



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Occupation orders*

#### **35 One former spouse with no existing right to occupy**

- (1) This section applies if—
  - (a) one former spouse 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;
  - (b) the other former spouse is not so entitled; and
  - (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.
- (2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
  - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
  - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—

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*Status: This is the original version (as it was originally enacted).*

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- (a) regulate the occupation of the dwelling-house by either or both of the parties;
  - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
  - (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.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) 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) or (4), 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;
  - (e) the length of time that has elapsed since the parties ceased to live together;
  - (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
  - (g) the existence of any pending proceedings between the parties—
    - (i) for an order under section 23A or 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.);
    - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the Children Act 1989 (orders for financial relief against parents); or
    - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; 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 provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses; and
  - (b) ceases to have effect on the death of either of them.

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- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.
- (11) A former spouse who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 33.
- (13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
  - (a) as if he were the spouse entitled to occupy the dwelling-house by virtue of that section; and
  - (b) as if the respondent were the other spouse.