



Matrimonial Homes (Family Protection) (Scotland) Act 1981

CHAPTER 59

ARRANGEMENT OF SECTIONS

Protection of occupancy rights of one spouse against the other

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*Matrimonial Homes (Family Protection) (Scotland)
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ELIZABETH II



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

An Act to make new provision for Scotland as to the rights of occupancy of spouses in a matrimonial home and of cohabiting couples in the house where they cohabit; to provide for the transfer of the tenancy of a matrimonial home between the spouses in certain circumstances during marriage and on granting decree of divorce or nullity of marriage, and for the transfer of the tenancy of a house occupied by a cohabiting couple between the partners in certain circumstances; to strengthen the law relating to matrimonial interdicts; and for connected purposes. [30th October 1981]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Protection of occupancy rights of one spouse
against the other*

1.—(1) Where, apart from the provisions of this Act, one Right of spouse is entitled, or permitted by a third party, to occupy a spouse matrimonial home (an “entitled spouse”) and the other spouse is not so entitled or permitted (a “non-entitled spouse”), the non-entitled spouse shall, subject to the provisions of this Act, have the following rights—

without title
to occupy
matrimonial
home.

- (a) if in occupation, a right not to be excluded from the matrimonial home or any part of it by the entitled spouse ;
- (b) if not in occupation, a right to enter into and occupy the matrimonial home.

(2) In subsection (1) above, an “entitled spouse” includes a spouse who is entitled, or permitted by a third party, to occupy a matrimonial home along with an individual who is not the other spouse only if that individual has waived his or her right of occupation in favour of the spouse so entitled or permitted.

(3) If the entitled spouse refuses to allow the non-entitled spouse to exercise the right conferred by subsection (1)(b) above, the non-entitled spouse may exercise that right only with the leave of the court under section 3(3) or (4) of this Act.

(4) In this Act, the rights mentioned in paragraphs (a) and (b) of subsection (1) above are referred to as occupancy rights.

(5) A non-entitled spouse may renounce in writing his or her occupancy rights only—

- (a) in a particular matrimonial home ; or
- (b) in a particular property which it is intended by the spouses will become a matrimonial home.

(6) A renunciation under subsection (5) above shall have effect only if at the time of making the renunciation, the non-entitled spouse has sworn or affirmed before a notary public that it was made freely and without coercion of any kind.

Subsidiary and consequential rights.

2.—(1) For the purpose of securing the occupancy rights of a non-entitled spouse, that spouse shall, in relation to a matrimonial home, be entitled without the consent of the entitled spouse—

- (a) to make any payment due by the entitled spouse in respect of rent, rates, secured loan instalments, interest or other outgoings (not being outgoings on repairs or improvements) ;
- (b) to perform any other obligation incumbent on the entitled spouse (not being an obligation in respect of non-essential repairs or improvements) ;
- (c) to enforce performance of an obligation by a third party which that third party has undertaken to the entitled spouse to the extent that the entitled spouse may enforce such performance ;
- (d) to carry out such essential repairs as the entitled spouse may carry out ;
- (e) to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the entitled spouse

may carry out and which the court considers to be appropriate for the reasonable enjoyment of the occupancy rights ;

- (f) to take such other steps, for the purpose of protecting the occupancy rights of the non-entitled spouse, as the entitled spouse may take to protect the occupancy rights of the entitled spouse.

(2) Any payment made under subsection (1)(a) above or any obligation performed under subsection (1)(b) above shall have effect in relation to the rights of a third party as if the payment were made or the obligation were performed by the entitled spouse ; and the performance of an obligation which has been enforced under subsection (1)(c) above shall have effect as if it had been enforced by the entitled spouse.

(3) Where there is an entitled and a non-entitled spouse, the court, on the application of either of them, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse—

- (a) without the consent of the other spouse, on any of the items mentioned in paragraphs (a) and (d) of subsection (1) above ;
- (b) with the consent of the other spouse, on anything relating to a matrimonial home.

(4) Where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home—

- (a) either spouse shall be entitled, without the consent of the other spouse, to carry out such non-essential repairs or improvements as may be authorised by an order of the court, being such repairs or improvements as the court considers to be appropriate for the reasonable enjoyment of the occupancy rights ;
- (b) the court, on the application of either spouse, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse, with or without the consent of the other spouse, on anything relating to the matrimonial home.

