



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Occupation orders*

### **33 Occupation orders where applicant has estate or interest etc. or has matrimonial home rights**

- (1) If—
- (a) a person (“the person entitled”)—
    - (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or
    - (ii) has matrimonial home rights in relation to a dwelling-house, and
  - (b) the dwelling-house—
    - (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
    - (ii) was at any time intended by the person entitled and any such other person to be their home,
- the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).
- (2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (3) An order under this section may—
- (a) enforce the applicant’s entitlement to remain in occupation as against the other person (“the respondent”);
  - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

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*Status: This is the original version (as it was originally enacted).*

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- (c) regulate the occupation of the dwelling-house by either or both parties;
  - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
  - (e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;
  - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (g) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.
- (5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by—
- (a) the death of the other spouse; or
  - (b) the termination (otherwise than by death) of the marriage.
- (6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (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; and
  - (d) the conduct of the parties in relation to each other and otherwise.
- (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
  - (b) the harm likely to be suffered by the respondent or child in that event 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 order is not made.
- (8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
  - (b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.
- (10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.