



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Occupation orders*

### **36 One cohabitant or former cohabitant with no existing right to occupy.**

- (1) This section applies if—
  - (a) one cohabitant or former cohabitant 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 cohabitant or former cohabitant is not so entitled; and
  - (c) that dwelling-house is the home in which they [<sup>F1</sup>cohabit or a home in which they at any time cohabited or intended to cohabit].
- (2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant (“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—

*Status: Point in time view as at 03/01/2019.*

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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 nature of the parties' relationship [<sup>F2</sup>and in particular the level of commitment involved in it];
  - (f) the length of time during which they have [<sup>F3</sup>cohabited];
  - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
  - (h) the length of time that has elapsed since the parties ceased to live together; and
  - (i) the existence of any pending proceedings between the parties—
    - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the <sup>M1</sup>Children Act 1989 (orders for financial relief against parents); or
    - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers 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—
- (a) the matters mentioned in subsection (6)(a) to (d); and
  - (b) the questions mentioned in subsection (8).
- (8) 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 (5) 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.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties; and
  - (b) ceases to have effect on the death of either of them.
- (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 occasion for a further specified period not exceeding six months.

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- (11) A person 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 person to apply for an order under section 33.
- (13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- [<sup>F4</sup>(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
  - (b) as if the respondent were A (the person entitled as mentioned in subsection (1) (a) of that section).]

#### Textual Amendments

- F1** Words in s. 36(1)(c) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(2)**; S.I. 2005/3196, **art. 2(c)**
- F2** Words in s. 36(6)(e) inserted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 2(2), 60**; S.I. 2005/3196, **art. 2(a)**
- F3** Word in s. 36(6)(f) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(3)**; S.I. 2005/3196, **art. 2(c)**
- F4** S. 36(13)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 7**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### Marginal Citations

- M1** 1989 c. 41.

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