



# Family Law Act 1996

## 1996 CHAPTER 27

An Act to make provision with respect to: divorce and separation; legal aid in connection with mediation in disputes relating to family matters; proceedings in cases where marriages have broken down; rights of occupation of certain domestic premises; prevention of molestation; the inclusion in certain orders under the Children Act 1989 of provisions about the occupation of a dwelling-house; the transfer of tenancies between spouses and persons who have lived together as husband and wife; and for connected purposes. [4th July 1996]

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

### Modifications etc. (not altering text)

- C1** Act modified (1.10.1997) by 1986 c. 45, s. 337(3) (as amended (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 58(3) (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

### Commencement Information

- I1** Act partly in force at Royal Assent see s. 67.

## PART I

### PRINCIPLES OF PARTS II AND III

#### 1 The general principles underlying Parts II and III.

The court and any person, in exercising functions under or in consequence of Parts II and III, shall have regard to the following general principles—

- (a) that the institution of marriage is to be supported;

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- (b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
- (c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end—
  - (i) with minimum distress to the parties and to the children affected;
  - (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and
  - (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
- (d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.

**PART II**

**DIVORCE AND SEPARATION**

**PROSPECTIVE**

*Court orders*

**F12 Divorce and separation.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

**F13 Circumstances in which orders are made.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

**F14 Conversion of separation order into divorce order.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

PROSPECTIVE

*Marital breakdown*

**F15 Marital breakdown.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

**F16 Statement of marital breakdown.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

VALID FROM 13/05/2014

*Reflection and consideration*

PROSPECTIVE

**F17 Period for reflection and consideration.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

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PROSPECTIVE

## **F18 Attendance at information meetings.**

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### **Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. **18(1)**, **139(4)**

## **9 Arrangements for the future.**

- (1) The requirements as to the parties' arrangements for the future are as follows.
- (2) One of the following must be produced to the court—
  - (a) a court order (made by consent or otherwise) dealing with their financial arrangements;
  - (b) a negotiated agreement as to their financial arrangements;
  - (c) a declaration by both parties that they have made their financial arrangements;
  - (d) a declaration by one of the parties (to which no objection has been notified to the court by the other party) that—
    - (i) he has no significant assets and does not intend to make an application for financial provision;
    - (ii) he believes that the other party has no significant assets and does not intend to make an application for financial provision; and
    - (iii) there are therefore no financial arrangements to be made.
- (3) If the parties—
  - (a) were married to each other in accordance with usages of a kind mentioned in section 26(1) of the <sup>M1</sup>Marriage Act 1949 (marriages which may be solemnized on authority of superintendent registrar's certificate), and
  - (b) are required to co-operate if the marriage is to be dissolved in accordance with those usages,

the court may, on the application of either party, direct that there must also be produced to the court a declaration by both parties that they have taken such steps as are required to dissolve the marriage in accordance with those usages.
- (4) A direction under subsection (3)—
  - (a) may be given only if the court is satisfied that in all the circumstances of the case it is just and reasonable to give it; and
  - (b) may be revoked by the court at any time.
- (5) The requirements of section 11 must have been satisfied.
- (6) Schedule 1 supplements the provisions of this section.
- (7) If the court is satisfied, on an application made by one of the parties after the end of the period for reflection and consideration, that the circumstances of the case are—

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- (a) those set out in paragraph 1 of Schedule 1,
- (b) those set out in paragraph 2 of that Schedule,
- (c) those set out in paragraph 3 of that Schedule, or
- (d) those set out in paragraph 4 of that Schedule,

it may make a divorce order or a separation order even though the requirements of subsection (2) have not been satisfied.

- (8) If the parties' arrangements for the future include a division of pension assets or rights under section 25B of the 1973 Act or section 10 of the <sup>M2</sup>Family Law (Scotland) Act 1985, any declaration under subsection (2) must be a statutory declaration.

