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## SCHEDULES

PROSPECTIVE

### <sup>F1</sup>SCHEDULE 1

Section 9(6).

#### ARRANGEMENTS FOR THE FUTURE

##### Textual Amendments

**F1** Sch. 1 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(1), 139(4)

##### <sup>F1</sup> *The first exemption*

<sup>F1</sup>1 .....

##### <sup>F1</sup> *The second exemption*

<sup>F1</sup>2 .....

##### <sup>F1</sup> *The third exemption*

<sup>F1</sup>3 .....

##### <sup>F1</sup> *The fourth exemption*

<sup>F1</sup>4 .....

##### <sup>F1</sup> *Court orders and agreements*

<sup>F1</sup>5 .....

##### <sup>F1</sup> *Financial arrangements*

<sup>F1</sup>6 .....

##### <sup>F1</sup> *Negotiated agreements*

<sup>F1</sup>7 .....

##### <sup>F1</sup> *Declarations*

<sup>F1</sup>8 .....

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*F1 Interpretation*

F19 .....

PROSPECTIVE

**F2**SCHEDULE 2

Section 15.

FINANCIAL PROVISION

**Textual Amendments**

**F2** Sch. 2 repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1)**, 139(4)

*F2 Introductory*

F21 .....

*F2 The orders*

F22 .....

*F2 Financial provision: divorce and separation*

F23 .....

*F2 Financial provision: nullity of marriage*

F24 .....

*F2 Property adjustment orders: divorce and separation*

F25 .....

*F2 Property adjustment orders: nullity*

F26 .....

*F2 Pension sharing orders: divorce and nullity*

F26A .....

*F2 Period of secured and unsecured payments orders*

F27 .....

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*F2 Variations et cetera etc. following reconciliations*

F28 .....

PROSPECTIVE

<sup>F3</sup>SCHEDULE 3

Section 19(5).

STAY OF PROCEEDINGS

**Textual Amendments**

**F3** Sch. 3 repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. **18(1)**, 139(4)

*F3 Introductory*

F31 .....

*F3 Interpretation*

F32 .....

F33 .....

F34 .....

*F3 Duty to furnish particulars of concurrent proceedings*

F35 .....

*F3 Obligatory stays in divorce cases*

F36 .....

*F3 Discretionary stays*

F37 .....

*F3 Discharge of orders*

F38 .....

*F3 Ancillary matters*

F39 .....

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## SCHEDULE 4

Section 32.

### PROVISIONS SUPPLEMENTARY TO SECTIONS 30 AND 31

#### *Interpretation*

- 1 (1) In this Schedule—
- (a) any reference to a solicitor includes a reference to a licensed conveyancer or a recognised body, and
  - (b) any reference to a person’s solicitor includes a reference to a licensed conveyancer or recognised body acting for that person.
- (2) In sub-paragraph (1)—
- “licensed conveyancer” has the meaning given by section 11(2) of the <sup>M1</sup>Administration of Justice Act 1985;
  - “recognised body” means a body corporate for the time being recognised under section 9 (incorporated practices) or section 32 (provision of conveyancing by recognised bodies) of that Act.

#### **Marginal Citations**

**M1** 1985 c. 61.

#### *Restriction on registration where spouse entitled to more than one charge*

- 2 Where one spouse [<sup>F4</sup>or civil partner] is entitled by virtue of section 31 to a registrable charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse [<sup>F4</sup>or civil partner] is so entitled shall be registered under section 31(10) or under section 2 of the <sup>M2</sup>Land Charges Act 1972 at any one time, and if any of those charges is registered under either of those provisions the Chief Land Registrar, on being satisfied that any other of them is so registered, shall cancel the registration of the charge first registered.

#### **Textual Amendments**

**F4** Words in Sch. 4 para. 2 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### **Marginal Citations**

**M2** 1972 c. 61.

#### *Contract for sale of house affected by registered charge to include term requiring cancellation of registration before completion*

- 3 (1) Where one spouse [<sup>F5</sup>or civil partner] is entitled by virtue of section 31 to a charge on an estate in a dwelling-house and the charge is registered under section 31(10) or section 2 of the Land Charges Act 1972, it shall be a term of any contract for the sale

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of that estate whereby the vendor agrees to give vacant possession of the dwelling-house on completion of the contract that the vendor will before such completion procure the cancellation of the registration of the charge at his expense.

- (2) Sub-paragraph (1) shall not apply to any such contract made by a vendor who is entitled to sell the estate in the dwelling-house freed from any such charge.
- (3) If, on the completion of such a contract as is referred to in sub-paragraph (1), there is delivered to the purchaser or his solicitor an application by the spouse [F6 or civil partner] entitled to the charge for the cancellation of the registration of that charge, the term of the contract for which sub-paragraph (1) provides shall be deemed to have been performed.
- (4) This paragraph applies only if and so far as a contrary intention is not expressed in the contract.
- (5) This paragraph shall apply to a contract for exchange as it applies to a contract for sale.
- (6) This paragraph shall, with the necessary modifications, apply to a contract for the grant of a lease or underlease of a dwelling-house as it applies to a contract for the sale of an estate in a dwelling-house.

#### Textual Amendments

- F5** Words in Sch. 4 para. 3(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(3); S.I. 2005/3175, art. 2(1), Sch. 1
- F6** Words in Sch. 4 para. 3(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(3); S.I. 2005/3175, art. 2(1), Sch. 1

*Cancellation of registration after termination of marriage [F7 or civil partnership], etc.*

#### Textual Amendments

- F7** Words in Sch. 4 para. 4 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(8); S.I. 2005/3175, art. 2(1), Sch. 1

- 4 (1) Where a [F8 spouse's or civil partner's home rights] are a charge on an estate in the dwelling-house and the charge is registered under section 31(10) or under section 2 of the M3 Land Charges Act 1972, the Chief Land Registrar shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied—
- [F9(a) in the case of a marriage—
    - (i) by the production of a certificate or other sufficient evidence, that either spouse is dead,
    - (ii) by the production of an official copy of a decree or order of a court, that the marriage has been terminated otherwise than by death, or
    - (iii) by the production of an order of the court, that the spouse's home rights constituting the charge have been terminated by the order, and
  - (b) in the case of a civil partnership—
    - (i) by the production of a certificate or other sufficient evidence, that either civil partner is dead,

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- (ii) by the production of an official copy of an order or decree of a court, that the civil partnership has been terminated otherwise than by death, or
- (iii) by the production of an order of the court, that the civil partner's home rights constituting the charge have been terminated by the order.]

(2) Where—

- (a) the marriage [<sup>F10</sup>or civil partnership] in question has been terminated by the death of the spouse [<sup>F11</sup>or civil partner] entitled to an estate in the dwelling-house or otherwise than by death, and
- (b) an order affecting the charge of the spouse [<sup>F12</sup>or civil partner] not so entitled had been made under section 33(5),

then if, after the making of the order, registration of the charge was renewed or the charge registered in pursuance of sub-paragraph (3), the Chief Land Registrar shall not cancel the registration of the charge in accordance with sub-paragraph (1) unless he is also satisfied that the order has ceased to have effect.

(3) Where such an order has been made, then, for the purposes of sub-paragraph (2), the spouse [<sup>F13</sup>or civil partner] entitled to the charge affected by the order may—

- (a) if before the date of the order the charge was registered under section 31(10) or under section 2 of the Land Charges Act 1972, renew the registration of the charge, and
- (b) if before the said date the charge was not so registered, register the charge under section 31(10) or under section 2 of the Land Charges Act 1972.

(4) Renewal of the registration of a charge in pursuance of sub-paragraph (3) shall be effected in such manner as may be prescribed, and an application for such renewal or for registration of a charge in pursuance of that sub-paragraph shall contain such particulars of any order affecting the charge made under section 33(5) as may be prescribed.

(5) The renewal in pursuance of sub-paragraph (3) of the registration of a charge shall not affect the priority of the charge.

(6) In this paragraph “prescribed” means prescribed by rules made under section 16 of the Land Charges Act 1972 or [<sup>F14</sup>by land registration rules under the Land Registration Act 2002], as the circumstances of the case require.

