



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Transfer of tenancy

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- (1) The court may, on the application of a non-entitled spouse, make an order transferring the tenancy of a matrimonial home to that spouse and providing, subject to subsection (11) below, for the payment by the non-entitled spouse to the entitled spouse of such compensation as seems just and reasonable in all the circumstances of the case.
- (2) The Court of Session may, in granting decree in an action for divorce or nullity of marriage, make an order granting an application under subsection (1) above.
- (3) In determining whether to grant an application under subsection (1) above, the court 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 and the suitability of the applicant to become the tenant and the applicant's capacity to perform the obligations under the lease of the matrimonial home.
- (4) The non-entitled spouse shall serve a copy of an application under subsection (1) above on the landlord and, before making an order under subsection (1) above, the court shall give the landlord an opportunity of being heard by it.
- (5) On the making of an order granting an application under subsection (1) above, the tenancy shall vest in the non-entitled spouse without intimation to the landlord, subject to all the liabilities under the lease (other than any arrears of rent for the period before the making of the order, which shall remain the liability of the original entitled spouse).
- (6) The clerk of court shall notify the landlord of the making of an order granting an application under subsection (1) above.
- (7) It shall not be competent for a non-entitled spouse to apply for an order under subsection (1) above where the matrimonial home—

- (a) is let to the entitled spouse by his or her employer as an incident of employment, and the lease is subject to a requirement that the entitled spouse must reside therein;
 - (b) is or is part of an agricultural holding ;
 - (c) is on or pertains to a croft or the subject of a cottar or the holding of a landholder or a statutory small tenant;
 - (d) is let on a long lease ;
 - (e) is part of the tenancy land of a tenant-at-will.
- (8) In subsection (6) above—
- " agricultural holding " has the same meaning as in section 1 of the Agricultural Holdings (Scotland) Act 1949;
 - "cottar" has the same meaning as in section 28(4) of the Crofters (Scotland) Act 1955 ;
 - " croft " has the same meaning as in the Crofters (Scotland) Act 1955;
 - " holding", in relation to a landholder and a statutory small tenant, "landholder" and "statutory small tenant" have the same meanings respectively as in sections 2(1), 2(2) and 32(1) of the Small Landholders (Scotland) Act 1911 ;
 - " long lease " has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979;
 - " tenant-at-will" has the same meaning as in section 20(8) of the Land Registration (Scotland) Act 1979.
- (9) Where both spouses are joint or common tenants of a matrimonial home, the court may, on the application of one of the spouses, make an order vesting the tenancy in that spouse solely and providing, subject to subsection (11) below, for the payment by the applicant to the other spouse of such compensation as seems just and reasonable in the circumstances of the case.
- (10) Subsections (2) to (8) above shall apply for the purposes of an order under subsection (9) above as they apply for the purposes of an order under subsection (1) above subject to the following modifications—
- (a) in subsection (3) for the word " tenant" there shall be substituted the words " sole tenant ";
 - (b) in subsection (4) for the words " non-entitled " there should be substituted the word " applicant ";
 - (c) in subsection (5) for the words "non-entitled" and " liability of the original entitled spouse " there shall be substituted respectively the words " applicant " and " joint and several liability of both spouses ";
 - (d) in subsection (7)—
 - (i) for the words " a non-entitled " there shall be substituted the words " an applicant ";
 - (ii) for paragraph (a) there shall be substituted the following paragraph—
 - “(a) is let to both spouses by their employer as an incident of employment, and the lease is subject to a requirement that both spouses must reside there ;”;
 - (iii) paragraphs (c) and (e) shall be omitted.
- (11) Where the matrimonial home is a secure tenancy within the meaning of the Tenants' Rights Etc. (Scotland) Act 1980, no account shall be taken, in assessing the amount

of any compensation to be awarded under subsection (1) or (9) above, of the loss, by virtue of the transfer of the tenancy of the home, of a right to purchase the home under Part I of that Act.

(12) In the Tenants' Rights, Etc. (Scotland) Act 1980—

- (a) paragraph 6 of Part I of Schedule 2 is repealed; and
- (b) in section 15(1) for the words "paragraphs 1 to 6" there shall be substituted the words " paragraphs 1 to