



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 [^{F1}to continue to occupy the matrimonial home;]
 - (b) if not in occupation, a right to enter into and occupy the matrimonial home.

[^{F2}(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.

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 1 is up to date with all changes known to be in force on or before 29 June 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

- (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.

[^{F3} 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.]

[^{F4}(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\(a\)](#)

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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\(7\)](#)