#### Textual Amendments

- F8** Words in Sch. 4 para. 4(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F9** Sch. 4 para. 4(1)(a)(b) substituted (5.12.2005) for Sch. 4 para. 4(1)(a)-(c) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(5\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F10** Words in Sch. 4 para. 4(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(6\)\(a\)\(i\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F11** Words in Sch. 4 para. 4(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(6\)\(a\)\(ii\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F12** Words in Sch. 4 para. 4(2)(b) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 15\(6\)\(b\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

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- F13** Words in Sch. 4 para. 4(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F14** Words in Sch. 4 para. 4(6) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(3) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

#### Marginal Citations

- M3** 1972 c. 61.

### *Release of [F15]home rights]*

#### Textual Amendments

- F15** Words in Sch. 4 para. 5 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

- 5 (1) A [F16]spouse or civil partner entitled to home rights] may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.
- (2) Where a contract is made for the sale of an estate or interest in a dwelling-house, or for the grant of a lease or underlease of a dwelling-house, being (in either case) a dwelling-house affected by a charge registered under section 31(10) or under section 2 of the Land Charges Act 1972, then, without prejudice to sub-paragraph (1), the [F17]home rights] constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs—
- (a) the delivery to the purchaser or lessee, as the case may be, or his solicitor on completion of the contract of an application by the spouse [F18]or civil partner] entitled to the charge for the cancellation of the registration of the charge; or
  - (b) the lodging of such an application at Her Majesty's Land Registry.

#### Textual Amendments

- F16** Words in Sch. 4 para. 5(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(9)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F17** Words in Sch. 4 para. 5(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(10)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F18** Words in Sch. 4 para. 5(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 15(10)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

### *Postponement of priority of charge*

- 6 A spouse [F19]or civil partner] entitled by virtue of section 31 to a charge on an estate or interest may agree in writing that any other charge on, or interest in, that estate or interest shall rank in priority to the charge to which that spouse [F19]or civil partner] is so entitled.

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### Textual Amendments

- F19** Words in Sch. 4 para. 6 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 15(12); S.I. 2005/3175, art. 2(1), Sch. 1

## SCHEDULE 5

Section 47(11).

### POWERS OF HIGH COURT AND COUNTY COURT TO REMAND

#### Modifications etc. (not altering text)

- C1** Sch. 5 extended (1.10.1997) by 1989 c. 41, ss. 38A, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)  
 Sch. 5 extended (1.10.1997) by 1989 c. 41, ss. 44A, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

#### *Interpretation*

- 1 In this Schedule “the court” means the High Court or a county court and includes—
- (a) in relation to the High Court, a judge of that court, and
  - (b) in relation to a county court, a judge or district judge of that court.

#### *Remand in custody or on bail*

- 2 (1) Where a court has power to remand a person under section 47, the court may—
- (a) remand him in custody, that is to say, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or
  - (b) remand him on bail—
    - (i) by taking from him a recognizance (with or without sureties) conditioned as provided in sub-paragraph (3), or
    - (ii) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 4 and in the meantime committing the person to custody in accordance with paragraph (a).
- (2) Where a person is brought before the court after remand, the court may further remand him.
- (3) Where a person is remanded on bail under sub-paragraph (1), the court may direct that his recognizance be conditioned for his appearance—
- (a) before that court at the end of the period of remand, or
  - (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
- (4) Where a recognizance is conditioned for a person’s appearance in accordance with sub-paragraph (1)(b), the fixing of any time for him next to appear shall be deemed



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to be a remand; but nothing in this sub-paragraph or sub-paragraph (3) shall deprive the court of power at any subsequent hearing to remand him afresh.

- (5) Subject to paragraph 3, the court shall not remand a person under this paragraph for a period exceeding 8 clear days, except that—
- (a) if the court remands him on bail, it may remand him for a longer period if he and the other party consent, and
  - (b) if the court adjourns a case under section 48(1), the court may remand him for the period of the adjournment.
- (6) Where the court has power under this paragraph to remand a person in custody it may, if the remand is for a period not exceeding 3 clear days, commit him to the custody of a constable.

#### *Further remand*

- 3 (1) If the court is satisfied that any person who has been remanded under paragraph 2 is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he was remanded, the court may, in his absence, remand him for a further time; and paragraph 2(5) shall not apply.
- (2) Notwithstanding anything in paragraph 2(1), the power of the court under sub-paragraph (1) to remand a person on bail for a further time may be exercised by enlarging his recognizance and those of any sureties for him to a later time.
- (3) Where a person remanded on bail under paragraph 2 is bound to appear before the court at any time and the court has no power to remand him under sub-paragraph (1), the court may in his absence enlarge his recognizance and those of any sureties for him to a later time; and the enlargement of his recognizance shall be deemed to be a further remand.

#### *Postponement of taking of recognizance*

- 4 Where under paragraph 2(1)(b)(ii) the court fixes the amount in which the principal and his sureties, if any, are to be bound, the recognizance may thereafter be taken by such person as may be prescribed by rules of court, and the same consequences shall follow as if it had been entered into before the court.

## SCHEDULE 6

Section 52.

### AMENDMENTS OF CHILDREN ACT 1989

- 1 After section 38 of the <sup>M4</sup>Children Act 1989 insert—

#### **“38A Power to include exclusion requirement in interim care order.**

- (1) Where—
- (a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 31(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and
  - (b) the conditions mentioned in subsection (2) are satisfied,

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the court may include an exclusion requirement in the interim care order.

- (2) The conditions are—
  - (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and
  - (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
    - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
    - (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
  - (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.
- (5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.
- (7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.
- (8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.
- (9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.
- (10) If, while an interim care order containing an exclusion requirement is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

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### **38B Undertakings relating to interim care orders.**

- (1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) An undertaking given to a court under subsection (1)—
  - (a) shall be enforceable as if it were an order of the court, and
  - (b) shall cease to have effect if, while it is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.
- (4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.”

#### **Marginal Citations**

**M4** 1989 c. 41.

2 In section 39 of the <sup>M5</sup>Children Act 1989 (discharge and variation etc. of care orders and supervision orders) after subsection (3) insert—

“(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(3B) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

#### **Marginal Citations**

**M5** 1989 c. 41.

3 After section 44 of the Children Act 1989 insert—

#### **“44A Power to include exclusion requirement in emergency protection order.**

- (1) Where—

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- (a) on being satisfied as mentioned in section 44(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child, and
  - (b) the conditions mentioned in subsection (2) are satisfied,
- the court may include an exclusion requirement in the emergency protection order.
- (2) The conditions are—
- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
    - (i) in the case of an order made on the ground mentioned in section 44(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 44(1)(a)(i) or does not remain as mentioned in section 44(1)(a)(ii), or
    - (ii) in the case of an order made on the ground mentioned in paragraph (b) or (c) of section 44(1), the enquiries referred to in that paragraph will cease to be frustrated, and
  - (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
    - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
    - (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.
- (5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.
- (7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.
- (8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

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- (9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.
- (10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.

#### **44B Undertakings relating to emergency protection orders.**

- (1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) An undertaking given to a court under subsection (1)—
  - (a) shall be enforceable as if it were an order of the court, and
  - (b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.
- (4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 44A.”

4 In section 45 of the <sup>M6</sup>Children Act 1989 (duration of emergency protection orders and other supplemental provisions), insert after subsection (8)—

“(8A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(8B) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

#### **Marginal Citations**

**M6** 1989 c. 41.

5 In section 105(1) of the Children Act 1989 (interpretation), after the definition of “domestic premises”, insert—

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“dwelling-house” includes—

- (a) any building or part of a building which is occupied as a dwelling;
- (b) any caravan, house-boat or structure which is occupied as a dwelling;

and any yard, garden, garage or outhouse belonging to it and occupied with it.”

## SCHEDULE 7

Section 53.

