



# Family Law Act 1996

## 1996 CHAPTER 27

### PART IV **E+W**

#### FAMILY HOMES AND DOMESTIC VIOLENCE

##### *Occupation orders*

### 33 Occupation orders where applicant has estate or interest etc. or has [<sup>F1</sup>home rights]. **E+W**

(1) If—

(a) a person (“the person entitled”)—

(i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or

(ii) has [<sup>F2</sup>home rights] in relation to a dwelling-house, and

(b) the dwelling-house—

(i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or

(ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).

(2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

[<sup>F3</sup>(2A) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.]

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- (3) An order under this section may—
- (a) enforce the applicant’s entitlement to remain in occupation as against the other person (“the respondent”);
  - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
  - (c) regulate the occupation of the dwelling-house by either or both parties;
  - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
  - (e) if the respondent has [<sup>F4</sup>home rights] in relation to the dwelling-house and the applicant is the other spouse [<sup>F5</sup>or civil partner], restrict or terminate those rights;
  - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (g) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has [<sup>F6</sup>home rights].
- (5) If the applicant has [<sup>F7</sup>home rights] and the respondent is the other spouse [<sup>F8</sup>or civil partner], an order under this section made during the marriage [<sup>F9</sup>or civil partnership] may provide that those rights are not brought to an end by—
- (a) the death of the other spouse [<sup>F10</sup>or civil partner]; or
  - (b) the termination (otherwise than by death) of the marriage [<sup>F11</sup>or civil partnership].
- (6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
  - (d) the conduct of the parties in relation to each other and otherwise.
- (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
  - (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.
- (8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.
- (9) An order under this section—

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- (a) may not be made after the death of either of the parties mentioned in subsection (1); and
  - (b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.
- (10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

#### Textual Amendments

- F1** Words in s. 33 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F2** Words in s. 33(1)(a)(ii) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F3** S. 33(2A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F4** Words in s. 33(3)(e) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F5** Words in s. 33(3)(e) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F6** Words in s. 33(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F7** Words in s. 33(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F8** Words in s. 33(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F9** Words in s. 33(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F10** Words in s. 33(5)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(d)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F11** Words in s. 33(5)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(e)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

### 34 Effect of order under s. 33 where rights are charge on dwelling-house. **E+W**

- (1) If [<sup>F12</sup>B's home rights] are a charge on the estate or interest of [<sup>F13</sup>A] or of trustees for [<sup>F13</sup>A]—
- (a) an order under section 33 against [<sup>F13</sup>A] has, except so far as a contrary intention appears, the same effect against persons deriving title under [<sup>F13</sup>A] or under the trustees and affected by the charge, and
  - (b) sections 33(1), (3), (4) and (10) and 30(3) to (6) apply in relation to any person deriving title under [<sup>F13</sup>A] or under the trustees and affected by the charge as they apply in relation to [<sup>F13</sup>A].
- (2) The court may make an order under section 33 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

#### Textual Amendments

- F12** Words in s. 34(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 5(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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**F13** Word in s. 34(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 5(b); S.I. 2005/3175, art. 2(1), Sch. 1

**35 One former spouse [F14 or former civil partner] with no existing right to occupy. E+W**

- (1) This section applies if—
  - (a) one former spouse [F15 or former civil partner] is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;
  - (b) the other former spouse [F16 or former civil partner] is not so entitled; and
  - [F17](c) the dwelling-house—
    - (i) in the case of former spouses, was at any time their matrimonial home or was at any time intended by them to be their matrimonial home, or
    - (ii) in the case of former civil partners, was at any time their civil partnership home or was at any time intended by them to be their civil partnership home.]
- (2) The former spouse [F18 or former civil partner] not so entitled may apply to the court for an order under this section against the other former spouse [F18 or former civil partner] (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
  - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
  - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
  - (a) regulate the occupation of the dwelling-house by either or both of the parties;
  - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
  - (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;

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- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise;
  - (e) the length of time that has elapsed since the parties ceased to live together;
  - (f) the length of time that has elapsed since the marriage [<sup>F19</sup>or civil partnership] was dissolved or annulled; and
  - (g) the existence of any pending proceedings between the parties—
    - (i) for an order under section 23A or 24 of the <sup>M1</sup>Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.);
    - [<sup>F20</sup>(ia) for a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004;]
    - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the <sup>M2</sup>Children Act 1989 (orders for financial relief against parents); or
    - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and
  - (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses [<sup>F21</sup>or former civil partners]; and
  - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.
- (11) A former spouse [<sup>F22</sup>or former civil partner] who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a former spouse [<sup>F23</sup>or former civil partner] to apply for an order under section 33.

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- (13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- [<sup>F24</sup>(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
- (b) as if the respondent were A (the person entitled as mentioned in subsection (1) (a) of that section).]

#### Textual Amendments

- F14** Words in s. 35 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(10)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F15** Words in s. 35(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F16** Words in s. 35(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F17** S. 35(1)(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F18** Words in s. 35(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F19** Words in s. 35(6)(f) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F20** S. 35(6)(g)(ia) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(6)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F21** Words in s. 35(9)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F22** Words in s. 35(11) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(8)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F23** Words in s. 35(12) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(8)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F24** S. 35(13)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(9)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### Marginal Citations

- M1** 1973 c. 18.
- M2** 1989 c. 41.