(5) Where one spouse owns or hires, or is acquiring under a hire-purchase or conditional sale agreement, furniture and furnishings in a matrimonial home—

- (a) the other spouse may, without the consent of the first mentioned spouse—
 - (i) make any payment due by the first mentioned spouse which is necessary, or take any other step which the first mentioned spouse is entitled to take, to secure the possession or use of any such furniture

and plenishings (and any such payment shall have effect in relation to the rights of a third party as if it were made by the first mentioned spouse); or

(ii) carry out such essential repairs to the furniture and plenishings as the first mentioned spouse is entitled to carry out;

(b) the court, on the application of either spouse, may, having regard in particular to the respective financial circumstances of the spouses, make an order apportioning expenditure incurred or to be incurred by either spouse—

(i) without the consent of the other spouse, in making payments under a hire, hire-purchase or conditional sale agreement, or in paying interest charges in respect of the furniture and plenishings, or in carrying out essential repairs to the furniture and plenishings; or

(ii) with the consent of the other spouse, on anything relating to the furniture and plenishings.

(6) An order under subsection (3), (4)(b) or (5)(b) above may require one spouse to make a payment to the other spouse in implementation of the apportionment.

(7) Any application under subsection (3), (4)(b) or (5)(b) above shall be made within five years of the date on which any payment in respect of such incurred expenditure was made.

(8) Where—

(a) the entitled spouse is a tenant of a matrimonial home; and

(b) possession thereof is necessary in order to continue the tenancy; and

(c) the entitled spouse abandons such possession,

the tenancy shall be continued by such possession by the non-entitled spouse.

(9) In this section “improvements” includes alterations and enlargement.

Regulation by
court of rights
of occupancy
of
matrimonial
home.

3.—(1) 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 ;

(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.

Exclusion orders.

4.—(1) 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 (in this Act referred to as “an exclusion order”) suspending the occupancy rights of the other spouse (“the non-applicant spouse”) in a matrimonial home.

(2) Subject to subsection (3) below, the court shall make an exclusion order if it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reason-

ably apprehended conduct of the non-applicant spouse which is or would be injurious to the physical or mental health of the applicant or child.

(3) The court shall not make an exclusion order if it appears to the court that the making of the order would be unjustified or unreasonable—

(a) having regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act ; and

(b) where the matrimonial home—

(i) is or is part of an agricultural holding within the meaning of section 1 of the Agricultural Holdings 1949 c. 75. (Scotland) Act 1949 ; or

(ii) is let, or is a home in respect of which possession is given, to the non-applicant spouse or to both spouses by an employer as an incident of employment,

subject to a requirement that the non-applicant spouse or, as the case may be, both spouses must reside in the matrimonial home, having regard to that requirement and the likely consequences of the exclusion of the non-applicant spouse from the matrimonial home.

(4) In making an exclusion order the court shall, on the application of the applicant spouse,—

(a) grant a warrant for the summary ejection of the non-applicant spouse from the matrimonial home ;

(b) grant an interdict prohibiting the non-applicant spouse from entering the matrimonial home without the express permission of the applicant ;

(c) grant an interdict prohibiting the removal by the non-applicant spouse, except with the written consent of the applicant or by a further order of the court, of any furniture and plenishings in the matrimonial home ;

unless, in relation to paragraph (a) or (c) above, the non-applicant spouse satisfies the court that it is unnecessary for it to grant such a remedy .

(5) In making an exclusion order the court may—

(a) grant an interdict prohibiting the non-applicant spouse from entering or remaining in a specified area in the vicinity of the matrimonial home ;

(b) where the warrant for the summary ejection of the non-applicant spouse has been granted in his or her absence, give directions as to the preservation of the non-applicant spouse's goods and effects which remain in the matrimonial home ;

- (c) on the application of either spouse, make the exclusion order or the warrant or interdict mentioned in paragraph (a), (b) or (c) of subsection (4) above or paragraph (a) of this subsection subject to such terms and conditions as the court may prescribe ;
- (d) on application as aforesaid, make such other order as it may consider necessary for the proper enforcement of an order made under subsection (4) above or paragraph (a), (b) or (c) of this subsection.

(6) Pending the making of an exclusion order, the court may, on the application of the applicant spouse, make an interim order suspending the occupancy rights of the non-applicant spouse in the matrimonial home to which the application for the exclusion order relates ; and subsections (4) and (5) above shall apply to such interim order as they apply to an exclusion order :

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.

(7) Without prejudice to subsections (1) and (6) above, where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, it shall be incompetent for one spouse to bring an action of ejection from the matrimonial home against the other spouse.

Duration of
orders under
ss. 3 and 4.