### TRANSFER OF CERTAIN TENANCIES ON DIVORCE ETC. OR ON SEPARATION OF COHABITANTS

#### PART I

##### GENERAL

##### *Interpretation*

1 In this Schedule—

[<sup>F20</sup>“civil partner”, except in paragraph 2, includes (where the context requires) former civil partner;]

“cohabitant”, except in paragraph 3, includes (where the context requires) former cohabitant;

“the court” does not include a magistrates’ court,

“landlord” includes—

- (a) any person from time to time deriving title under the original landlord; and
- (b) in relation to any dwelling-house, any person other than the tenant who is, or (but for Part VII of the <sup>M7</sup>Rent Act 1977 or Part II of the <sup>M8</sup>Rent (Agriculture) Act 1976) would be, entitled to possession of the dwelling-house;

“Part II order” means an order under Part II of this Schedule;

“a relevant tenancy” means—

- (a) a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977;
- (b) a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976;
- (c) a secure tenancy within the meaning of section 79 of the <sup>M9</sup>Housing Act 1985; <sup>F21</sup> . . .
- (d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the <sup>M10</sup>Housing Act 1988; [<sup>F22</sup> or
- (e) an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996;

“spouse”, except in paragraph 2, includes (where the context requires) former spouse; and

“tenancy” includes sub-tenancy.]

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#### Textual Amendments

- F20** Sch. 7 para. 1: definition of "civil partner" inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 16\(2\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F21** Word in Sch. 7 para. 1(c) omitted (12.2.1997) by virtue of S.I. 1997/74, [art. 2](#), [Sch. para. 10\(b\)\(i\)](#)
- F22** Sch. 7 para. 1(e) and preceding word inserted (12.2.1997) by S.I. 1997/74, [art. 2](#), [Sch. para. 10\(b\)\(i\)](#)

#### Marginal Citations

- M7** 1977 c. 42.
- M8** 1976 c. 80.
- M9** 1985 c. 68.
- M10** 1988 c. 50.

#### *Cases in which the court may make an order*

- 2 (1) This paragraph applies if one spouse [<sup>F23</sup>or civil partner] is entitled, either in his own right or jointly with the other spouse [<sup>F23</sup>or civil partner], to occupy a dwelling-house by virtue of a relevant tenancy.
- [<sup>F24</sup>(2) The court may make a Part II order—
- (a) 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), or
  - (b) at any time when it has power to make a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004 with respect to the civil partnership.]

#### Textual Amendments

- F23** Words in [Sch. 7 para. 2\(1\)](#) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 16\(3\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F24** [Sch. 7 para. 2\(2\)](#) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 16\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

- 3 (1) This paragraph applies if one cohabitant is entitled, either in his own right or jointly with the other cohabitant, to occupy a dwelling-house by virtue of a relevant tenancy.
- (2) If the cohabitants cease [<sup>F25</sup>to cohabit], the court may make a Part II order.

#### Textual Amendments

- F25** Words in [Sch. 7 para. 3\(2\)](#) substituted (5.12.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), ss. 58(1), 60, [Sch. 10 para. 42\(2\)](#); S.I. 2005/3196, [art. 2\(c\)](#)

- 4 The court shall not make a Part II order unless the dwelling-house is or was—
- (a) in the case of spouses, a matrimonial home; <sup>F26</sup> . . .
  - [<sup>F27</sup>(aa) in the case of civil partners, a civil partnership home; or]
  - (b) in the case of cohabitants, a home in which they [<sup>F28</sup>cohabited].

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#### Textual Amendments

- F26** Word in Sch. 7 para. 4(a) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 261(4), 263, Sch. 9 para. 16(5), **Sch. 30**; S.I. 2005/3175, **art. 2(1)(6)**, Sch. 1
- F27** Sch. 7 para. 4(aa) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F28** Words in Sch. 7 para. 4(b) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 42(3)**; S.I. 2005/3196, **art. 2(c)**

#### *Matters to which the court must have regard*

- 5 In determining whether to exercise its powers under Part II of this Schedule and, if so, in what manner, the court shall have regard to all the circumstances of the case including—
- (a) the circumstances in which the tenancy was granted to either or both of the spouses [<sup>F29</sup>, civil partners] or cohabitants or, as the case requires, the circumstances in which either or both of them became tenant under the tenancy;
  - (b) the matters mentioned in section 33(6)(a), (b) and (c) and, where the parties are cohabitants and only one of them is entitled to occupy the dwelling-house by virtue of the relevant tenancy, the further matters mentioned in section 36(6)(e), (f), (g) and (h); and
  - (c) the suitability of the parties as tenants.

#### Textual Amendments

- F29** Words in Sch. 7 para. 5(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(6)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

## PART II

### ORDERS THAT MAY BE MADE

#### *References to entitlement to occupy*

- 6 References in this Part of this Schedule to a spouse [<sup>F30</sup>, a civil partner] or a cohabitant being entitled to occupy a dwelling-house by virtue of a relevant tenancy apply whether that entitlement is in his own right or jointly with the other spouse [<sup>F31</sup>, civil partner] or cohabitant.

#### Textual Amendments

- F30** Words in Sch. 7 para. 6 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(7)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F31** Words in Sch. 7 para. 6 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(7)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1



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*Protected, secure or assured tenancy or assured agricultural occupancy*

- 7 (1) If a spouse [<sup>F32</sup>, civil partner] or cohabitant is entitled to occupy the dwelling-house by virtue of a protected tenancy within the meaning of the <sup>M11</sup>Rent Act 1977, a secure tenancy within the meaning of the <sup>M12</sup>Housing Act 1985 [<sup>F33</sup>, an assured tenancy] or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988 [<sup>F34</sup> or an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996], 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 [<sup>F32</sup>, civil partner] or cohabitant—
- (a) the estate or interest which the spouse [<sup>F32</sup>, civil partner] or cohabitant 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 [<sup>F32</sup>, civil partner] or cohabitant so entitled is an assignee of such lease or agreement, the liability of that spouse [<sup>F32</sup>, civil partner] or cohabitant under any covenant of indemnity by the assignee express or implied in the assignment of the lease or agreement to that spouse [<sup>F32</sup>, civil partner] or cohabitant.
- (2) If an order is made under this paragraph, any liability or obligation to which the spouse [<sup>F32</sup>, civil partner] or cohabitant 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 discharged or performed on or after the date so specified, shall not be enforceable against that spouse [<sup>F32</sup>, civil partner] or cohabitant.
- [<sup>F35</sup>(3) If the spouse, civil partner or cohabitant so entitled is a successor within the meaning of Part 4 of the Housing Act 1985—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
  - (b) his former civil partner (or, if a separation order is in force, his civil partner),  
or
  - (c) his former cohabitant,
- is to be deemed also to be a successor within the meaning of that Part.
- (3A) If the spouse, civil partner or cohabitant so entitled is a successor within the meaning of section 132 of the Housing Act 1996—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
  - (b) his former civil partner (or, if a separation order is in force, his civil partner),  
or
  - (c) his former cohabitant,
- is to be deemed also to be a successor within the meaning of that section.
- (4) If the spouse, civil partner or cohabitant so entitled is for the purposes of section 17 of the Housing Act 1988 a successor in relation to the tenancy or occupancy—
- (a) his former spouse (or, in the case of judicial separation, his spouse),
  - (b) his former civil partner (or, if a separation order is in force, his civil partner),  
or
  - (c) his former cohabitant,

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is to be deemed to be a successor in relation to the tenancy or occupancy for the purposes of that section.]

- (5) If the transfer under sub-paragraph (1) is of an assured agricultural occupancy, then, for the purposes of Chapter III of Part I of the Housing Act 1988—
- (a) the agricultural worker condition is fulfilled with respect to the dwelling-house while the spouse [<sup>F36</sup>, civil partner] or cohabitant to whom the assured agricultural occupancy is transferred continues to be the occupier under that occupancy, and
  - (b) that condition is to be treated as so fulfilled by virtue of the same paragraph of Schedule 3 to the Housing Act 1988 as was applicable before the transfer.
- (6) <sup>F37</sup> .....