**Marginal Citations**

**M1** 1949 c. 76.

**M2** 1985 c. 37.

PROSPECTIVE

*Orders preventing divorce*

**<sup>F1</sup>10** **Hardship: orders preventing divorce.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

PROSPECTIVE

*Welfare of children*

**<sup>F1</sup>11** **Welfare of children.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(1), 139(4)**

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PROSPECTIVE

*Supplementary*

**<sup>F1</sup>12 Rules about procedure**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

PROSPECTIVE

*Resolution of disputes*

**<sup>F1</sup>13 Directions with respect to mediation.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

**<sup>F1</sup>14 Adjournments.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

PROSPECTIVE

*Financial provision*

**<sup>F1</sup>15 Financial arrangements.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

**F2** **16** .....

**Textual Amendments**

**F2** S. 16 repealed (1.12.2000) by [1999 c. 30, s. 88, Sch. 13 Pt. II](#); [S.I. 2000/1116, art. 2\(g\)](#)

**F3** **17** .....

**Textual Amendments**

**F3** S. 17 repealed (6.4.2002) by [1999 c. 30, s. 88, Sch. 13 Pt. II](#); [S.I. 2001/4049, art. 2\(3\)\(c\)](#)

**F1** **18** **Grounds for financial provision orders in magistrates' courts.**

.....

**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

PROSPECTIVE

*Jurisdiction and commencement of proceedings*

**F1** **19** **Jurisdiction in relation to divorce and separation.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

**F1** **20** **Time when proceedings for divorce or separation begin.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

PROSPECTIVE

*Intestacy*

**F1 21 Intestacy: effect of separation.**

.....

**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

*Marriage support services*

**22 Funding for marriage support services.**

- (1) The Lord Chancellor may, with the approval of the Treasury, make grants in connection with—
  - (a) the provision of marriage support services;
  - (b) research into the causes of marital breakdown;
  - (c) research into ways of preventing marital breakdown.
- (2) Any grant under this section may be made subject to such conditions as the Lord Chancellor considers appropriate.
- (3) In exercising his power to make grants in connection with the provision of marriage support services, the Lord Chancellor is to have regard, in particular, to the desirability of services of that kind being available when they are first needed.

PROSPECTIVE

**F1 23 Provision of marriage counselling.**

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**Textual Amendments**

**F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)



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PROSPECTIVE

### Interpretation

#### **F124 Interpretation of Part II etc.**

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##### **Textual Amendments**

- F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

#### **F125 Connected proceedings.**

.....

##### **Textual Amendments**

- F1** Pt. II repealed (except for s. 22) (13.5.2014) by [Children and Families Act 2014 \(c. 6\), ss. 18\(1\), 139\(4\)](#)

## PART III

### LEGAL AID FOR MEDIATION IN FAMILY MATTERS

#### **26 Legal aid for mediation in family matters.**

- (1) In the <sup>M3</sup>Legal Aid Act 1988 insert, after section 13—

#### **“PART IIIA**

#### **MEDIATION**

##### **13A Scope of this Part.**

- (1) This Part applies to mediation in disputes relating to family matters.
- (2) “Family matters” means matters which are governed by English law and in relation to which any question has arisen, or may arise—
  - (a) under any provision of—
    - (i) the 1973 Act;
    - (ii) the <sup>M4</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
    - (iii) Parts I to V of the <sup>M5</sup>Children Act 1989;
    - (iv) Parts II and IV of the Family Law Act 1996; or

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- (v) any other enactment prescribed;
  - (b) under any prescribed jurisdiction of a prescribed court or tribunal; or
  - (c) under any prescribed rule of law.
- (3) Regulations may restrict this Part to mediation in disputes of any prescribed description.
- (4) The power to—
- (a) make regulations under subsection (2), or
  - (b) revoke any regulations made under subsection (3),
- is exercisable only with the consent of the Treasury.”
- (2) In section 2 of the 1988 Act, after subsection (3), insert—
- “(3A) “Mediation” means mediation to which Part IIIA of this Act applies; and includes steps taken by a mediator in any case—
- (a) in determining whether to embark on mediation;
  - (b) in preparing for mediation; and
  - (c) in making any assessment under that Part.”
- (3) In section 43 of the 1988 Act, after the definition of “legal representative” insert—
- “ “mediator” means a person with whom the Board contracts for the provision of mediation by any person.”