5.—(1) The court may, on the application of either spouse, vary or recall any order made by it under section 3 or 4 of this Act, but, subject to subsection (2) below, any such order shall, unless previously so varied or recalled, cease to have effect—

- (a) on the termination of the marriage ; or
- (b) subject to section 6(1) of this Act, where there is an entitled and a non-entitled spouse, on the entitled spouse ceasing to be an entitled spouse in respect of the matrimonial home to which the order relates ; or
- (c) where both spouses are entitled, or permitted by a third party, to occupy the matrimonial home, on both spouses ceasing to be so entitled or permitted.

(2) Without prejudice to the generality of subsection (1) above, an order under section 3(3) or (4) of this Act which grants the possession or use of furniture and plenishings shall cease to have effect if the furniture and plenishings cease to be permitted by a third party to be retained in the matrimonial home.

*Occupancy rights in relation to
dealings with third parties*

6.—(1) Subject to subsection (3) below—

Continued
exercise of
occupancy
rights after
dealing.

(a) the continued exercise of the rights conferred on a non-entitled spouse by the provisions of this Act in respect of a matrimonial home shall not be prejudiced by reason only of any dealing of the entitled spouse relating to that home ; and

(b) a third party shall not by reason only of such a dealing be entitled to occupy that matrimonial home or any part of it.

(2) In this section and section 7 of this Act—

“dealing” includes the grant of a heritable security and the creation of a trust but does not include a conveyance under section 80 of the Lands Clauses Consolidation (Scotland) Act 1845 ; 1845 c. 19.

“entitled spouse” does not include a spouse who, apart from the provisions of this Act,—

(a) is permitted by a third party to occupy a matrimonial home ; or

(b) is entitled to occupy a matrimonial home along with an individual who is not the other spouse, whether or not that individual has waived his or her right of occupation in favour of the spouse so entitled ;

and “non-entitled spouse” shall be construed accordingly.

(3) This section shall not apply in any case where—

(a) the non-entitled spouse in writing either—

(i) consents or has consented to the dealing, and any consent shall be in such form as the Secretary of State may, by regulations made by statutory instrument, prescribe ; or

(ii) renounces or has renounced his or her occupancy rights in relation to the matrimonial home or property to which the dealing relates ;

(b) the court has made an order under section 7 of this Act dispensing with the consent of the non-entitled spouse to the dealing ;

(c) the dealing occurred, or implements, a binding obligation entered into by the entitled spouse before his or her marriage to the non-entitled spouse ;

(d) the dealing occurred, or implements, a binding obligation entered into before the commencement of this Act ; or

- (e) the dealing comprises the purchase of a matrimonial home by a third party who has acted in good faith, if, at the time of the dealing, there is produced to the third party by the entitled spouse—
- (i) an affidavit sworn or affirmed by the entitled spouse declaring that there is no non-entitled spouse; or
 - (ii) a renunciation of occupancy rights or consent to the dealing which bears to have been properly made or given by the non-entitled spouse

1979 c. 33.

(4) The Land Registration (Scotland) Act 1979 shall be amended as follows—

(a) in section 6(4)—

(i) after the words “ the interest of ” there shall be inserted “ (i) ” ; and

(ii) after the words “ is not a long lease ” there shall be inserted—

“ and

(ii) a non-entitled spouse within the meaning of section 6 of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981.*” ;

(b) in paragraph (b) of section 9(4)—

(i) after the words “ the interest of ” there shall be inserted “ (i) ” ; and

(ii) after the words “ is not a long lease ” there shall be inserted—

“ and

(ii) a non-entitled spouse within the meaning of section 6 of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981.*” ; and

(c) in section 28 in the definition of overriding interest after paragraph (g) there shall be inserted the following—

“ (gg) the non-entitled spouse within the meaning of section 6 of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981* ; ”.

**Dispensation
by court with
spouse's
consent to
dealing.**

7.—(1) The court may, on the application of an entitled spouse or any other person having an interest, make an order dispensing with the consent of a non-entitled spouse to a dealing which has taken place or a proposed dealing, if—

- (a) such consent is unreasonably withheld ;
- (b) such consent cannot be given by reason of physical or mental disability ;
- (c) the non-entitled spouse cannot be found after reasonable steps have been taken to trace him or her ; or

(d) the non-entitled spouse is a minor.

(2) For the purposes of subsection (1)(a) above, a non-entitled spouse shall have unreasonably withheld consent to a dealing which has taken place or a proposed dealing, where it appears to the court—

(a) that the non-entitled spouse has led the entitled spouse to believe that he or she would consent to the dealing and that the non-entitled spouse would not be prejudiced by any change in the circumstances of the case since such apparent consent was given; or

(b) that the entitled spouse has, having taken all reasonable steps to do so, been unable to obtain an answer to a request for consent.