#### Textual Amendments

- F32** Words in Sch. 7 para. 7(1)(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(8); S.I. 2005/3175, art. 2(1), Sch. 1
- F33** Words in Sch. 7 para. 7(1) substituted (12.2.1997) by S.I. 1997/74, art. 2, Sch. para. 10(b)(ii)
- F34** Words in Sch. 7 para. 7(1) inserted (12.2.1997) by S.I. 1997/74, art. 2, Sch. para. 10(b)(ii)
- F35** Sch. 7 para. 7(3)(3A)(4) substituted (5.12.2005) for Sch. 7 para. 7(3)(4) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(9); S.I. 2005/3175, art. 2(1), Sch. 1
- F36** Words in Sch. 7 para. 7(5)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(10); S.I. 2005/3175, art. 2(1), Sch. 1
- F37** Sch. 7 para. 7(6) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 261(4), 263, Sch. 9 para. 16(11), Sch. 30; S.I. 2005/3175, art. 2(1)(6), Sch. 1

#### Marginal Citations

- M11** 1977 c. 42.  
**M12** 1985 c. 68.

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

- 8 (1) This paragraph applies if the spouse [<sup>F38</sup>, civil partner] or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the <sup>M13</sup>Rent Act 1977.
- (2) The court may by order direct that, as from the date specified in the order—
- (a) that spouse [<sup>F38</sup>, civil partner] or cohabitant is to cease to be entitled to occupy the dwelling-house; and
  - (b) the other spouse [<sup>F38</sup>, civil partner] or cohabitant is to be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.
- (3) 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 [<sup>F39</sup> or surviving civil partner] 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 is to be determined according as those provisions have or have not already had effect in relation to the statutory tenancy.

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#### Textual Amendments

- F38** Words in Sch. 7 para. 8(1)(2)(a)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(12); S.I. 2005/3175, art. 2(1), Sch. 1
- F39** Words in Sch. 7 para. 8(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(13); S.I. 2005/3175, art. 2(1), Sch. 1

#### Marginal Citations

- M13** 1977 c. 42.

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

- 9 (1) This paragraph applies if the spouse [<sup>F40</sup>, civil partner] or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the <sup>M14</sup>Rent (Agriculture) Act 1976.
- (2) The court may by order direct that, as from such date as may be specified in the order—
- (a) that spouse [<sup>F41</sup>, civil partner] or cohabitant is to cease to be entitled to occupy the dwelling-house; and
  - (b) the other spouse [<sup>F41</sup>, civil partner] or cohabitant is to be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.
- (3) A spouse [<sup>F42</sup>, civil partner] or cohabitant who is deemed under this paragraph to be the tenant under a statutory tenancy is (within the meaning of that Act) a statutory tenant in his own right, or a statutory tenant by succession, according as the other spouse [<sup>F42</sup>, civil partner] or cohabitant was a statutory tenant in his own right or a statutory tenant by succession.

#### Textual Amendments

- F40** Words in Sch. 7 para. 9(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(14); S.I. 2005/3175, art. 2(1), Sch. 1
- F41** Words in Sch. 7 para. 9(2)(a)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(14); S.I. 2005/3175, art. 2(1), Sch. 1
- F42** Words in Sch. 7 para. 9(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(14); S.I. 2005/3175, art. 2(1), Sch. 1

#### Marginal Citations

- M14** 1976 c. 80.

## PART III

### SUPPLEMENTARY PROVISIONS

#### *Compensation*

- 10 (1) If the court makes a Part II order, it may by the order direct the making of a payment by the spouse [<sup>F43</sup>, civil partner] or cohabitant to whom the tenancy is

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- transferred (“the transferee”) to the other spouse [<sup>F43</sup>, civil partner] or cohabitant (“the transferor”).
- (2) Without prejudice to that, the court may, on making an order by virtue of sub-paragraph (1) for the payment of a sum—
    - (a) direct that payment of that sum or any part of it is to be deferred until a specified date or until the occurrence of a specified event, or
    - (b) direct that that sum or any part of it is to be paid by instalments.
  - (3) Where an order has been made by virtue of sub-paragraph (1), the court may, on the application of the transferee or the transferor—
    - (a) exercise its powers under sub-paragraph (2), or
    - (b) vary any direction previously given under that sub-paragraph, at any time before the sum whose payment is required by the order is paid in full.
  - (4) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court shall have regard to all the circumstances including—
    - (a) the financial loss that would otherwise be suffered by the transferor as a result of the order;
    - (b) the financial needs and financial resources of the parties; and
    - (c) the financial obligations which the parties have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.
  - (5) The court shall not give any direction under sub-paragraph (2) unless it appears to it that immediate payment of the sum required by the order would cause the transferee financial hardship which is greater than any financial hardship that would be caused to the transferor if the direction were given.

#### Textual Amendments

**F43** Words in Sch. 7 para. 10(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, Sch. 9 para. 16(14); S.I. 2005/3175, art. 2(1), Sch. 1

#### Modifications etc. (not altering text)

**C2** Sch. 7 Pt. III para. 10 applied (1.10.1997) by 1984 c. 42, s. 22 (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

**C3** Sch. 7 para. 10 applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, Sch. 7 para. 13(3); S.I. 2005/3175, art. 2(1), Sch. 1

#### *Liabilities and obligations in respect of the dwelling-house*

- 11 (1) If the court makes a Part II order, it may by the order direct that both spouses [<sup>F44</sup>, civil partners] or cohabitants are to 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—
  - (a) have at the date of the order fallen due to be discharged or performed by one only of them; or
  - (b) 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.

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- (2) If the court gives such a direction, it may further direct that either spouse [<sup>F45</sup>, civil partner] or cohabitant is to 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.

#### Textual Amendments

- F44** Words in Sch. 7 para. 11(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(15)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F45** Words in Sch. 7 para. 11(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(16)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### Modifications etc. (not altering text)

- C4** Sch. 7 Pt. III para. 11 applied (1.10.1997) by 1984 c. 42, **s. 22** (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
- C5** Sch. 7 para. 11 applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, **Sch. 7 para. 13(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

*[<sup>F46</sup>Date when order made between spouses or civil partners takes effect]*

#### Textual Amendments

- F46** Sch. 7 para. 12: cross-heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(17)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

- [<sup>F47</sup>12 The date specified in a Part II order as the date on which the order is to take effect must not be earlier than—
- (a) in the case of a marriage in respect of which a decree of divorce or nullity has been granted, the date on which the decree is made absolute;
  - (b) in the case of a civil partnership in respect of which a dissolution or nullity order has been made, the date on which the order is made final.]

#### Textual Amendments

- F47** Sch. 7 para. 12 substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(17)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

*[<sup>F48</sup>Effect of remarriage or subsequent civil partnership]*

#### Textual Amendments

- F48** Sch. 7 para. 13: cross-heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(18)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

- [<sup>F49</sup>13 (1) If after the grant of a decree dissolving or annulling a marriage either spouse remarries or forms a civil partnership, that spouse is not entitled to apply, by reference to the grant of that decree, for a Part II order.

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- (2) If after the making of a dissolution or nullity order either civil partner forms a subsequent civil partnership or marries, that civil partner is not entitled to apply, by reference to the making of that order, for a Part II order.
- (3) In sub-paragraphs (1) and (2)—
- (a) the references to remarrying and marrying include references to cases where the marriage is by law void or voidable, and
  - (b) the references to forming a civil partnership include references to cases where the civil partnership is by law void or voidable.]

#### Textual Amendments

- F49** Sch. 7 para. 13 substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(18)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### *Rules of court*

- 14 (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 a Part II order by reference to an order or decree may not, without the leave of the court by which that order was made or decree was granted, be made after the expiration of such period from the order or grant as may be prescribed by the rules.

#### Modifications etc. (not altering text)

- C6** Sch. 7 Pt. III para. 14(1) applied (1.10.1997) by 1984 c. 42, **s. 22** (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
- C7** Sch. 7 para. 14(1) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, **Sch. 7 para. 13(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

#### *Saving for other provisions of Act*

- 15 (1) If a spouse [<sup>F50</sup>or civil partner] is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule does not affect the operation of sections 30 and 31 in relation to the other [<sup>F51</sup>spouse's or civil partner's home rights].
- (2) If a spouse [<sup>F52</sup>, civil partner] or cohabitant is entitled to occupy a dwelling-house by virtue of a tenancy, the court's powers to make orders under this Schedule are additional to those conferred by sections 33, 35 and 36.

