



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

## 1981 CHAPTER 59

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

#### **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 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.

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*Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 2 is up to date with all changes known to be in force on or before 09 August 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*

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- (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
    - (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

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(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.

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

**C1** 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)

**Changes to legislation:**

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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\(7\)](#)