(3) The court, in considering whether to make an order under subsection (1) above, shall have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act.

(4) Where—

(a) an application is made for an order under this section; and

(b) an action is or has been raised by a non-entitled spouse to enforce occupancy rights,

the action shall be stayed until the conclusion of the proceedings on the application.

(5) Where a wife is an entitled spouse and her husband is a non-entitled spouse, it shall not be competent for her to apply to the court under section 5 of the Married Women's Property 1881 c. 21. (Scotland) Act 1881 for an order dispensing with her husband's consent to a dealing relating to a matrimonial home; and accordingly the said section 5 shall have effect as if at the beginning there were inserted the words "Subject to section 7(5) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981".

8.—(1) The rights of a third party with an interest in the matrimonial home as a creditor under a secured loan in relation to the non-performance of any obligation under the loan shall not be prejudiced by reason only of the occupancy rights of the non-entitled spouse; but where a non-entitled spouse has or obtains occupation of a matrimonial home and—

Interests of heritable creditors.

(a) the entitled spouse is not in occupation; and

(b) there is a third party with such an interest in the matrimonial home,

the court may, on the application of the third party, make an order requiring the non-entitled spouse to make any payment due by the entitled spouse in respect of the loan.

(2) This section shall not apply unless the third party in granting the secured loan acted in good faith and before the granting of the loan there was produced to the third party by the entitled spouse—

- (a) an affidavit sworn or affirmed by the entitled spouse declaring that there is no non-entitled spouse ; or
- (b) a renunciation of occupancy rights or consent to the taking of the loan which bears to have been properly made or given by the non-entitled spouse.

Provisions
where both
spouses have
title.

9.—(1) Subject to subsection (2) below, where, apart from the provisions of this Act, both spouses are entitled to occupy a matrimonial home—

- (a) the rights in that home of one spouse shall not be prejudiced by reason only of any dealing of the other spouse ; and
- (b) a third party shall not by reason only of such a dealing be entitled to occupy that matrimonial home or any part of it.

(2) The definition of “ dealing ” in section 6(2) of this Act and sections 6(3) and 7 of this Act shall apply for the purposes of subsection (1) above as they apply for the purposes of section 6(1) of this Act subject to the following modifications—

- (a) any reference to the entitled spouse and to the non-entitled spouse shall be construed as a reference to a spouse who has entered into or, as the case may be, proposes to enter into a dealing and to the other spouse respectively ; and
- (b) in paragraph (b) of section 7(4) the reference to occupancy rights shall be construed as a reference to any rights in the matrimonial home.

*Protection of rights of spouse against
arrangements intended to defeat them*

Sequestration.
1913 c. 20.

10.—(1) After section 31 of the Bankruptcy (Scotland) Act 1913 there shall be inserted the following section—

“Recall of
sequestration
by
non-entitled
spouse.

31A. (1) If a debtor’s sequestrated estate includes a matrimonial home of which the debtor, immediately before the act and warrant appointing the trustee was an entitled spouse and the other spouse is a non-entitled spouse, the Court of Session, on the application of the non-entitled spouse within 40 days of the date of the act and warrant, may—

- (a) recall the sequestration ; or

(b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled spouse,
if it is satisfied that the purpose of the application for sequestration was wholly or mainly to defeat the occupancy rights of the non-entitled spouse.

(2) In section 30 of this Act, the words from “ and the Lord Ordinary ” to the end shall apply for the purposes of this section subject to the following modifications—

(a) the words “ in these several cases ” shall be omitted ;

(b) for the words “ the recall ” there shall be substituted the words “ or make an order to protect the occupancy rights of a non-entitled spouse, the recall or order ”.

(3) In this section and section 30 of this Act—

“ entitled spouse ” and “ non-entitled spouse ” have the meanings respectively assigned to them by section 6(2) of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981* ;

“ matrimonial home ” has the same meaning as in section 22 of the said Act of 1981 ;

and other expressions used in this section and the said section 30 and in that Act have the same meanings in those sections as in that Act.”.

(2) After section 76 of the *Bankruptcy (Scotland) Act 1913* 1913 c. 20. there shall be inserted the following section—

“Noti-
fication of
sequestration
to
non-entitled
spouse.