#### Textual Amendments

- F50** Words in Sch. 7 para. 15(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(19)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1
- F51** Words in Sch. 7 para. 15(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 16(19)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

*Status: Point in time view as at 05/12/2005.*

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**F52** Words in Sch. 7 para. 15(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 16\(20\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

## SCHEDULE 8

Section 66(1).

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

#### AMENDMENTS CONNECTED WITH PART II

PROSPECTIVE

#### *The Wills Act 1837 (c. 26)*

**F53**<sub>1</sub> .....

##### **Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 18\(2\)\(e\)](#), 139(4)

PROSPECTIVE

#### *The Judicial Proceedings (Regulation of Reports) Act 1926 (c. 61)*

**F53**<sub>2</sub> .....

##### **Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 18\(2\)\(e\)](#), 139(4)

PROSPECTIVE

#### *The Maintenance Orders Act 1950 (c. 37)*

**F53**<sub>3</sub> .....

*Status: Point in time view as at 05/12/2005.*

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**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

*The Matrimonial Causes Act 1973 (c. 18)*

PROSPECTIVE

4 The 1973 Act is amended as follows.

PROSPECTIVE

**F53**<sub>5</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>6</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>7</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>8</sub> .....



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**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>9</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>10</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>11</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**<sub>11A</sub> .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

*Status: Point in time view as at 05/12/2005.*

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PROSPECTIVE

F53 12 .....

**Textual Amendments**  
**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(2\)\(e\), 139\(4\)](#)

PROSPECTIVE

F53 13 .....

**Textual Amendments**  
**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(2\)\(e\), 139\(4\)](#)

PROSPECTIVE

F53 14 .....

**Textual Amendments**  
**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(2\)\(e\), 139\(4\)](#)

PROSPECTIVE

F53 15 .....

**Textual Amendments**  
**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(2\)\(e\), 139\(4\)](#)

- 16 (1) Section 31 (variation etc. of orders) is amended as follows.
- (2) In subsection (2)—
- (a) after “following orders” insert “ under this Part of this Act ”;
  - (b) for paragraph (d) substitute—
    - “(d) an order for the payment of a lump sum in a case in which the payment is to be by instalments;”;
  - (c) in paragraph (dd), for “23(1)(c)” substitute “ 21(1)(c) ”;
  - (d) after paragraph (dd) insert—

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- “(de) any other order for the payment of a lump sum, if it is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;”;
- (e) for paragraph (e) substitute—
- “(e) any order under section 23A of a kind referred to in section 21(2)(b),(c) or (d) which is made on or after the making of a separation order;
- (ea) any order under section 23A which is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage;”
- [<sup>F54</sup>(f) after paragraph (f) there is inserted—
- “(“ a pension sharing order under section 24B which is made at a time when no divorce order has been made, and no separation order is in force, in relation to the marriage; ”
- (g) in paragraph (g), for “24B” substitute “24BB”.]
- (3) In subsection (4)—
- (a) for the words from “for a settlement” to “24(1)(c) or (d)”, substitute “referred to in subsection (2)(e)”; and
- (b) for paragraphs (a) and (b) substitute “ on an application for a divorce order in relation to the marriage ”.
- [<sup>F55</sup>(3A) In subsection (4A), after “paragraph” insert “(de), (ea), (fa) or”.]
- (4) After [<sup>F56</sup>subsection (4A) insert—
- [<sup>F57</sup>“(4AA)] No variation—
- (a) of a financial provision order made under section 22A above, other than an interim order, or
- (b) of a property adjustment order made under section 23A above, shall be made so as to take effect before the making of a divorce order or separation order in relation to the marriage, unless the court is satisfied that the circumstances of the case are exceptional, and that it would be just and reasonable for the variation to be so made.”
- [<sup>F58</sup>(4AB) No variation of a pension sharing order under section 24B above shall be made so as to take effect before the making of a divorce order in relation to the marriage.]
- [<sup>F59</sup>(4A) In subsection (4B), after “order” insert “under section 24BB above”.]
- (5) In subsection (5)—
- (a) insert, at the beginning, “Subject to subsections (7A) to (7F) below and without prejudice to any power exercisable by virtue of subsection (2)(d), (dd) or (e) above or otherwise than by virtue of this section,”; and
- (b) for “section 23”, in each place, substitute “ section 22A or 23 ”.
- (6) In subsection (7)(a)—
- (a) for “on or after” to “consider” substitute “ in favour of a party to a marriage, the court shall, if the marriage has been dissolved or annulled, consider ”; and

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- (b) after “sufficient” insert “ (in the light of any proposed exercise by the court, where the marriage has been dissolved, of its powers under subsection (7B) below) ”.

(7) After subsection (7), insert—

“(7A) Subsection (7B) below applies where, after the dissolution of a marriage, the court—

- (a) discharges a periodical payments order or secured periodical payments order made in favour of a party to the marriage; or
- (b) varies such an order so that payments under the order are required to be made or secured only for such further period as is determined by the court.

(7B) The court has power, in addition to any power it has apart from this subsection, to make supplemental provision consisting of any of—

- (a) an order for the payment of a lump sum in favour of a party to the marriage;
- (b) one or more property adjustment orders in favour of a party to the marriage;
- (c) a direction that the party in whose favour the original order discharged or varied was made is not entitled to make any further application for—
  - (i) a periodical payments or secured periodical payments order, or
  - (ii) an extension of the period to which the original order is limited by any variation made by the court.

(7C) An order for the payment of a lump sum made under subsection (7B) above may—

- (a) provide for the payment of that sum by instalments of such amount as may be specified in the order; and
- (b) require the payment of the instalments to be secured to the satisfaction of the court.

(7D) Subsections (7) and (8) of section 22A above apply where the court makes an order for the payment of a lump sum under subsection (7B) above as they apply where it makes such an order under section 22A above.

(7E) If under subsection (7B) above the court makes more than one property adjustment order in favour of the same party to the marriage, each of those orders must fall within a different paragraph of section 21(2) above.

(7F) Sections 24A and 30 above apply where the court makes a property adjustment order under subsection (7B) above as they apply where it makes such an order under section 23A above.”

[<sup>F60</sup>(8) After subsection (7F) insert—

- (“) Section 24B(3) above applies where the court makes a pension sharing order under subsection (7B) above as it applies where the court makes such an order under section 24B above. ”

(9) In subsection (7G)—

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- (a) for “Subsections (3) to (5) of section 24B” substitute “Section 24BA(5) to (7)”, and
- (b) for “that section” substitute “section 24B above”.]

**Textual Amendments**

- F54** Sch. 8 para. 16(2)(f) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(1)(5)**; S.I. 2000/1116, **art. 2(f)**
- F55** Sch. 8 para. 16(3A) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(1)(6)**; S.I. 2000/1116, **art. 2(f)**
- F56** Words in Sch. 8 para. 16(4) substituted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(7)**; S.I. 2000/1116, **art. 2(f)**
- F57** Sch. 8 para. 16(4AA) renumbered for 16(4B) (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(7)**; S.I. 2000/1116, **art. 2(f)**
- F58** Sch. 8 para. 16(4)(4AB) inserted (1.12.2000) by 1999 c. 30, s.84, **Sch. 12 Pt. I para. 66(7)**; S.I. 2000/1116, **art. 2(f)**
- F59** Sch. 8 para. 16(4A) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(8)**; S.I. 2000/1116, **art. 2(f)**
- F60** Sch. 8 para. 16(8)(9) inserted (1.12.2000) by 1999 c. 30, s. 84, **Sch. 12 Pt. I para. 66(9)**; S.I. 2000/1116, **art. 2(f)**

**Commencement Information**

- II** Sch. 8 para. 16 partly in force; Sch. 8 para. 16 not in force at Royal Assent see s. 67(3); Sch. 8 para. 16(5)(a)(6)(b)(7) in force at 1.11.1998 by S.I. 1998/2572, **art. 3**

PROSPECTIVE

<sup>F53</sup>16A .....

**Textual Amendments**

- F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by **Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4)**

PROSPECTIVE

<sup>F53</sup>17 .....

**Textual Amendments**

- F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by **Children and Families Act 2014 (c. 6), ss. 18(2)(e), 139(4)**

PROSPECTIVE

<sup>F53</sup>18 .....

