



Family Law Act 1996

1996 CHAPTER 27

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE

Occupation orders

38 Neither cohabitant or former cohabitant entitled to occupy.

- (1) This section applies if—
 - (a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they [^{F1}cohabit or cohabited]; but
 - (b) neither of them is entitled to remain in occupation—
 - (i) by virtue of a beneficial estate or interest or contract; or
 - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
 - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
 - (b) regulate the occupation of the dwelling-house by either or both of the parties;
 - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
 - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) (“a subsection (3) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—

Status: Point in time view as at 25/11/2008.

Changes to legislation: Family Law Act 1996, Section 38 is up to date with all changes known to be in force on or before 14 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)

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
 - (b) the financial resources of each of the parties;
 - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
 - (d) the conduct of the parties in relation to each other and otherwise; and
 - (e) the questions mentioned in subsection (5).
- (5) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
 - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

Textual Amendments

- F1** Words in s. 38(1)(a) substituted (5.12.2005) by [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), ss. 58(1), 60, [Sch. 10 para. 35](#); S.I. 2005/3196, [art. 2\(c\)](#)

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