76A. (1) Where—

(a) the bankrupt’s estate includes a matrimonial home of which the bankrupt immediately before the act and warrant appointing the trustee was an entitled spouse and the other spouse is a non-entitled spouse ; and

(b) the trustee is aware that the entitled spouse is married to the non-entitled spouse and knows where the non-entitled spouse is residing,

the trustee shall, within 7 days of the date of the said act and warrant, intimate to the non-entitled spouse that sequestration of the entitled spouse’s estate has been awarded.

(2) In this section—

“entitled spouse” and “non-entitled spouse” have the meanings respectively assigned to them by section 6(2) of the *Matrimonial Homes (Family Protection) (Scotland) Act 1981*;

“matrimonial home” has the same meaning as in section 22 of the said Act of 1981.”.

Poin ding.

11.—Where a poiding has been executed of furniture and plenishings of which the debtor's spouse has the possession or use by virtue of an order under section 3(3) or (4) of this Act, the sheriff, on the application of that spouse within 40 days of the date of execution of the poiding, may—

(a) declare that the poiding is null ; or

(b) make such order as he thinks appropriate to protect such possession or use by that spouse,

if he is satisfied that the purpose of the diligence was wholly or mainly to prevent such possession or use.

Adjudication.

12.—(1) Where a matrimonial home of which there is an entitled spouse and a non-entitled spouse is adjudged, the Court of Session, on the application of the non-entitled spouse within 40 days of the date of the decree of adjudication, may—

(a) order the reduction of the decree ; or

(b) make such order as it thinks appropriate to protect the occupancy rights of the non-entitled spouse,

if it is satisfied that the purpose of the diligence was wholly or mainly to defeat the occupancy rights of the non-entitled spouse.

(2) In this section, “entitled spouse” and “non-entitled spouse” have the same meanings respectively as in section 6(2) of this Act.

Transfer of tenancy

Transfer of tenancy.

13.—(1) The court may, on the application of a non-entitled spouse, make an order transferring the tenancy of a matrimonial home to that spouse and providing, subject to subsection (11) below, for the payment by the non-entitled spouse to the entitled spouse of such compensation as seems just and reasonable in all the circumstances of the case.

(2) The Court of Session may, in granting decree in an action for divorce or nullity of marriage, make an order granting an application under subsection (1) above.

(3) In determining whether to grant an application under subsection (1) above, the court shall have regard to all the circumstances of the case including the matters specified in paragraphs (a) to (e) of section 3(3) of this Act and the suitability of the applicant to become the tenant and the applicant's capacity to perform the obligations under the lease of the matrimonial home.

(4) The non-entitled spouse shall serve a copy of an application under subsection (1) above on the landlord and, before making an order under subsection (1) above, the court shall give the landlord an opportunity of being heard by it.

(5) On the making of an order granting an application under subsection (1) above, the tenancy shall vest in the non-entitled spouse without intimation to the landlord, subject to all the liabilities under the lease (other than any arrears of rent for the period before the making of the order, which shall remain the liability of the original entitled spouse).

(6) The clerk of court shall notify the landlord of the making of an order granting an application under subsection (1) above.

(7) It shall not be competent for a non-entitled spouse to apply for an order under subsection (1) above where the matrimonial home—

(a) is let to the entitled spouse by his or her employer as an incident of employment, and the lease is subject to a requirement that the entitled spouse must reside therein ;

(b) is or is part of an agricultural holding ;

(c) is on or pertains to a croft or the subject of a cottar or the holding of a landholder or a statutory small tenant ;

(d) is let on a long lease ;

(e) is part of the tenancy land of a tenant-at-will.

(8) In subsection (7) above—

“ agricultural holding ” has the same meaning as in section 1 of the Agricultural Holdings (Scotland) Act 1949 ; 1949 c. 75.

“ cottar ” has the same meaning as in section 28(4) of the Crofters (Scotland) Act 1955 ; 1955 c. 21.

“ croft ” has the same meaning as in the Crofters (Scotland) Act 1955 ;

“ holding ”, in relation to a landholder and a statutory small tenant, “ landholder ” and “ statutory small tenant ” have the same meanings respectively as in sections 2(1), 2(2) and 32(1) of the Small Landholders (Scotland) Act 1911 ; 1911 c. 49.

“ long lease ” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979 ; 1979 c. 33.

“tenant-at-will” has the same meaning as in section 20(8) of the Land Registration (Scotland) Act 1979.

(9) Where both spouses are joint or common tenants of a matrimonial home, the court may, on the application of one of the spouses, make an order vesting the tenancy in that spouse solely and providing, subject to subsection (11) below, for the payment by the applicant to the other spouse of such compensation as seems just and reasonable in the circumstances of the case.

