



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

## 1981 CHAPTER 59

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

#### **4 Exclusion orders.**

- (1) Where there is an entitled and non-entitled spouse, or where both spouses are entitled, or permitted by a third party, to occupy a matrimonial home, either spouse [<sup>F1</sup>whether or not that spouse is in occupation at the time of the application] 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 reasonably 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 <sup>M1</sup>Agricultural Holdings (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.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 4 is up to date with all changes known to be in force on or before 22 May 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)*

- (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 furnishings 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.

#### Textual Amendments

- F1** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(5), 60(6)**

#### Marginal Citations

- M1** 1949 c. 75.

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