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**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**19 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**20 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**21 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

**F53**22 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

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PROSPECTIVE

<sup>F53</sup>23 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

<sup>F53</sup>24 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

<sup>F53</sup>25 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

<sup>F53</sup>25A .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Domicile and Matrimonial Proceedings Act 1973 (c. 45)*

<sup>F53</sup>26 .....

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**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Inheritance (Provision for Family and Dependants) Act 1975 (c. 63)*

<sup>F53</sup>27 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)*

<sup>F53</sup>28 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Housing Act 1980 (c. 51)*

<sup>F53</sup>29 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)



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*The Supreme Court Act 1981 (c. 54)*

PROSPECTIVE

F53 30 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

F53 31 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

F53 32 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Finance Act 1985 (c. 54)*

F53 33 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

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PROSPECTIVE

*The Housing Act 1985 (c. 68)*

F53 34 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

PROSPECTIVE

*The Housing Associations Act 1985 (c. 69)*

F53 35 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

PROSPECTIVE

*The Agricultural Holdings Act 1986 (c. 5)*

F53 36 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

PROSPECTIVE

*The Family Law Act 1986 (c. 55)*

F53 37 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

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PROSPECTIVE

*The Landlord and Tenant Act 1987 (c. 31)*

<sup>F53</sup>38 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Legal Aid Act 1988 (c. 34)*

<sup>F53</sup>39 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Housing Act 1988 (c. 50)*

<sup>F53</sup>40 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

PROSPECTIVE

*The Children Act 1989 (c. 41)*

<sup>F53</sup>41 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e)**, 139(4)

*Status: Point in time view as at 05/12/2005.*

*Changes to legislation: Family Law Act 1996 is up to date with all changes known to be in force on or before 24 May 2023. 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)*

PROSPECTIVE

*The Local Government and Housing Act 1989 (c. 42)*

<sup>F53</sup>42 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

PROSPECTIVE

*Pensions Act 1995 (c. 26)*

<sup>F53</sup>43 .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

PROSPECTIVE

*[<sup>F61</sup> The Welfare Reform and Pensions Act 1999]*

**Textual Amendments**

**F61** Sch. 8 para. 43A and cross-heading immediately preceding it inserted (1.12.2000) by [1999 c. 30, s. 84, Sch. 12 Pt. I para. 66\(17\)](#); S.I. 2000/1116, **art. 2(f)**

<sup>F53</sup>43A .....

**Textual Amendments**

**F53** Sch. 8 Pt. I repealed (except for paras. 4, 16(1)(5)(a)(6)(b)(7)) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(e), 139(4)**

[<sup>F62</sup>PART II

AMENDMENTS CONNECTED WITH PART III]

.....

*Status: Point in time view as at 05/12/2005.*

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**Textual Amendments**

**F62** Pt. II repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.**

**PART III**

AMENDMENTS CONNECTED WITH PART IV

*The Land Registration Act 1925 (c. 21)*

45 **F63** .....

**Textual Amendments**

**F63** Sch. 8 para. 45 repealed (13.10.2003) by 2002 c. 9, ss. 135, 136(2), Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

*The Land Charges Act 1972 (c. 61)*

- 46 In section 1(6A) of the Land Charges Act 1972 (cases where county court has jurisdiction to vacate registration) in paragraph (d)—
- (a) after “section 1 of the Matrimonial Homes Act 1983” insert “ or section 33 of the Family Law Act 1996 ”; and
  - (b) for “that section” substitute “ either of those sections ”.
- 47 In section 2(7) of that Act (Class F land charge) for “Matrimonial Homes Act 1983” substitute “ Part IV of the Family Law Act 1996 ”.

*The Land Compensation Act 1973 (c. 26)*

- 48 (1) Section 29A of the Land Compensation Act 1973 (spouses having statutory rights of occupation) is amended as follows.
- (2) In subsection (1), for “rights of occupation (within the meaning of the Matrimonial Homes Act 1983)” substitute “ matrimonial home rights (within the meaning of Part IV of the Family Law Act 1996) ”.
- (3) **F64** .....

**Textual Amendments**

**F64** Sch. 8 para. 48(3) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(4), 263, **Sch. 30**; S.I. 2005/3175, **art. 2(6)**

*The Magistrates’ Courts Act 1980 (c. 43)*

- 49 In section 65(1) of the Magistrates’ Courts Act 1980 (meaning of family proceedings) after paragraph (o) insert—

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“(p) Part IV of the Family Law Act 1996;”.

*The Contempt of Court Act 1981 (c. 49)*

50 In Schedule 3 to the Contempt of Court Act 1981 (application of Magistrates’ Courts Act 1980 to civil contempt proceedings), in paragraph 3 for the words from ““or, having been arrested” onwards substitute—

“ “or, having been arrested under section 47 of the Family Law Act 1996 in connection with the matter of the complaint, is at large after being remanded under subsection (7)(b) or (10) of that section.””

*The Supreme Court Act 1981 (c. 54)*

51 In Schedule 1 to the Supreme Court Act 1981 (distribution of business in High Court), in paragraph 3 (Family Division)—

- (a) in paragraph (d), after “matrimonial proceedings” insert “ or proceedings under Part IV of the Family Law Act 1996 ”, and
- (b) in paragraph (f)(i), for “Domestic Violence and Matrimonial Proceedings Act 1976” substitute “ Part IV of the Family Law Act 1996 ”.

*The Matrimonial and Family Proceedings Act 1984 (c. 42)*

52 For section 22 of the Matrimonial and Family Proceedings Act 1984 substitute—

**“22 Powers of court in relation to certain tenancies of dwelling-houses.**

- (1) This section applies if—
  - (a) an application is made by a party to a marriage for an order for financial relief; and
  - (b) one of the parties is entitled, either in his own right or jointly with the other party, to occupy a dwelling-house situated in England or Wales by virtue of a tenancy which is a relevant tenancy within the meaning of Schedule 7 to the Family Law Act 1996 (certain statutory tenancies).
- (2) The court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if—
  - (a) a divorce order,
  - (b) a separation order, or
  - (c) a decree of nullity of marriage,
 had been made or granted in England and Wales in respect of the marriage.
- (3) The provisions of paragraphs 10, 11 and 14(1) in Part III of that Schedule apply in relation to any order under this section as they apply to any order under Part II of that Schedule.”

*The Housing Act 1985 (c. 68)*

53 (1) Section 85 of the Housing Act 1985 (extended discretion of court in certain proceedings for possession) is amended as follows.

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- (2) In subsection (5)—
- (a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”;<sup>F65</sup> . . .
  - (b) <sup>F66</sup> . . . . .

- (3) After subsection (5) insert—

“(5A) If proceedings are brought for possession of a dwelling-house which is let under a secure tenancy and—

- (a) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant or an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,
- (b) the former spouse, cohabitant or former cohabitant is then in occupation of the dwelling-house, and
- (c) the tenancy is terminated as a result of those proceedings,

the former spouse, cohabitant or former cohabitant shall, so long as he or she remains in occupation, have the same rights in relation to, or in connection with, any adjournment, stay, suspension or postponement in pursuance of this section as he or she would have if the rights conferred by the order referred to in paragraph (a) were not affected by the termination of the tenancy.”

**Textual Amendments**

- F65** Word preceding Sch. 8 para. 53(2)(b) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(4), 263, [Sch. 30](#); [S.I. 2005/3175](#), [art. 2\(6\)](#)
- F66** [Sch. 8 para. 53\(2\)\(b\)](#) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(4), 263, [Sch. 30](#); [S.I. 2005/3175](#), [art. 2\(6\)](#)

- 54 In section 99B of that Act (persons qualifying for compensation for improvements) in subsection (2) for paragraph (f) substitute—
- “(f) a spouse, former spouse, cohabitant or former cohabitant of the improving tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”
- 55 In section 101 of that Act (rent not to be increased on account of tenant’s improvements) in subsection (3) for paragraph (d) substitute—
- “(d) a spouse, former spouse, cohabitant or former cohabitant of the tenant to whom the tenancy has been transferred by an order made under Schedule 1 to the Matrimonial Homes Act 1983 or Schedule 7 to the Family Law Act 1996.”
- 56 In section 171B of that Act (extent of preserved right to buy: qualifying persons and dwelling-houses) in subsection (4)(b)(ii) after “Schedule 1 to the Matrimonial Homes Act 1983” insert “ or Schedule 7 to the Family Law Act 1996 ”.

