



# Family Law (Scotland) Act 2006

## 2006 asp 2

### *Cohabitation: domestic interdicts*

#### **31 Domestic interdicts**

- (1) The 1981 Act shall be amended in accordance with subsections (2) and (3).
- (2) In subsection (3) of section 18 (cohabiting couples: occupancy rights and application of certain provisions of Act), for the words from “sections”, where it first occurs, to “17” there shall be substituted “section 13”.
- (3) After section 18 there shall be inserted—

#### *“Domestic interdicts*

##### **18A Meaning of “domestic interdict”**

- (1) In section 18B, “domestic interdict” means—
  - (a) an interdict granted on the application of a person (“A”) who is (or was) living with another person (“B”) as if they were husband and wife against B for any of the purposes mentioned in subsection (2); or
  - (b) an interdict granted on the application of a person (“C”) who is (or was) living with another person (“D”) as if they were civil partners against D for any of the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (a) restraining or prohibiting such conduct of the defender towards—
    - (i) the pursuer; or
    - (ii) any child in the permanent or temporary care of the pursuer, as the court may specify;
  - (b) prohibiting the defender from entering or remaining in—
    - (i) a family home occupied by the pursuer and the defender;
    - (ii) any other residence occupied by the pursuer;
    - (iii) any place of work of the pursuer;
    - (iv) any school attended by a child in the permanent or temporary care of the pursuer.

- (3) In this section and in section 18B—
- “family home” means, subject to subsection (4), any house, caravan, houseboat or other structure which has been provided or has been made available by the pursuer or the defender (or both of them) as (or has become) a family residence for them and includes any garden or other ground or building usually occupied with, or otherwise required for the amenity or convenience of, the house, caravan, houseboat or other structure; but does not include a residence provided or made available by any person for the pursuer or, as the case may be, the defender to reside in (whether or not with any child of the pursuer and the defender) separately from the defender or, as the case may be, the pursuer; and “interdict” includes interim interdict.
- (4) If the tenancy of a family home is transferred from a pursuer to a defender (or, as the case may be, from a defender to a pursuer) by agreement or under any enactment, the home shall, on such transfer, cease to be a family home.
- (5) In subsection (3), “child of the pursuer and the defender” includes any child or grandchild of the pursuer or the defender, and any person who has been brought up or treated by the pursuer or the defender as if the person were a child of the pursuer or, as the case may be, the defender, whatever the age of such a child, grandchild or person.

### **18B Domestic interdicts: further provision**

- (1) Subsection (2) applies if the defender—
- (a) is entitled to occupy a family home;
  - (b) is permitted by a third party to occupy it; or
  - (c) has, by virtue of section 18(1), occupancy rights in it.
- (2) Except where subsection (3) applies, the court may not grant a domestic interdict prohibiting the defender from entering or remaining in the family home.
- (3) This subsection applies if—
- (a) the interdict is ancillary to an exclusion order; or
  - (b) an order under section 18(1) granting or extending occupancy rights is recalled.”.