



Proceeds of Crime (Scotland) Act 1995

1995 CHAPTER 43

PART V

MISCELLANEOUS AND GENERAL

45 Disposal of family home under Part I or II.

- (1) This section applies where —
 - (a) ^{F1}
 - (b) a person's family home has been forfeited to the Crown under section 24 of this Act.
- (2) Where this section applies, then, before the Crown disposes of any right or interest in the person's family home it shall—
 - (a) obtain the relevant consent; or
 - (b) where it is unable to do so, apply to the court for authority to carry out the disposal.
- (3) On an application being made to it under subsection (2)(b) above, the court, after having regard to all the circumstances of the case including—
 - (a) the needs and financial resources of the spouse or former spouse of the person concerned;
 - (b) the needs and financial resources of any child of the family;
 - (c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b) above,may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.
- (4) Subsection (3) above shall apply—
 - (a) to an action for division and sale of the family home of the person concerned;or

Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 45. (See end of Document for details)

(b) to an action for the purpose of obtaining vacant possession of that home, brought by the Crown as it applies to an application under subsection (2)(b) above and, for the purposes of this subsection, any reference in the said subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.

(5) In this section—

“family home”, in relation to any person (in this subsection referred to as “the relevant person”) means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person’s spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

“child of the family” includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

“relevant consent” means in relation to the disposal of any right or interest in a family home—

- (a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;
- (b) where paragraph (a) above does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

Textual Amendments

F1 S. 45(1)(a) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 456-458(1), Sch. 11 para. 28(2)(i), [Sch. 12](#); [S.S.I. 2003/210](#), [art. 2](#), Sch. (subject to arts. 3-7)

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