#### Marginal Citations

- M3 1988 c. 34.
- M4 1978 c. 22.
- M5 1989 c. 41.

## 27 Provision and availability of mediation.

After section 13A of the 1988 Act, insert—

### “13B Provision and availability of mediation.

- (1) The Board may secure the provision of mediation under this Part.
- (2) If mediation is provided under this Part, it is to be available to any person whose financial resources are such as, under regulations, make him eligible for mediation.
- (3) A person is not to be granted mediation in relation to any dispute unless mediation appears to the mediator suitable to the dispute and the parties and all the circumstances.
- (4) A grant of mediation under this Part may be amended, withdrawn or revoked.
- (5) The power conferred by subsection (1) shall be exercised in accordance with any directions given by the Lord Chancellor.
- (6) Any contract entered into by the Board for the provision of mediation under this Part must require the mediator to comply with a code of practice.

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- (7) The code must require the mediator to have arrangements designed to ensure—
  - (a) that parties participate in mediation only if willing and not influenced by fear of violence or other harm;
  - (b) that cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
  - (c) that the possibility of reconciliation is kept under review throughout mediation; and
  - (d) that each party is informed about the availability of independent legal advice.
- (8) Where there are one or more children of the family, the code must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider—
  - (a) the welfare, wishes and feelings of each child; and
  - (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.
- (9) A contract entered into by the Board for the provision of mediation under this Part must also include such other provision as the Lord Chancellor may direct the Board to include.
- (10) Directions under this section may apply generally to contracts, or to contracts of any description, entered into by the Board, but shall not be made with respect to any particular contract.”

## **28 Payment for mediation.**

- (1) After section 13B of the 1988 Act, insert—

### **“13C Payment for mediation under this Part.**

- (1) Except as provided by this section, the legally assisted person is not to be required to pay for mediation provided under this Part.
- (2) Subsection (3) applies if the financial resources of a legally assisted person are such as, under regulations, make him liable to make a contribution.
- (3) The legally assisted person is to pay to the Board in respect of the costs of providing the mediation, a contribution of such amount as is determined or fixed by or under the regulations.
- (4) If the total contribution made by a person in respect of any mediation exceeds the Board’s liability on his account, the excess shall be repaid to him.
- (5) Regulations may provide that, where—
  - (a) mediation under this Part is made available to a legally assisted person, and
  - (b) property is recovered or preserved for the legally assisted person as a result of the mediation,a sum equal to the Board’s liability on the legally assisted person’s account is, except so far as the regulations otherwise provide, to be a first charge on the property in favour of the Board.

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- (6) Regulations under subsection (5) may, in particular, make provision—
    - (a) as to circumstances in which property is to be taken to have been, or not to have been, recovered or preserved; and
    - (b) as to circumstances in which the recovery or preservation of property is to be taken to be, or not to be, the result of any mediation.
  - (7) For the purposes of subsection (5), the nature of the property and where it is situated is immaterial.
  - (8) The power to make regulations under section 34(2)(f) and (8) is exercisable in relation to any charge created under subsection (5) as it is exercisable in relation to the charge created by section 16.
  - (9) For the purposes of subsections (4) and (5), the Board’s liability on any person’s account in relation to any mediation is the aggregate amount of—
    - (a) the sums paid or payable by the Board on his account for the mediation, determined in accordance with subsection (10);
    - (b) any sums paid or payable in respect of its net liability on his account, determined in accordance with subsection (11) and the regulations—
      - (i) in respect of any proceedings, and
      - (ii) for any advice or assistance under Part III in connection with the proceedings or any matter to which the proceedings relate, so far as the proceedings relate to any matter to which the mediation relates; and
    - (c) any sums paid or payable in respect of its net liability on his account, determined in accordance with the regulations, for any other advice or assistance under Part III in connection with the mediation or any matter to which the mediation relates.
  - (10) For the purposes of subsection (9)(a), the sums paid or payable by the Board on any person’s account for any mediation are—
    - (a) sums determined under the contract between the Board and the mediator as payable by the Board on that person’s account for the mediation; or
    - (b) if the contract does not differentiate between such sums and sums payable on any other person’s account or for any other mediation, such part of the remuneration payable under the contract as may be specified in writing by the Board.
  - (11) For the purposes of subsection (9)(b), the Board’s net liability on any person’s account in relation to any proceedings is its net liability on his account under section 16(9)(a) and (b) in relation to the proceedings.”
- (2) In section 16(9), after paragraph (b) insert
- “and
- (c) if and to the extent that regulations so provide, any sums paid or payable in respect of the Board’s liability on the legally assisted person’s account in relation to any mediation in connection with any matter to which those proceedings relate.”
- (3) At the end of section 16, insert—

