



# Matrimonial Homes and Property Act 1981

## 1981 CHAPTER 24

An Act to amend the Matrimonial Homes Act 1967, and to make further provision as to the rights of husbands and wives to possession or occupation of any matrimonial home or former matrimonial home, and as to orders for the sale of property under the Matrimonial Causes Act 1973. [2nd July 1981]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### RIGHTS OF OCCUPATION

##### **1 Dwelling house held by trustees**

- (1) In the Matrimonial Homes Act 1967 (in this Part of this Act referred to as " the Act of 1967 ") for the words " any estate or interest" in section 1(1) and for the words " an estate or interest " in section 2(1) (which refer in each case to the estate or interest entitling a spouse to occupy a dwelling house) there shall be substituted the words " a beneficial estate or interest ".
- (2) In section 1 of the Act of 1967 after subsection (5) (which relates to the satisfaction by a spouse having rights of occupation under the Act of liabilities of the other spouse) there shall be inserted the following subsection—

“(5A) Where a spouse is entitled under this section to occupy a dwelling house or part thereof by reason of an interest of the other spouse under a trust, all the provisions of subsection (5) above shall apply in relation to the trustees as they apply in relation to the other spouse.”

- (3) In section 2(3)(b) of the Act of 1967 for " (5) " there shall be substituted " (5A) ".
- (4) In section 2 of the Act of 1967, after subsection (1), there shall be inserted as subsection (1A)—
- “(1A) If, at any time when a spouse's rights of occupation are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust, then those rights shall be a charge also on the estate or interest of the trustees for the other spouse, having the like priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- In determining for purposes of this subsection whether there are any persons who are not, but could become, beneficiaries under the trust, there shall be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).”
- (5) In the provisions of the Act of 1967 mentioned in Schedule 1 to this Act there shall be made the amendments provided for by that Schedule, being amendments arising out of the insertion of section 2(1A) in that Act.

## 2 Dwelling house subject to mortgage

In the Act of 1967, after section 7, there shall be inserted the following section 7A, and subsection (1) of that section 7A shall be deemed always to have had effect:—

### “7A Dwelling house subject to mortgage.

- (1) In determining for the purposes of this Act whether a spouse or former spouse is entitled to occupy a dwelling house by virtue of an estate or interest there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling house under or by virtue of his mortgage, whether the mortgagee is in possession or not; but the other spouse shall not by virtue of the rights of occupation conferred by this Act have any larger right against the mortgagee to occupy the dwelling house than the one first mentioned has by virtue of his or her estate or interest and of any contract with the mortgagee, unless under section 2 of this Act those rights of occupation are a charge, affecting the mortgagee, on the estate or interest mortgaged.
- (2) Where a mortgagee of land which consists of or includes a dwelling house brings an action in any court for the enforcement of his security, a spouse who is not a party to the action and who is enabled by section 1(5) or (5A) of this Act to meet the mortgagor's liabilities under the mortgage, on applying to the court at any time before the action is finally disposed of in that court, shall be entitled to be made a party to the action if the court—
- (a) does not see special reason against it; and
  - (b) is satisfied that the applicant may be expected to make such payments or do such things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings or that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.

- (3) (a) Where a mortgagee of land which consists or substantially consists of a dwelling house brings an action for the enforcement of his security, and at the relevant time there is—
- (i) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or
  - (ii) in the case of registered land, a subsisting registration of a notice or caution entered pursuant to section 2(7) of this Act;
- notice of the action shall be served by the mortgagee on the person on whose behalf the land charge is registered or the notice or caution entered, if that person is not a party to the action.
- (b) For the purposes of paragraph (a) above, if there has been issued a certificate of the result of an official search made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within sub-paragraph (i) or (ii) of paragraph (a) above, and the action is commenced within the priority period, the relevant time is the date of that certificate; and in any other case the relevant time is the time when the action is commenced.

In this paragraph " priority period" means, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.

- (4) In this section—
- (a) "mortgage" includes a charge and " mortgagor " and " mortgagee " shall be construed accordingly;
  - (b) " mortgagor " and " mortgagee " includes any person deriving title under the original mortgagor or mortgagee."

### **3 Polygamous marriages**

At the end of section 1 of the Act of 1967 there shall be inserted the following subsection—

- “(10) It is hereby declared that this Act applies as between a husband and a wife notwithstanding that the marriage in question was entered into under a law which permits polygamy (whether or not either party to the marriage in question has for the time being any spouse additional to the other party).”

### **4 Registration of rights of occupation**

- (1) At the end of section 64 of the Land Registration Act 1925 there shall be inserted the following subsection—

- “(5) Subsection (1) above shall not require the production of the land certificate when a person applies for the registration of a notice by virtue of section 2(7) of the Matrimonial Homes Act 1967 (spouse's charge in respect of rights of occupation).”

