



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Protection of occupancy rights of one spouse against the other

3 Regulation by court of rights of occupancy of matrimonial home.

- (1) [^{F1}Subject to section 1(7) of this Act,] Where there is an entitled and a non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse may apply to the court for an order—
 - (a) declaring the occupancy rights of the applicant spouse;
 - (b) enforcing the occupancy rights of the applicant spouse;
 - (c) restricting the occupancy rights of the non-applicant spouse;
 - (d) regulating the exercise by either spouse of his or her occupancy rights;
 - (e) protecting the occupancy rights of the applicant spouse in relation to the other spouse.
- (2) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and plenishings in a matrimonial home, the other spouse, if he or she has occupancy rights in that home, may apply to the court for an order granting to the applicant the possession or use in the matrimonial home of any such furniture and plenishings; but, subject to section 2 of this Act, an order under this subsection shall not prejudice the rights of any third party in relation to the non-performance of any obligation under such hire-purchase or conditional sale agreement.
- (3) The court shall grant an application under subsection (1) (a) above if it appears to the court that the application relates to a matrimonial home; and, on an application under any of paragraphs (b) to (e) of subsection (1) or under subsection (2) above, the court may make such order relating to the application as appears to it to be just and reasonable having regard to all the circumstances of the case including—
 - (a) the conduct of the spouses in relation to each other and otherwise;
 - (b) the respective needs and financial resources of the spouses;
 - (c) the needs of any child of the family;

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 3 is up to date with all changes known to be in force on or before 26 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

- (d) the extent (if any) to which—
 - (i) the matrimonial home; and
 - (ii) in relation only to an order under subsection (2) above, any item of furniture and plenishings referred to in that subsection,
 is used in connection with a trade, business or profession of either spouse; and
 - (e) whether the entitled spouse offers or has offered to make available to the non-entitled spouse any suitable alternative accommodation.
- (4) Pending the making of an order under subsection (3) above, the court, on the application of either spouse, may make such interim order as it may consider necessary or expedient in relation to—
- (a) the residence of either spouse in the home to which the application relates;
 - (b) the personal effects of either spouse or of any child of the family; or
 - (c) the furniture and plenishings:
- Provided that an interim order may be made only if the non-applicant spouse has been afforded an opportunity of being heard by or represented before the court.
- (5) The court shall not make an order under subsection (3) or (4) above if it appears that the effect of the order would be to exclude the non-applicant spouse from the matrimonial home.
- (6) If the court makes an order under subsection (3) or (4) above which requires the delivery to one spouse of anything which has been left in or removed from the matrimonial home, it may also grant a warrant authorising a messenger-at-arms or sheriff officer to enter the matrimonial home or other premises occupied by the other spouse and to search for and take possession of the thing required to be delivered, if need be by opening shut and lockfast places, and to deliver the thing in accordance with the said order:
- Provided that a warrant granted under this subsection shall be executed only after expiry of the period of a charge, being such period as the court shall specify in the order for delivery.
- (7) Where it appears to the court—
- (a) on the application of a non-entitled spouse, that that spouse has suffered a loss of occupancy rights or that the quality of the non-entitled spouse's occupation of a matrimonial home has been impaired; or
 - (b) on the application of a spouse who has been given the possession or use of furniture and plenishings by virtue of an order under subsection (3) above, that the applicant has suffered a loss of such possession or use or that the quality of the applicant's possession or use of the furniture and plenishings has been impaired,
- in consequence of any act or default on the part of the other spouse which was intended to result in such loss or impairment, it may order that other spouse to pay to the applicant such compensation as the court in the circumstances considers just and reasonable in respect of that loss or impairment.
- (8) A spouse may renounce in writing the right to apply under subsection (2) above for the possession or use of any item of furniture and plenishings.

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Textual Amendments

- F1** Words in s. 3(1) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), s. 46(2), **Sch. 2 para. 4(2)**; S.S.I. 2006/212, art. 2

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Changes and effects yet to be applied to :

- s. 3(2) words inserted by [2023 asp 3 s. 56\(3\)](#)

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\(7\)](#)