(10) Subsections (2) to (8) above shall apply for the purposes of an order under subsection (9) above as they apply for the purposes of an order under subsection (1) above subject to the following modifications—

- (a) in subsection (3) for the word “tenant” there shall be substituted the words “sole tenant”;
- (b) in subsection (4) for the words “non-entitled” there should be substituted the word “applicant”;
- (c) in subsection (5) for the words “non-entitled” and “liability of the original entitled spouse” there shall be substituted respectively the words “applicant” and “joint and several liability of both spouses”;
- (d) in subsection (7)—
 - (i) for the words “a non-entitled” there shall be substituted the words “an applicant”;
 - (ii) for paragraph (a) there shall be substituted the following paragraph—

“(a) is let to both spouses by their employer as an incident of employment, and the lease is subject to a requirement that both spouses must reside there;”;
 - (iii) paragraphs (c) and (e) shall be omitted.

(11) Where the matrimonial home is a secure tenancy within the meaning of the Tenants’ Rights Etc. (Scotland) Act 1980, no account shall be taken, in assessing the amount of any compensation to be awarded under subsection (1) or (9) above, of the loss, by virtue of the transfer of the tenancy of the home, of a right to purchase the home under Part I of that Act.

(12) In the Tenants’ Rights, Etc. (Scotland) Act 1980—

- (a) paragraph 6 of Part I of Schedule 2 is repealed; and
- (b) in section 15(1) for the words “paragraphs 1 to 6” there shall be substituted the words “paragraphs 1 to 5”.

Matrimonial interdicts

14.—(1) It shall not be incompetent for the court to entertain an application by a spouse for a matrimonial interdict by reason only that the spouses are living together as man and wife. Interdict competent where spouses live together.

(2) In this section and section 15 of this Act—

“matrimonial interdict” means an interdict including an interim interdict which—

(a) restrains or prohibits any conduct of one spouse towards the other spouse or a child of the family, or

(b) prohibits a spouse from entering or remaining in a matrimonial home or in a specified area in the vicinity of the matrimonial home.

15.—(1) The court shall, on the application of the applicant spouse, attach a power of arrest— Attachment of powers of arrest to matrimonial interdicts.

(a) to any matrimonial interdict which is ancillary to an exclusion order, including an interim order under section 4(6) of this Act ;

(b) to any other matrimonial interdict where the non-applicant spouse has had the opportunity of being heard by or represented before the court, unless it appears to the court that in all the circumstances of the case such a power is unnecessary.

(2) A power of arrest attached to an interdict by virtue of subsection (1) above shall not have effect until such interdict is served on the non-applicant spouse, and such a power of arrest shall, unless previously recalled, cease to have effect upon the termination of the marriage.

(3) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, a constable may arrest without warrant the non-applicant spouse if he has reasonable cause for suspecting that spouse of being in breach of the interdict.

(4) If, by virtue of subsection (1) above, a power of arrest is attached to an interdict, the applicant spouse shall, as soon as possible after service of the interdict on the non-applicant spouse, ensure that there is delivered—

(a) to the chief constable of the police area in which the matrimonial home is situated ; and

(b) if the applicant spouse resides in another police area, to the chief constable of that other police area,

a copy of the application for the interdict and of the interlocutor granting the interdict together with a certificate of service of the interdict.

(5) Where any matrimonial interdict to which, by virtue of subsection (1) above there is attached a power of arrest, is varied or recalled, the spouse who applied for the variation or recall shall ensure that there is delivered—

(a) to the chief constable of the police area in which the matrimonial home is situated ; and

(b) if the applicant spouse (within the meaning of subsection (6) below) resides in another police area, to the chief constable of that other police area,

a copy of the application for variation or recall and of the interlocutor granting the variation or recall.

(6) In this section and in sections 16 and 17 of this Act—

“ applicant spouse ” means the spouse who has applied for the interdict ; and

“ non-applicant spouse ” shall be construed accordingly.

Police powers
after arrest.

16.—(1) Where a person has been arrested under section 15(3) of this Act, the officer in charge of a police station may—

(a) if satisfied that there is no likelihood of violence to the applicant spouse or any child of the family, liberate that person unconditionally ; or

(b) refuse to liberate that person ; and such refusal and the detention of that person until his or her appearance in court by virtue of—

(i) section 17(2) of this Act ; or

(ii) any provision of the Criminal Procedure (Scotland) Act 1975,

shall not subject the officer to any claim whatsoever.

1975 c. 21.

