) In this section and section 30 of this Act—

" entitled spouse " and " non-entitled spouse " have the meanings respectively assigned to them by section 6(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

" matrimonial home " has the same meaning as in section 22 of the said Act of 1981 ; and other expressions used in this section and the said section 30 and in that Act have the same meanings in those sections as in that Act."

- (2) After section 76 of the Bankruptcy (Scotland) Act 1913 there shall be inserted the following section—

**“76A Notification of sequestration to non-entitled spouse.**

- (1) Where—

- (a) the bankrupt's estate includes a matrimonial home of which the bankrupt immediately before the act and warrant appointing the trustee was an entitled spouse and the other spouse is a non-entitled spouse; and
- (b) the trustee is aware that the entitled spouse is married to the non-entitled spouse and knows where the non-entitled spouse is residing, the trustee shall, within 7 days of the date of the said act and warrant, intimate to the non-entitled spouse that sequestration of the entitled spouse's estate has been awarded.

- (2) In this section—

"entitled spouse" and "non-entitled spouse" have the meanings respectively assigned to them by section 6(2) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;

" matrimonial home " has the same meaning as in section 22 of the said Act of 1981.”.

## 11 Poinding

—Where a poinding has been executed of furniture and plenishings of which the debtor's spouse has the possession or use by virtue of an order under section 3(3) or (4) of this Act, the sheriff, on the application of that spouse within 40 days of the date of execution of the poinding, may—

- (a) declare that the poinding is null; or
- (b) make such order as he thinks appropriate to protect such possession or use by that spouse,

if he is satisfied that the purpose of the diligence was wholly or mainly to prevent such possession or use.

## 12 Adjudication

- (1) Where a matrimonial home of which there is an entitled spouse and a non-entitled spouse is adjudged, the Court of Session, on the application of the non-entitled spouse within 40 days of the date of the decree of adjudication, may—

- (a) order the reduction of the decree ; or
- (b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled spouse,

if it is satisfied that the purpose of the diligence was wholly or mainly to defeat the occupancy rights of the non-entitled spouse.

- (2) In this section, "entitled spouse" and "non-entitled spouse" have the same meanings respectively as in section 6(2) of this Act.