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“(11) For the purposes of subsection (9)(c) above, the Board’s liability on any person’s account in relation to any mediation is its liability on his account under section 13C(9)(a) and (c) above in relation to the mediation.”

## 29 Mediation and civil legal aid.

In section 15 of the 1988 Act, after subsection (3E) insert—

“(3F) A person shall not be granted representation for the purposes of proceedings relating to family matters, unless he has attended a meeting with a mediator—

- (a) to determine—
  - (i) whether mediation appears suitable to the dispute and the parties and all the circumstances, and
  - (ii) in particular, whether mediation could take place without either party being influenced by fear of violence or other harm; and
- (b) if mediation does appear suitable, to help the person applying for representation to decide whether instead to apply for mediation.

(3G) Subsection (3F) does not apply—

- (a) in relation to proceedings under—
  - (i) Part IV of the Family Law Act 1996;
  - (ii) section 37 of the <sup>M6</sup>Matrimonial Causes Act 1973;
  - (iii) Part IV or V of the <sup>M7</sup>Children Act 1989;
- (b) in relation to proceedings of any other description that may be prescribed; or
- (c) in such circumstances as may be prescribed.

(3H) So far as proceedings relate to family matters, the Board, in determining under subsection (3)(a) whether, in relation to the proceedings, it is reasonable that a person should be granted representation under this Part—

- (a) must have regard to whether and to what extent recourse to mediation would be a suitable alternative to taking the proceedings; and
- (b) must for that purpose have regard to the outcome of the meeting held under subsection (3F) and to any assessment made for the purposes of section 13B(3).”

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### Marginal Citations

**M6** 1973 c. 18.

**M7** 1989 c. 41.

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## PART IV

### FAMILY HOMES AND DOMESTIC VIOLENCE

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

**C2** Pt. 4 modified (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 82, 263, [Sch. 9 para. 25\(2\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

#### *Rights to occupy matrimonial home*

### **30 Rights concerning matrimonial home where one spouse has no estate, etc.**

- (1) This section applies if—
  - (a) one spouse is entitled to occupy a dwelling-house by virtue of—
    - (i) a beneficial estate or interest or contract; or
    - (ii) any enactment giving that spouse the right to remain in occupation; and
  - (b) the other spouse is not so entitled.
- (2) Subject to the provisions of this Part, the spouse not so entitled has the following rights (“matrimonial home rights”)—
  - (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse except with the leave of the court given by an order under section 33;
  - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.
- (3) If a spouse is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by that spouse in or towards satisfaction of any liability of the other spouse in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by the other spouse.
- (4) A spouse’s occupation by virtue of this section—
  - (a) is to be treated, for the purposes of the <sup>M8</sup>Rent (Agriculture) Act 1976 and the <sup>M9</sup>Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation by the other spouse as the other spouse’s residence, and
  - (b) if the spouse occupies the dwelling-house as that spouse’s only or principal home, is to be treated, for the purposes of the <sup>M10</sup>Housing Act 1985 [<sup>F4</sup>, Part I of the Housing Act 1988 and Chapter I of Part V of the Housing Act 1996], as occupation by the other spouse as the other spouse’s only or principal home.
- (5) If a spouse (“the first spouse”)—
  - (a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and
  - (b) makes any payment in or towards satisfaction of any liability of the other spouse (“the second spouse”) in respect of mortgage payments affecting the dwelling-house,

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the person to whom the payment is made may treat it as having been made by the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an interest in the dwelling-house by virtue of the payment.