(2) Where a person arrested under section 15(3) of this Act is liberated under subsection (1) above, the facts and circumstances which gave rise to the arrest shall be reported forthwith to the procurator fiscal who, if he decides to take no criminal proceedings in respect of those facts and circumstances, shall at the earliest opportunity take all reasonable steps to intimate his decision to the persons mentioned in paragraphs (a) and (b) of section 17(4) of this Act.

Procedure
after arrest.

17.—(1) The provisions of this section shall apply only where—

(a) the non-applicant spouse has not been liberated under section 16(1) of this Act ; and

(b) the procurator fiscal decides that no criminal proceedings are to be taken in respect of the facts and circumstances which gave rise to the arrest.

(2) The non-applicant spouse who has been arrested under section 15(3) of this Act shall wherever practicable be brought

before the sheriff sitting as a court of summary criminal jurisdiction for the district in which he or she was arrested not later than in the course of the first day after the arrest, such day not being a Saturday, a Sunday or a court holiday prescribed for that court under section 10 of the Bail etc. (Scotland) Act 1980 c. 4. 1980:

Provided that nothing in this subsection shall prevent the non-applicant spouse from being brought before the sheriff on a Saturday, a Sunday or such a court holiday where the sheriff is in pursuance of the said section 10 sitting on such day for the disposal of criminal business.

(3) Subsections (1) and (2) of section 3 of the Criminal Justice 1980 c. 62. (Scotland) Act 1980 (intimation to a named person) shall apply to a non-applicant spouse who has been arrested under section 15(3) of this Act as they apply to a person who has been arrested in respect of any offence.

(4) The procurator fiscal shall at the earliest opportunity, and in any event prior to the non-applicant spouse being brought before the sheriff under subsection (2) above, take all reasonable steps to intimate—

- (a) to the applicant spouse ; and
- (b) to the solicitor who acted for that spouse when the interdict was granted or to any other solicitor who the procurator fiscal has reason to believe acts for the time being for that spouse,

that the criminal proceedings referred to in subsection (1) above will not be taken.

(5) On the non-applicant spouse being brought before the sheriff under subsection (2) above, the following procedure shall apply—

- (a) the procurator fiscal shall present to the court a petition containing—
 - (i) a statement of the particulars of the non-applicant spouse ;
 - (ii) a statement of the facts and circumstances which gave rise to the arrest ; and
 - (iii) a request that the non-applicant spouse be detained for a further period not exceeding 2 days ;
- (b) if it appears to the sheriff that—
 - (i) the statement referred to in paragraph (a)(ii) above discloses a *prima facie* breach of interdict by the non-applicant spouse ;
 - (ii) proceedings for breach of interdict will be taken ; and

(iii) there is a substantial risk of violence by the non-applicant spouse against the applicant spouse or any child of the family,

he may order the non-applicant spouse to be detained for a further period not exceeding 2 days ;

(c) in any case to which paragraph (b) above does not apply, the non-applicant spouse shall, unless in custody in respect of any other matter, be released from custody ;

and in computing the period of two days referred to in paragraphs (a) and (b) above, no account shall be taken of a Saturday or Sunday or of any holiday in the court in which the proceedings for breach of interdict will require to be raised.

Cohabiting couples

Occupancy
rights of
cohabiting
couples.

18.—(1) If a man and a woman are living with each other as if they were man and wife (“ a cohabiting couple ”) in a house which, apart from the provisions of this section—

(a) one of them (an “ entitled partner ”) is entitled, or permitted by a third party, to occupy ; and

(b) the other (a “ non-entitled partner ”) is not so entitled or permitted to occupy,

the court may, on the application of the non-entitled partner, if it appears that the man and the woman are a cohabiting couple in that house, grant occupancy rights therein to the applicant for such period, not exceeding 3 months, as the court may specify :

Provided that the court may extend the said period for a further period or periods, no such period exceeding 6 months.

(2) In determining whether for the purpose of subsection (1) above a man and woman are a cohabiting couple the court shall have regard to all the circumstances of the case including—

(a) the time for which it appears they have been living together ; and

(b) whether there are any children of the relationship.

(3) While an order granting an application under subsection (1) above or an extension of such an order is in force, or where both partners of a cohabiting couple are entitled, or permitted by a third party, to occupy the house where they are cohabiting, the following provisions of this Act shall subject to any necessary modifications—

(a) apply to the cohabiting couple as they apply to parties to a marriage ;

and

(b) have effect in relation to any child residing with the cohabiting couple as they have effect in relation to a child of the family,

section 2 ;

section 3, except subsection (1)(a) ;

section 4 ;

in section 5(1), the words from the beginning to " Act " where it first occurs ;

sections 13 and 14 ;

section 15, except the words in subsection (2) from " and such a power of arrest " to the end ;

sections 16 and 17 ;

and

section 22,

and any reference in these provisions to a matrimonial home shall be construed as a reference to a house.