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*The Insolvency Act 1986 (c. 45)*

- 57 (1) Section 336 of the Insolvency Act 1986 (rights of occupation etc. of bankrupt’s spouse) is amended as follows.
- (2) In subsection (1), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.
- (3) In subsection (2)—
- (a) for “rights of occupation under the Act of 1983” substitute “matrimonial home rights under the Act of 1996”, and
- (b) in paragraph (b), for “under section 1 of that Act” substitute “under section 33 of that Act”.
- (4) In subsection (4), for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.
- 58 (1) Section 337 of that Act is amended as follows.
- (2) In subsection (2), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”.
- (3) For subsection (3) substitute—
- “(3) The Act of 1996 has effect, with the necessary modifications, as if—
- (a) the rights conferred by paragraph (a) of subsection (2) were matrimonial home rights under that Act,
- (b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act, and
- (c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse.”
- (4) In subsections (4) and (5) for “section 1 of the Act of 1983” substitute “section 33 of the Act of 1996”.

*The Housing Act 1988 (c. 50)*

- 59 (1) Section 9 of the Housing Act 1988 (extended discretion of court in possession claims) is amended as follows.
- (2) In subsection (5)—
- (a) in paragraph (a), for “rights of occupation under the Matrimonial Homes Act 1983” substitute “matrimonial home rights under Part IV of the Family Law Act 1996”,<sup>F67</sup> . . .
- (b) <sup>F68</sup> . . . . .
- (3) After subsection (5) insert—
- “(5A) In any case where—
- (a) at a time when proceedings are brought for possession of a dwelling-house let on an assured tenancy—
- (i) an order is in force under section 35 of the Family Law Act 1996 conferring rights on the former spouse of the tenant, or



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- (ii) an order is in force under section 36 of that Act conferring rights on a cohabitant or former cohabitant (within the meaning of that Act) of the tenant,
- (b) that cohabitant, former cohabitant or former spouse is then in occupation of the dwelling-house, and
- (c) the assured tenancy is terminated as a result of those proceedings, the cohabitant, former cohabitant or former spouse shall have the same rights in relation to, or in connection with, any such adjournment as is referred to in subsection (1) above or any such stay, suspension or postponement as is referred to in subsection (2) above as he or she would have if the rights conferred by the order referred to in paragraph (a) above were not affected by the termination of the tenancy.”

#### Textual Amendments

- F67** Word preceding Sch. 8 para. 59(2)(b) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(4), 263, [Sch. 30](#); S.I. 2005/3175, [art. 2\(6\)](#)
- F68** Sch. 8 para. 59(2)(b) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(4), 263, [Sch. 30](#); S.I. 2005/3175, [art. 2\(6\)](#)

#### *The Children Act 1989 (c. 41)*

- 60 (1) In section 8(4) of the Children Act 1989 (meaning of “family proceedings” for purposes of that Act), omit paragraphs (c) and (f) and after paragraph (g) insert—
- “(h) the Family Law Act 1996.”
- (2) In Schedule 11 to that Act, in paragraph 6(a) (amendment of the <sup>M15</sup>Domestic Proceedings and Magistrates’ Courts Act 1978), for “sections 16(5)(c) and” substitute “section”.

#### Marginal Citations

- M15** 1978 c. 22.

#### *The Courts and Legal Services Act 1990 (c. 41)*

- <sup>F69</sup>61 .....

#### Textual Amendments

- F69** Sch. 8 para. 61 repealed (31.7.2000) by 1999 c. 22, s. 106, [Sch. 15 Pt. II](#) (with Sch. 14 para. 7(2), 36(9)); S.I. 2000/1920, [art. 2\(c\)](#)

*Status: Point in time view as at 05/12/2005.*

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SCHEDULE 9

Section 66(2).

MODIFICATIONS, SAVING AND TRANSITIONAL

PROSPECTIVE

*Transitional arrangements for those who have been living apart*

F70<sup>1</sup> .....

**Textual Amendments**

F70 Sch. 9 para. 1 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(f), 139(4)

*Modifications of enactments etc.*

PROSPECTIVE

F71<sup>2</sup> .....

**Textual Amendments**

F71 Sch. 9 para. 2 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(2)(f), 139(4)

- 3 If an Act or subordinate legislation—
  - (a) refers to an enactment repealed or amended by or under this Act, and
  - (b) was passed or made before the repeal or amendment came into force,
 the Lord Chancellor may by order make such consequential modifications of any provision contained in the Act or subordinate legislation as appears to him necessary or expedient in respect of the reference.

*Expressions used in paragraphs 2 and 3*

- 4 In paragraphs 2 and 3—
  - “decree” means a decree of divorce (whether a decree nisi or a decree which has been made absolute) or a decree of judicial separation;
  - “instrument” includes any deed, will or other instrument or document
  - “petition” means a petition for a decree of divorce or a petition for a decree of judicial separation; and
  - “subordinate legislation” has the same meaning as in the <sup>M16</sup>Interpretation Act 1978.

**Marginal Citations**

M16 1978 c. 30.

*Status: Point in time view as at 05/12/2005.*

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PROSPECTIVE

*Proceedings under way*

- 5 (1) Except for paragraph 6 of this Schedule, nothing in any provision of Part II, Part I of Schedule 8 or Schedule 10—
- (a) applies to, or affects—
    - (i) any decree granted before the coming into force of the provision;
    - (ii) any proceedings begun, by petition or otherwise, before that time; or
    - (iii) any decree granted in any such proceedings;
  - (b) affects the operation of—
    - (i) the 1973 Act,
    - (ii) any other enactment, or
    - (iii) any subordinate legislation,in relation to any such proceedings or decree or to any proceedings in connection with any such proceedings or decree; or
  - (c) without prejudice to paragraph (b), affects any transitional provision having effect under Schedule 1 to the 1973 Act.
- (2) In this paragraph, “subordinate legislation” has the same meaning as in the <sup>M17</sup>Interpretation Act 1978.

**Marginal Citations**

**M17** 1978 c. 30.

- 6 (1) Section 31 of the 1973 Act has effect as amended by this Act in relation to any order under Part II of the 1973 Act made after the coming into force of the amendments.
- (2) Subsections (7) to (7F) of that section also have effect as amended by this Act in relation to any order made before the coming into force of the amendments.

*Interpretation*

- 7 In paragraphs 8 to 15 “the 1983 Act” means the <sup>M18</sup>Matrimonial Homes Act 1983.

**Marginal Citations**

**M18** 1983 c. 19.

*Pending applications for orders relating to occupation and molestation*

- 8 (1) In this paragraph and paragraph 10 “the existing enactments” means—
- (a) the <sup>M19</sup>Domestic Violence and Matrimonial Proceedings Act 1976;
  - (b) sections 16 to 18 of the <sup>M20</sup>Domestic Proceedings and Magistrates’ Courts Act 1978; and
  - (c) sections 1 and 9 of the 1983 Act.

*Status: Point in time view as at 05/12/2005.*

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- (2) Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application for an order or injunction under any of the existing enactments which is pending immediately before the commencement of the repeal of that enactment.

**Marginal Citations**

**M19** 1976 c. 50.

**M20** 1978 c. 22.

*Pending applications under Schedule 1 to the Matrimonial Homes Act 1983*

- 9 Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application for an order under Schedule 1 to the 1983 Act which is pending immediately before the commencement of the repeal of that Schedule.

*Existing orders relating to occupation and molestation*

- 10 (1) In this paragraph “an existing order” means any order or injunction under any of the existing enactments which—
- (a) is in force immediately before the commencement of the repeal of that enactment; or
  - (b) was made or granted after that commencement in proceedings brought before that commencement.
- (2) Subject to sub-paragraphs (3) and (4), nothing in Part IV, Part III of Schedule 8 or Schedule 10—
- (a) prevents an existing order from remaining in force; or
  - (b) affects the enforcement of an existing order.
- (3) Nothing in Part IV, Part III of Schedule 8 or Schedule 10 affects any application to extend, vary or discharge an existing order, but the court may, if it thinks it just and reasonable to do so, treat the application as an application for an order under Part IV.
- (4) The making of an order under Part IV between parties with respect to whom an existing order is in force discharges the existing order.