- (2) In section 2 of the Act of 1967 after subsection (7) there shall be inserted the following subsection—

“(7A) A spouse's rights of occupation (whether or not constituting a charge) shall not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.”,

and in the said subsection (7) the words " or caution " shall be omitted, but this subsection shall not affect any caution duly lodged before the commencement of this Act as respects any estate or interest.

- (3) At the end of the said section 2 there shall be added the following subsection—

“(9) It is hereby declared that a charge under subsection (1) or (1A) above is not registrable by notice under subsection (7) above, or as a Class F land charge, unless it is a charge on a legal estate”.

- (4) After section 112A of the Land Registration Act 1925 there shall be inserted the following section—

**“112B Search on behalf of mortgagee for notice or caution for statutory rights of occupation.**

Where registered land which consists of or includes a dwelling house is subject to a registered charge, or to a mortgage which is protected by a notice or caution in accordance with section 106(3) of this Act, the proprietor of the registered charge, or as the case may be the mortgagee, may requisition an official search of the register to ascertain whether any notice or caution affecting that land has been registered under section 2(7) of the Matrimonial Homes Act 1967, and a certificate showing the result of that search.”

## 5 Minor amendments

- (1) In section 1(5) of the Act of 1967 (which provides that a spouse's occupation by virtue of that section shall for the purposes of the Rent Act 1977 be treated as possession by the other spouse) before the words " the Rent Act 1977" there shall be inserted the words " the Rent (Agriculture) Act 1976, and of ".
- (2) In section 2(8) of the Act of 1967 after the words " section 94 of that Act" there shall be inserted the words " of 1925 ".
- (3) At the end of section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976 (order restricting occupation of matrimonial home) there shall be inserted the following subsection—

“(4) In the determining for the purposes of this section whether two spouses are entitled to occupy a dwelling-house there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage, whether the mortgagee is in possession or not.

In this subsection—

- (a) " mortgage " includes a charge and " mortgagee " shall be construed accordingly ;

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- (b) " mortgagee" includes any person deriving title under the original mortgagee”.

*Protected tenancies etc.*

## **6 Transfer on termination of marriage etc.**

- (1) The Act of 1967 shall be amended as follows.
- (2) For section 7 substitute—  
“Schedule 2 to this Act shall have effect”.
- (3) At the end of the Act of 1967 insert the Schedule in Schedule 2 to this Act (which re-enacts section 7 with modifications).
- (4) The existing Schedule to the Act of 1967 shall be numbered Schedule 1.

## **PART II**

### **ORDERS FOR SALE OF PROPERTY**

## **7 Powers of court to order sale of property in matrimonial proceedings**

After section 24 of the Matrimonial Causes Act 1973 there shall be inserted the following section—

### **“24A Orders for sale of property**

- (1) Where the court makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.
- (2) Any order made under subsection (1) above may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include—
  - (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
  - (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.
- (3) Where an order is made under subsection (1) above on or after the grant of a decree of divorce or nullity of marriage, the order shall not take effect unless the decree has been made absolute.
- (4) Where an order is made under subsection (1) above, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

- (5) Where an order under subsection (1) above contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or re-marriage of that person.”

## **8 Amendments consequential on powers of court to order sale of property**

- (1) In section 25 of the Matrimonial Causes Act 1973 (which specifies the matters to which the court is to have regard in deciding how to exercise its powers under sections 23 and 24) in subsections (1), (2) and (3) for the words " or 24 " there shall be substituted the words " 24 or 24A, " and at the end of that section there shall be added the following subsection—

“(4) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under section 24A above in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under this section.”

- (2) In section 31 of the said Act of 1973 (which provides for the variation and discharge of certain orders for financial relief)—

(a) at the end of subsection (2) there shall be inserted the following paragraph—

“(f) any order made under section 24A(1) above for the sale of property”;

(b) in subsection (6) for the words "may be made by the person entitled to payments under the order" there shall be substituted the words " (and to any order made under section 24A(1) above which requires the proceeds of sale of property to be used for securing those payments) may be made by the person entitled to payments under the periodical payments order. "

- (3) In paragraph 11 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (which relates to the effect on an order for periodical payments of the stay of proceedings for divorce, judicial separation or nullity of marriage) after sub-paragraph (3) there shall be inserted the following sub-paragraph—

“(3A) Where any such order as is mentioned in paragraph (e) of section 23(1) of the Matrimonial Causes Act 1973, being an order made under section 23(1) or (2)(a) of that Act, ceases to have effect by virtue of sub-paragraph (2) or (3) above, any order made under section 24A(1) of that Act which requires the proceeds of sale of property to be used for securing periodical payments under the first mentioned order shall also cease to have effect.”