- (6) If a spouse is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to the other spouse.
- (7) This section does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.
- (8) A spouse's matrimonial home rights continue—
  - (a) only so long as the marriage subsists, except to the extent that an order under section 33(5) otherwise provides; and
  - (b) only so long as the other spouse is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.
- (9) It is hereby declared that a spouse—
  - (a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but
  - (b) is not a spouse in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,is to be treated, only for the purpose of determining whether he has matrimonial home rights, as not being entitled to occupy the dwelling-house by virtue of that interest.

#### Textual Amendments

**F4** Words in s. 30(4)(b) substituted (12.2.1997) by S.I. 1997/74, art. 2, Sch. para. 10(a)

#### Marginal Citations

**M8** 1976 c. 80.

**M9** 1977 c. 42.

**M10** 1985 c. 68.

### 31 Effect of matrimonial home rights as charge on dwelling-house.

- (1) Subsections (2) and (3) apply if, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.
- (2) The other spouse's matrimonial home rights are a charge on the estate or interest.
- (3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—
  - (a) the date on which the spouse so entitled acquires the estate or interest;
  - (b) the date of the marriage; and
  - (c) 1st January 1968 (the commencement date of the <sup>M11</sup>Matrimonial Homes Act 1967).

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- (4) Subsections (5) and (6) apply if, at any time when a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust.
- (5) The rights are a charge also on the estate or interest of the trustees for the other spouse.
- (6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- (7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).
- (8) Even though a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—
  - (a) the death of the other spouse, or
  - (b) the termination (otherwise than by death) of the marriage,
 unless the court directs otherwise by an order made under section 33(5).
- (9) If—
  - (a) a spouse's matrimonial home rights are a charge on an estate or interest in the dwelling-house, and
  - (b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,
 the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title to the other estate or interest under the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.
- (10) If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the <sup>M12</sup>Land Registration Act 1925 or any enactment replaced by that Act—
  - (a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and
  - (b) a spouse's matrimonial home rights are not an overriding interest within the meaning of that Act affecting the dwelling-house even though the spouse is in actual occupation of the dwelling-house.
- (11) A spouse's matrimonial home rights (whether or not constituting a charge) do not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.
- (12) If—
  - (a) a spouse's matrimonial home rights are a charge on the estate of the other spouse or of trustees of the other spouse, and
  - (b) that estate is the subject of a mortgage,



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then if, after the date of the creation of the mortgage (“the first mortgage”), the charge is registered under section 2 of the <sup>M13</sup>Land Charges Act 1972, the charge is, for the purposes of section 94 of the <sup>M14</sup>Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.

- (13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

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

- C3** S. 31(10) restricted (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 2**; S.I. 1997/1892, **art. 3**  
S. 31(10) extended (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 4(3)(b)**; S.I. 1997/1892, **art. 3**

**Marginal Citations**

- M11** 1967 c. 75.  
**M12** 1925 c. 21.  
**M13** 1972 c. 61.  
**M14** 1925 c. 20.

**32 Further provisions relating to matrimonial home rights.**

Schedule 4 re-enacts with consequential amendments and minor modifications provisions of the <sup>M15</sup>Matrimonial Homes Act 1983.

**Marginal Citations**

- M15** 1983 c. 19.

*Occupation orders*

**33 Occupation orders where applicant has estate or interest etc. or has matrimonial home rights.**

(1) If—

- (a) a person (“the person entitled”)—
- (i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or
  - (ii) has matrimonial home rights in relation to a dwelling-house, and
- (b) the dwelling-house—
- (i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or
  - (ii) was at any time intended by the person entitled and any such other person to be their home,

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

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- (2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (3) An order under this section may—
  - (a) enforce the applicant’s entitlement to remain in occupation as against the other person (“the respondent”);
  - (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
  - (c) regulate the occupation of the dwelling-house by either or both parties;
  - (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
  - (e) if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights;
  - (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (g) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has matrimonial home rights.
- (5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this section made during the marriage may provide that those rights are not brought to an end by—
  - (a) the death of the other spouse; or
  - (b) the termination (otherwise than by death) of the marriage.
- (6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—
  - (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
  - (d) the conduct of the parties in relation to each other and otherwise.
- (7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—
  - (a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and
  - (b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.
- (8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.