*Matrimonial home rights*

- 11 (1) Any reference (however expressed) in any enactment, instrument or document (whether passed or made before or after the passing of this Act) to rights of occupation under, or within the meaning of, the 1983 Act shall be construed, so far as is required for continuing the effect of the instrument or document, as being or as the case requires including a reference to matrimonial home rights under, or within the meaning of, Part IV.
- (2) Any reference (however expressed) in this Act or in any other enactment, instrument or document (including any enactment amended by Schedule 8) to matrimonial home rights under, or within the meaning of, Part IV shall be construed as including, in relation to times, circumstances and purposes before the commencement of sections 30 to 32, a reference to rights of occupation under, or within the meaning of, the 1983 Act.

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- 12 (1) Any reference (however expressed) in any enactment, instrument or document (whether passed or made before or after the passing of this Act) to registration under section 2(8) of the 1983 Act shall, in relation to any time after the commencement of sections 30 to 32, be construed as being or as the case requires including a reference to registration under section 31(10).
- (2) Any reference (however expressed) in this Act or in any other enactment, instrument or document (including any enactment amended by Schedule 8) to registration under section 31(10) shall be construed as including a reference to—
- (a) registration under section 2(7) of the <sup>M21</sup>Matrimonial Homes Act 1967 or section 2(8) of the 1983 Act, and
  - (b) registration by caution duly lodged under section 2(7) of the Matrimonial Homes Act 1967 before 14th February 1983 (the date of the commencement of section 4(2) of the <sup>M22</sup>Matrimonial Homes and Property Act 1981).

**Marginal Citations**

**M21** 1967 c. 75.

**M22** 1981 c. 24.

- 13 In sections 30 and 31 and Schedule 4—
- (a) any reference to an order made under section 33 shall be construed as including a reference to an order made under section 1 of the 1983 Act, and
  - (b) any reference to an order made under section 33(5) shall be construed as including a reference to an order made under section 1 of the 1983 Act by virtue of section 2(4) of that Act.
- 14 Neither section 31(11) nor the repeal by the Matrimonial Homes and Property Act 1981 of the words “or caution” in section 2(7) of the Matrimonial Homes Act 1967, affects any caution duly lodged as respects any estate or interest before 14th February 1983.
- 15 Nothing in this Schedule is to be taken to prejudice the operation of sections 16 and 17 of the <sup>M23</sup>Interpretation Act 1978 (which relate to the effect of repeals).

**Marginal Citations**

**M23** 1978 c. 30.

SCHEDULE 10

Section 66(3).

REPEALS

**Extent Information**

**E1** Sch. 10 extends to England and Wales only except that the repeal of [Domestic and Appellate Proceedings \(Restriction of Publicity\) Act 1968 \(c. 63, SIF 39:1\)](#) s. 2(1)(b) extends also to Scotland see [s. 66\(4\)\(b\)](#).

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#### Commencement Information

- I2** Sch. 10 partly in force; Sch. 10 not in force at Royal Assent see s. 67(3); Sch. 10 in force for certain purposes at 21.3.1997 by S.I. 1997/1077, **art. 2**; Sch. 10 in force for certain purposes at 1.10.1997 by S.I. 1997/1892, **art. 3**

| Chapter     | Short title   | Extent of repeal  |
|-------------|---|---|
| 1968 c. 63. | The Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968. | Section 2(1)(b).  |
| 1973 c. 18. | The Matrimonial Causes Act 1973.  | Sections 1 to 7.<br><br>In section 8(1)(b), the words “or before the decree nisi is made absolute”.<br><br>Sections 9 and 10.<br><br>Sections 17 and 18.<br><br>Section 20.<br><br>Section 22.<br><br>In section 24A(3), the words “divorce or”.<br><br>In section 25(2)(h), the words “in the case of proceedings for divorce or nullity of marriage,”.<br><br>In section 28(1), the words from “in”, in the first place where it occurs, to “nullity of marriage” in the first place where those words occur.<br><br>In section 29(2), the words from “may begin” to “but”.<br><br>In section 30, the words “divorce” and “or judicial separation”.<br><br>In section 31, in subsection (2)(a), the words “order for maintenance pending suit and any”.<br><br>In section 41, in subsection (1) the words “divorce or” and “or a decree of judicial separation” and in subsection (2) the words “divorce or” and “or that the |

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|             |   |   |
|-------------|---|---|
|             |   | decree of judicial separation is not to be granted.”  |
|             |   | Section 49.   |
|             |   | In section 52(2)(b), the words “to orders for maintenance pending suit and”, “respectively” and “section 22 and”.   |
|             |   | In Schedule 1, paragraph 8.   |
| 1973 c. 45. | The Domicile and Matrimonial Proceedings Act 1973.          | In section 5, in subsection (1), the words “subject to section 6(3) and (4) of this Act” and, in paragraph (a), “divorce, judicial separation or” and subsection (2).<br><br>Section 6(3) and (4).<br><br>In Schedule 1, in paragraph 11, in sub-paragraph (2)(a), in sub-paragraph (2)(c), in the first place where they occur, and in sub-paragraph (3) (b) and (c), the words “in connection with the stayed proceedings”. |
| 1976 c. 50. | The Domestic Violence and Matrimonial Proceedings Act 1976. | The whole Act.  |
| 1978 c. 22. | The Domestic Proceedings and Magistrates’ Courts Act 1978.  | In section 1, paragraphs (c) and (d) and the word “or” preceding paragraph (c).<br><br>In section 7(1), the words “neither party having deserted the other”.<br><br>Sections 16 to 18.<br><br>Section 28(2).<br><br>Section 63(3).<br><br>In Schedule 2, paragraphs 38 and 53.  |
| 1980 c. 43. | The Magistrates’ Courts Act 1980.                           | In Schedule 7, paragraph 159.   |
| 1981 c. 54. | The Supreme Court Act 1981.                                 | In section 18(1)(d), the words “divorce or”.  |
| 1982 c. 53. | The Administration of Justice Act 1982.                     | Section 16.   |

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|             |  |  |
|-------------|--|--|
| 1983 c. 19. | The Matrimonial Homes Act 1983.                                    | The whole Act.   |
| 1984 c. 42. | The Matrimonial and Family Proceedings Act 1984.                   | Section 1.<br><br>In section 21(f) the words “except subsection (2)(e) and subsection (4)”.<br><br>In section 27, the definition of “secured periodical payments order”.<br><br>In Schedule 1, paragraph 10. |
| 1985 c. 61. | The Administration of Justice Act 1985.                            | In section 34(2), paragraph (f) and the word “and” immediately preceding it.<br><br>In Schedule 2, in paragraph 37, paragraph (e) and the word “and” immediately preceding it.                               |
| 1985 c. 71. | The Housing (Consequential Provisions) Act 1985.                   | In Schedule 2, paragraph 56.   |
| 1986 c. 53. | The Building Societies Act 1986.                                   | In Schedule 21, paragraph 9(f).  |
| 1986 c. 55. | The Family Law Act 1986.   | In Schedule 1, paragraph 27.   |
| 1988 c. 34. | The Legal Aid Act 1988.  | In section 16(9), the word “and” at the end of paragraph (a).  |
| 1988 c. 50. | The Housing Act 1988.  | In Schedule 17, paragraphs 33 and 34.  |
| 1989 c. 41. | The Children Act 1989.   | Section 8(4)(c) and (f).<br><br>In Schedule 11, paragraph 6(b).<br><br>In Schedule 13, paragraphs 33(1) and 65(1).   |
| 1990 c. 41. | The Courts and Legal Services Act 1990.                            | Section 58(10)(b) and (e).<br><br>In Schedule 18, paragraph 21.  |
| 1995 c. 42. | The Private International Law (Miscellaneous Provisions) Act 1995. | In the Schedule, paragraph 3.  |

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**Status:**

Point in time view as at 05/12/2005.

**Changes to legislation:**

Family Law Act 1996 is up to date with all changes known to be in force on or before 24 May 2023. 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.