(4) Any order under section 3 or 4 of this Act as applied to a cohabiting couple by subsection (3) above shall have effect—

(a) if one of them is a non-entitled partner, for such a period, not exceeding the period or periods which from time to time may be specified in any order under subsection (1) above for which occupancy rights have been granted under that subsection, as may be specified in the order ;

(b) if they are both entitled, or permitted by a third party, to occupy the house, until a further order of the court.

(5) Nothing in this section shall prejudice the rights of any third party having an interest in the house referred to in subsection (1) above.

(6) In this section—

" house " includes a caravan, houseboat or other structure in which the couple are cohabiting and any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure ;

" occupancy rights " means the following rights of a non-entitled partner—

(a) if in occupation, a right not to be excluded from the house or any part of it by the entitled partner ;

(b) if not in occupation, a right to enter into and occupy the house ;

" entitled partner " includes a partner who is entitled, or permitted by a third party, to occupy the house along with an individual who is not the other partner only if that individual has waived his or her right of occupation in favour of the partner so entitled or permitted.

Miscellaneous and General

Rights of occupancy in relation to division and sale.

19. Where a spouse brings an action for the division and sale of a matrimonial home which the spouses own in common, the court, after having regard to all the circumstances of the case including—

(a) the matters specified in paragraphs (a) to (d) of section 3(3) of this Act ; and

(b) whether the spouse bringing the action offers or has offered to make available to the other spouse any suitable alternative accommodation,

may refuse to grant decree in that action or may postpone the granting of decree for such period as it may consider reasonable in the circumstances or may grant decree subject to such conditions as it may prescribe.

Spouse's consent in relation to calling up of standard securities over matrimonial homes.
1970 c. 35.

20. Section 19(10) of the Conveyancing and Feudal Reform (Scotland) Act 1970 shall have effect as if at the end there were added the following proviso—

“ Provided that, without prejudice to the foregoing generality, if the standard security is over a matrimonial home as defined in section 22 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the spouse on whom the calling-up notice has been served may not dispense with or shorten the said period without the consent in writing of the other spouse.”.

Procedural provision
1962 c. 48.

21. Section 2(2) of the Law Reform (Husband and Wife) Act 1962 (dismissal by court of delictual proceedings between spouses) shall not apply to any proceedings brought before the court in pursuance of any provision of this Act.

Interpretation.

22. In this Act—

“ caravan ” means a caravan which is mobile or affixed to the land ;

“ child of the family ” includes any child or grandchild of either spouse, and any person who has been brought up or accepted by either spouse as if he or she were a child of that spouse, whatever the age of such a child, grandchild or person may be ;

“ the court ” means the Court of Session or the sheriff ;

“ furniture and plenishings ” means any article situated in a matrimonial home which—

(a) is owned or hired by either spouse or is being acquired by either spouse under a hire-purchase agreement or conditional sale agreement ; and

(b) is reasonably necessary to enable the home to be used as a family residence,

but does not include any vehicle, caravan or house-boat, or such other structure as is mentioned in the definition of "matrimonial home";

- "matrimonial home" means any house, caravan, house-boat or other structure which has been provided or has been made available by one or both of the spouses as, or has become, a family residence and includes any garden or other ground or building attached to, and usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, house-boat or other structure;
- "occupancy rights" has, subject to section 18(6) of this Act, the meaning assigned by section 1(4) of this Act;
- "the sheriff" includes the sheriff having jurisdiction in the district where the matrimonial home is situated;
- "tenant" includes sub-tenant and a statutory tenant as defined in section 3 of the Rent (Scotland) Act 1971 and 1971 c. 28.
"tenancy" shall be construed accordingly;
- "entitled spouse" and "non-entitled spouse", subject to sections 6(2) and 12(2) of this Act, have the meanings respectively assigned to them by section 1 of this Act.

23.—(1) This Act may be cited as the **Matrimonial Homes (Family Protection) (Scotland) Act 1981.** Short title,
commence-
ment and
extent.

(2) This Act (except this section) shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions and for different purposes.

(3) This Act extends to Scotland only.

*Matrimonial Homes (Family Protection)
(Scotland) Act 1981*

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