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

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

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

### **35 One former spouse with no existing right to occupy.**

- (1) This section applies if—
  - (a) one former spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;
  - (b) the other former spouse is not so entitled; and
  - (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.
- (2) The former spouse not so entitled may apply to the court for an order under this section against the other former spouse ( “the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
  - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
  - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
  - (a) regulate the occupation of the dwelling-house by either or both of the parties;

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- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise;
  - (e) the length of time that has elapsed since the parties ceased to live together;
  - (f) the length of time that has elapsed since the marriage was dissolved or annulled; and
  - (g) the existence of any pending proceedings between the parties—
    - (i) for an order under section 23A or 24 of the <sup>M16</sup>Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.);
    - (ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the <sup>M17</sup>Children Act 1989 (orders for financial relief against parents); or
    - (iii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).
- (8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—
- (a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and
  - (b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the former spouses; and
  - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

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- (11) A former spouse who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a former spouse to apply for an order under section 33.
- (13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
  - (a) as if he were the spouse entitled to occupy the dwelling-house by virtue of that section; and
  - (b) as if the respondent were the other spouse.

#### Marginal Citations

**M16** 1973 c. 18.

**M17** 1989 c. 41.

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

- (1) This section applies if—
  - (a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;
  - (b) the other cohabitant or former cohabitant is not so entitled; and
  - (c) that dwelling-house is the home in which they live together as husband and wife or a home in which they at any time so lived together or intended so to live together.
- (2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant (“the respondent”).
- (3) If the applicant is in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and
  - (b) prohibiting the respondent from evicting or excluding the applicant during that period.
- (4) If the applicant is not in occupation, an order under this section must contain provision—
  - (a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and
  - (b) requiring the respondent to permit the exercise of that right.
- (5) An order under this section may also—
  - (a) regulate the occupation of the dwelling-house by either or both of the parties;

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- (b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise;
  - (e) the nature of the parties' relationship;
  - (f) the length of time during which they have lived together as husband and wife;
  - (g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;
  - (h) the length of time that has elapsed since the parties ceased to live together; and
  - (i) the existence of any pending proceedings between the parties—
    - (i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the <sup>M18</sup>Children Act 1989 (orders for financial relief against parents); or
    - (ii) relating to the legal or beneficial ownership of the dwelling-house.
- (7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) (“a subsection (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
- (a) the matters mentioned in subsection (6)(a) to (d); and
  - (b) the questions mentioned in subsection (8).
- (8) The questions are—
- (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and
  - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (9) An order under this section—
- (a) may not be made after the death of either of the parties; and
  - (b) ceases to have effect on the death of either of them.
- (10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

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- (11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.
- (12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.
- (13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—
  - (a) as if he were a spouse entitled to occupy the dwelling-house by virtue of that section; and
  - (b) as if the respondent were the other spouse.

#### Marginal Citations

**M18** 1989 c. 41.

### 37 Neither spouse entitled to occupy.

- (1) This section applies if—
  - (a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but
  - (b) neither of them is entitled to remain in occupation—
    - (i) by virtue of a beneficial estate or interest or contract; or
    - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
  - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
  - (b) regulate the occupation of the dwelling-house by either or both of the spouses;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.
- (5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

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### **38 Neither cohabitant or former cohabitant entitled to occupy.**

