



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Transfer of tenancy

13 Transfer of tenancy.

(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.

[^{F1}(2) In an action—

- (a) for divorce, the Court of Session or a sheriff;
- (b) for nullity of marriage, the Court of Session,

may, on granting decree or within such period as the court may specify on granting decree, 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).

Status: Point in time view as at 27/11/2003.

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Cross Heading: Transfer of tenancy is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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;
 - [^{F2}(b) is on or pertains to land comprised in an agricultural lease;]
 - (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 (6) above—
- [^{F3}“agricultural lease” means a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or a lease constituting a limited duration tenancy or a short limited duration tenancy (within the meaning of that Act);]
- “cottar” has the same meaning as in section 28(4) of the ^{M1}Crofters (Scotland) Act 1955;
- “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 ^{M2}Small Landholders (Scotland) Act 1911;
- “long lease” has the same meaning as in section 28(1) of the ^{M3}Land Registration (Scotland) Act 1979;
- “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—

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“(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 [^{F4}Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10)], 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 [^{F4}Part III of the Housing (Scotland) Act 1987 (c. 26)].

(12) In the Tenants’ Rights, Etc. (Scotland) Act 1980 ^{M4}—

(a) paragraph 6 of Part I of Schedule 2 is repealed; and

(b) ^{F5}

Textual Amendments

- F1** S. 13(2) substituted by [Family Law \(Scotland\) Act 1985 \(c. 37, SIF 49:3\)](#), ss. 28(1), 29(4), **Sch. 1 para. 11**
- F2** S. 13(7)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 5(a)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F3** Words in s. 13(8) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), **Sch. para. 5(b)** (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with Sch.)
- F4** Words in s. 13(11) substituted (30.9.2002) by [2001 asp 10](#), s. 112, **Sch. 10 para. 7(a)(b)**; S.S.I.2002/321, **art. 2** (subject to **arts. 3-5**)
- F5** S. 13(12)(b) repealed (*retrospectively*) by [Tenants' Rights, Etc. \(Scotland\) Amendment Act 1984 \(c. 18, SIF 61\)](#), ss. 8(2), 9(3), **Sch.**

Modifications etc. (not altering text)

- C1** The text of s. 13(12)(a) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Marginal Citations

- M1** 1955 c. 21.
- M2** 1911 c. 49.
- M3** 1979 c. 33.
- M4** 1980 c. 52.

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