### 36 One cohabitant or former cohabitant with no existing right to occupy. **E+W**

- (1) This section applies if—
- (a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;
- (b) the other cohabitant or former cohabitant is not so entitled; and
- (c) that dwelling-house is the home in which they [<sup>F25</sup>cohabit or a home in which they at any time cohabited or intended to cohabit].
- (2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—

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- (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
  - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
- (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
  - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
- (a) regulate the occupation of the dwelling-house by either or both of the parties;
  - (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise;
  - (e) the nature of the parties' relationship [<sup>F26</sup>and in particular the level of commitment involved in it];
  - (f) the length of time during which they have [<sup>F27</sup>cohabited];
  - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
  - (h) the length of time that has elapsed since the parties ceased to live together; and
  - (i) the existence of any pending proceedings between the parties—
    - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the <sup>M3</sup>Children Act 1989 (orders for financial relief against parents); or
    - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the matters mentioned in subsection (6)(a) to (d); and
  - (b) the questions mentioned in subsection (8).
- (8) The questions are—

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- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and
  - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties; and
  - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.
- (11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.
- (13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
- [<sup>F28</sup>(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and
  - (b) as if the respondent were A (the person entitled as mentioned in subsection (1) (a) of that section).]

#### Textual Amendments

- F25** Words in s. 36(1)(c) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(2)**; S.I. 2005/3196, **art. 2(e)**
- F26** Words in s. 36(6)(e) inserted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 2(2)**, 60; S.I. 2005/3196, **art. 2(a)**
- F27** Word in s. 36(6)(f) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(3)**; S.I. 2005/3196, **art. 2(c)**
- F28** S. 36(13)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 7**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### Marginal Citations

- M3** 1989 c. 41.

### 37 Neither spouse [<sup>F29</sup>or civil partner] entitled to occupy. **E+W**

- (1) This section applies if—
- (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but



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- (b) neither of them is entitled to remain in occupation—
  - (i) by virtue of a beneficial estate or interest or contract; or
  - (ii) by virtue of any enactment giving him the right to remain in occupation.

[<sup>F30</sup>(1A) This section also applies if—

- (a) one civil partner or former civil partner and the other civil partner or former civil partner occupy a dwelling-house which is or was the civil partnership home; but
- (b) neither of them is entitled to remain in occupation—
  - (i) by virtue of a beneficial estate or interest or contract; or
  - (ii) by virtue of any enactment giving him the right to remain in occupation.]

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may—

- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
- (b) regulate the occupation of the dwelling-house by either or both of the [<sup>F31</sup>parties];
- (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.

(5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

#### Textual Amendments

**F29** Words in s. 37 heading inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 8\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

**F30** S. 37(1A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 8\(1\)\(2\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

**F31** Word in s. 37(3)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 8\(1\)\(3\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

## 38 Neither cohabitant or former cohabitant entitled to occupy. **E+W**

(1) This section applies if—

- (a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they [<sup>F32</sup>cohabit or cohabited]; but
- (b) neither of them is entitled to remain in occupation—

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- (i) by virtue of a beneficial estate or interest or contract; or
  - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
- (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
  - (b) regulate the occupation of the dwelling-house by either or both of the parties;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) (“a subsection (3) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise; and
  - (e) the questions mentioned in subsection (5).
- (5) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
  - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

#### Textual Amendments

**F32** Words in s. 38(1)(a) substituted (5.12.2005) by [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), ss. 58(1), 60, [Sch. 10 para. 35](#); S.I. 2005/3196, [art. 2\(c\)](#)

### 39 Supplementary provisions. E+W

- (1) In this Part an “occupation order” means an order under section 33, 35, 36, 37 or 38.
- (2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.

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**Changes to legislation:** Family Law Act 1996, Cross Heading: Occupation orders is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

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- (3) If—
- (a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and
  - (b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,
- the court may make an order under that other section.
- (4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

**40 Additional provisions that may be included in certain occupation orders. E+W**

- (1) The court may on, or at any time after, making an occupation order under section 33, 35 or 36—
- (a) impose on either party obligations as to—
    - (i) the repair and maintenance of the dwelling-house; or
    - (ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;
  - (b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;
  - (c) grant either party possession or use of furniture or other contents of the dwelling-house;
  - (d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;
  - (e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.
- (2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including—
- (a) the financial needs and financial resources of the parties; and
  - (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.
- (3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

**41 Additional considerations if parties are cohabitants or former cohabitants. E+W**

F33 .....

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**Changes to legislation:** Family Law Act 1996, Cross Heading: Occupation orders is up to date with all changes known to be in force on or before 19 April 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) [View outstanding changes](#)

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### Textual Amendments

**F33** S. 41 repealed (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 2(1), 58(2), 60, **Sch. 11**; S.I. 2005/3196, **art. 2(a)(d)**

**Changes to legislation:**

Family Law Act 1996, Cross Heading: Occupation orders is up to date with all changes known to be in force on or before 19 April 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 63(2)(k) inserted by [2021 c. 17 s. 52\(2\)](#)