## **PART III**

### SUPPLEMENTAL

#### **9 Commencement**

This Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint, and different days may be appointed for different provisions of this Act.

#### **10 Short title, etc.**

- (1) This Act may be cited as the Matrimonial Homes and Property Act 1981.
- (2) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) This Act does not extend to Scotland or Northern Ireland.

## SCHEDULES

### SCHEDULE 1

#### AMENDMENTS OF ACT OF 1967 RELATED TO CHARGE ON ESTATE OR INTEREST OF TRUSTEES

- 1 In section 2 of the Act of 1967—
  - (a) in subsection (3)—
    - (i) after the words " the estate or interest of the other spouse " there shall be inserted the words " or of trustees for the other spouse "; and
    - (ii) after the words " deriving title under the other spouse", in paragraph (a) and in paragraph (b), there shall be inserted the words " or under the trustees ";
  - (b) in subsection (4)—
    - (i) for the words " the estate or interest of the other spouse " there shall be substituted the words " the estate or interest surrendered "; and
    - (ii) after the words "deriving title to the other estate or interest under the other spouse " there shall be inserted the words " or, as the case may be, under the trustees for the other spouse ";
  - (c) in subsection (5) after the words " the estate or interest of the other spouse " there shall be inserted the words " or of trustees for the other spouse ";
  - (d) in subsection (7) after the words " the legal estate by virtue of which a spouse is entitled to occupy a dwelling house " there shall be inserted the words " (including any legal estate held by trustees for that spouse) ";
  - (e) in subsection (8) after the words " the estate or interest of the other spouse " there shall be inserted the words " or of trustees for the other spouse ".
- 2 In section 3 of the Act of 1967 for the words "charge on the estate or interest of the other spouse in each of two or more dwelling houses " there shall be substituted the words " registrable charge in respect of each of two or more dwelling houses ".
- 3 In section 5(1) of the Act of 1967 for the words " the estate or interest of the other spouse " there shall be substituted the words " an estate ".
- 4 In section 6(3) of the Act of 1967 the words " of the other spouse " shall be omitted.



## SCHEDULE 2

### SCHEDULE TO BE INSERTED IN MATRIMONIAL HOMES ACT 1967

#### “SCHEDULE 2

#### TERMINATION OF MARRIAGE ETC.: DWELLING HOUSE SUBJECT TO RENT ACTS ETC.

##### PART I

- 1 (1) Where one spouse is entitled, either in his or her own right or jointly with the other spouse, to occupy a dwelling house by virtue of—
  - (a) a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977, or
  - (b) a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, or
  - (c) a secure tenancy within the meaning of section 28 of the Housing Act 1980, then, on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), the court by which the decree is granted may make an order under Part II below.
- (2) References in this Schedule to a spouse being entitled to occupy a dwelling house by virtue of a protected, statutory or secure tenancy apply whether that entitlement is in his or her own right, or jointly with the other spouse.

##### PART II

###### *Protected or secure tenancy*

- 2 (1) Where a spouse is entitled to occupy the dwelling house by virtue of a protected tenancy within the meaning of the Rent Act 1977, or a secure tenancy within the meaning of the Housing Act 1980, the court may by order direct that, as from such date as may be specified in the order, there shall, by virtue of the order and without further assurance, be transferred to, and vested in, the other spouse—
  - (a) the estate or interest which the spouse so entitled had in the dwelling house immediately before that date by virtue of the lease or agreement creating the tenancy and any assignment of that lease or agreement, with all rights, privileges and appurtenances attaching to that estate or interest but subject to all covenants, obligations, liabilities and incumbrances to which it is subject; and
  - (b) where the spouse so entitled is an assignee of such lease or agreement, the liability of that spouse under any covenant of indemnity by the assignee expressed or implied in the assignment of the lease or agreement to that spouse.
- (2) Where an order is made under this paragraph any liability or obligation to which the spouse so entitled is subject under any covenant having reference to the dwelling house in the lease or agreement, being a liability or obligation falling due to be

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discharged or performed on or after the date so specified, shall not be enforceable against that spouse.

- (3) Where the spouse so entitled is a successor within the meaning of Chapter II of Part I of the Housing Act 1980 his or her former spouse (or, in the case of judicial separation, his or her spouse) shall be deemed also to be a successor within the meaning of that Chapter.

*Statutory tenancy within the meaning of the Rent Act 1977*

- 3 (1) Where the spouse is entitled to occupy the dwelling house by virtue of a statutory tenancy within the meaning of the Rent Act 1977, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.
- (2) The question whether the provisions of paragraphs 1 to 3 or, as the case may be, paragraphs 5 to 7 of Schedule 1 to the Rent Act 1977 as to the succession by the surviving spouse of a deceased tenant, or by a member of the deceased tenant's family, to the right to retain possession are capable of having effect in the event of the death of the person deemed by an order under this paragraph to be the tenant or sole tenant under the statutory tenancy shall be determined according as those provisions have or have not already had effect in relation to the statutory tenancy.

