



Matrimonial Homes (Family Protection) (Scotland) Act 1981

1981 CHAPTER 59

Occupancy rights in relation to dealings with third parties

6 Continued exercise of occupancy rights after dealing.

(1) Subject to subsection (3) below—

- (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 ^MLands Clauses Consolidation (Scotland) Act 1845;

“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;

Status: Point in time view as at 15/08/2003. This version of this provision has been superseded.

Changes to legislation: Matrimonial Homes (Family Protection) (Scotland) Act 1981, Section 6 is up to date with all changes known to be in force on or before 12 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)

- (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; . . . ^{F1}
- (e) the dealing comprises [^{F2}a sale to] a third party who has acted in good faith, if . . . ^{F3} there is produced to the third party by the [^{F4}seller—
 - (i) an affidavit sworn or affirmed by the seller declaring that the subjects of sale are not [^{F5}or were not at the time of the dealing] a matrimonial home in relation to which a spouse of the seller has [^{F5}or had] occupancy rights;]
 - (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

[^{F6}For the purposes of this paragraph, the time of the dealing, in the case of the sale of an interest in heritable property, is the date of delivery to the purchaser of the deed transferring title to that interest.][^{F7}; or]
- [^{F8}(f) the entitled spouse has permanently ceased to be entitled to occupy the matrimonial home, and at any time thereafter a continuous period of 5 years has elapsed during which the non-entitled spouse has not occupied the matrimonial home.]

(4) The Land Registration (Scotland) Act 1979 ^{M2} 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) 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.”.

Textual Amendments

F1 Word repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 49:6\)](#), **ss. 13(6)(a), 60(6)**

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- F2** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(b)(i)**, 60(6)
- F3** Words repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, Sch. 8 para. 31(1)(a), **Sch. 9**
- F4** Words substituted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(iii)**, 60(6)
- F5** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2, 68A:2), s. 74, **Sch. 8 para. 31(b)**
- F6** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(iv)**, 60(6)
- F7** Words added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(c)**, 60(6)
- F8** S. 6(3)(f) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 13(6)(c)**, 60(6)

Modifications etc. (not altering text)

- C1** S. 6(3)(e) modified (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 14(2)(a)**, 21(2); S.S.I. 2003/384, art. 2(a)
- C2** The text of ss. 6(4), 13(12)(a), 20 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** 1845 c. 19.
- M2** 1979 c. 33.

Status:

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Changes to legislation:

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