*Statutory tenancy within the meaning of the Rent (Agriculture) Act 1976*

- 4 Where the spouse is entitled to occupy the dwelling house by virtue of a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy; and a spouse who is deemed as aforesaid to be the tenant under a statutory tenancy shall be (within the meaning of that Act) a statutory tenant in his own right, or a statutory tenant by succession, according as the other spouse was a statutory tenant in his own right or a statutory tenant by succession.

### PART III

*Ancillary jurisdiction*

- 5 Where the court makes an order under Part II of this Schedule it may by the order direct that both spouses shall be jointly and severally liable to discharge or perform any or all of the liabilities and obligations in respect of the dwelling house (whether arising under the tenancy or otherwise) which have at the date of the order fallen due to be discharged or performed by one only of the spouses or which, but for the direction, would before the date specified as the date on which the order is to take effect fall due to be discharged or performed by one only of them ; and where the court gives such a direction it may further direct that either spouse shall be liable to indemnify the other in whole or in part against any payment made or expenses incurred by the other in discharging or performing any such liability or obligation.

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*Date when order is to take effect*

- 6 In the case of a decree of divorce or nullity of marriage, the date specified in an order under Part II of this Schedule as the date on which the order is to take effect shall not be earlier than the date on which the decree is made absolute.

*Remarriage of either spouse*

- 7 If after the grant of a decree dissolving or annulling a marriage either spouse remarries, that spouse shall not be entitled to apply, by reference to the grant of that decree, for an order under Part II of this Schedule.

*Rules of court*

- 8 (1) Rules of court shall be made requiring the court before it makes an order under this Schedule to give the landlord of the dwelling house to which the order will relate an opportunity of being heard.
- (2) Rules of court may provide that an application for an order under this Schedule shall not, without the leave of the court by which the decree of divorce, nullity of marriage or judicial separation was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.
- (3) Rules of court may provide for the transfer of proceedings pending by virtue of this Schedule in the court which granted the decree of divorce, nullity of marriage or judicial separation as follows—
- (a) if the proceedings are pending in the High Court, for the transfer of the proceedings to a divorce county court;
  - (b) if the proceedings are pending in a divorce county court, for the transfer of the proceedings to the High Court or to some other divorce county court;
- and a court shall have jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of this sub-paragraph.
- (4) For the purposes of sub-paragraph (3) above—
- (a) any proceedings in the divorce registry shall be treated as pending in a divorce county court; and
  - (b) the power to provide for the transfer of proceedings to a divorce county court shall include power to provide for the transfer of proceedings to the divorce registry.

*Savings for sections 1 and 2 of this Act*

- 9 Where a spouse is entitled to occupy a dwelling house by virtue of a tenancy, this Schedule shall not affect the operation of sections 1 and 2 of this Act in relation to the other spouse's rights of occupation, and the court's power to make orders under this Schedule shall be in addition to the powers conferred by those sections.

*Interpretation*

- 10 (1) In this Schedule—
- "divorce county court" means a county court designated under section 1 of the Matrimonial Causes Act 1967;

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"divorce registry" means the principal registry of the Family Division of the High Court;

" landlord " includes any person from time to time deriving title under the original landlord and also includes, in relation to any dwelling house, any person other than the tenant who is, or but for Part VII of the Rent Act 1977 or Part II of the Rent (Agriculture) Act 1976 would be, entitled to possession of the dwelling house ;

" tenancy " includes sub-tenancy.

- (2) For the avoidance of doubt it is hereby declared that the reference in paragraph 7 above to remarriage includes a reference to a marriage which is by law void or voidable.”

### SCHEDULE 3

#### REPEALS

Chapter	Short Title	Extent of Repeal
1967 c. 75.	Matrimonial Homes Act 1967.	In section 2(7) the words " or caution "  In section 2(8) the words " or interest" (twice).  In section 4(1) the words " or interest" (three times).  In section 4(5) the words " or interest".  In section 5(2)(a) the words " or interest".
1968 c. 23.	Rent Act 1968.	In Schedule 15 the amendments of section 7 of the Matrimonial Homes Act 1967 (as saved by paragraph 30 of Schedule 24 to the Rent Act 1977).
1976 c. 80.	Rent (Agriculture) Act 1976.	In Schedule 8 paragraph 16.
1977 c. 42.	Rent Act 1977.	In Schedule 23 paragraph 41.
1980 c. 51.	Housing Act 1980.	In Schedule 25 paragraphs 15, 16 and 17.

The repeals in the Matrimonial Homes Act 1967 shall not affect any caution duly lodged before the commencement of this Act as respects any estate or interest.