- (1) This section applies if—
  - (a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they live or lived together as husband and wife; but
  - (b) neither of them is entitled to remain in occupation—
    - (i) by virtue of a beneficial estate or interest or contract; or
    - (ii) by virtue of any enactment giving him the right to remain in occupation.
- (2) Either of the parties may apply to the court for an order against the other under this section.
- (3) An order under this section may—
  - (a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
  - (b) regulate the occupation of the dwelling-house by either or both of the parties;
  - (c) require the respondent to leave the dwelling-house or part of the dwelling-house; or
  - (d) exclude the respondent from a defined area in which the dwelling-house is included.
- (4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) (“a subsection (3) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including—
  - (a) the housing needs and housing resources of each of the parties and of any relevant child;
  - (b) the financial resources of each of the parties;
  - (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;
  - (d) the conduct of the parties in relation to each other and otherwise; and
  - (e) the questions mentioned in subsection (5).
- (5) The questions are—
  - (a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and
  - (b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.
- (6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

### **39 Supplementary provisions.**

- (1) In this Part an “occupation order” means an order under section 33, 35, 36, 37 or 38.



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- (2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.
- (3) If—
  - (a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and
  - (b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,the court may make an order under that other section.
- (4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

#### **40 Additional provisions that may be included in certain occupation orders.**

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

#### **41 Additional considerations if parties are cohabitants or former cohabitants.**

- (1) This section applies if the parties are cohabitants or former cohabitants.

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- (2) Where the court is required to consider the nature of the parties' relationship, it is to have regard to the fact that they have not given each other the commitment involved in marriage.

### *Non-molestation orders*

## **42 Non-molestation orders.**

- (1) In this Part a “non-molestation order” means an order containing either or both of the following provisions—
- (a) provision prohibiting a person ( “the respondent”) from molesting another person who is associated with the respondent;
  - (b) provision prohibiting the respondent from molesting a relevant child.
- (2) The court may make a non-molestation order—
- (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
  - (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
- (3) In subsection (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under section 44 of the <sup>M19</sup>Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
- (4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.
- (5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
- (a) of the applicant or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and
  - (b) of any relevant child.
- (6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
- (7) A non-molestation order may be made for a specified period or until further order.
- (8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

### **Marginal Citations**

M19 1989 c. 41.

**Status:** Point in time view as at 01/10/1997. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/07/2007

#### **[<sup>F5</sup>42A Offence of breaching non-molestation order**

- (1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.
- (2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.
- (6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in such proceedings.

“Enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).]

#### **Textual Amendments**

- F5** S. 42A inserted (1.7.2007) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), **ss. 1**, 60 (with transitional provisions in [Sch. 12 para. 1](#)); [S.I. 2007/1845](#), **art. 2(a)** (with [art. 3](#))

#### *Further provisions relating to occupation and non-molestation orders*

#### **43 Leave of court required for applications by children under sixteen.**

- (1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.
- (2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

#### **44 Evidence of agreement to marry.**

- (1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.

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- (2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—
- (a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or
  - (b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

#### **45 Ex parte orders.**

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
- (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
  - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
  - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
    - (i) where the court is a magistrates' court, in effecting service of proceedings; or
    - (ii) in any other case, in effecting substituted service.
- (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.
- (4) If, at a full hearing, the court makes an occupation order (“the full order”), then—
- (a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and
  - (b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.
- (5) In this section—
- “full hearing” means a hearing of which notice has been given to all the parties in accordance with rules of court;
- “initial order” means an occupation order made by virtue of subsection (1); and
- “relevant section” means section 33(10), 35(10), 36(10), 37(5) or 38(6).

#### **46 Undertakings.**

- (1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

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- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.
- (4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.
- (5) This section has effect without prejudice to the powers of the High Court and the county court apart from this section.

#### **47 Arrest for breach of order.**

- (1) In this section “a relevant order” means an occupation order or a non-molestation order.
- (2) If—
  - (a) the court makes a relevant order; and
  - (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.
- (3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it—
  - (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
  - (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.
- (4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.
- (5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.
- (6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.
- (7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—
  - (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
  - (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

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- (8) If the court has made a relevant order but—
- (a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or
  - (b) has attached that power only to certain provisions of the order,
- then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.
- (9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless—
- (a) the application is substantiated on oath; and
  - (b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.
- (10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.
- (11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 of the <sup>M20</sup>Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and a county court to remand a person by virtue of this section.
- (12) If a person remanded under this section is granted bail (whether in the High Court or a county court under Schedule 5 or in a magistrates' court under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

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

- C4** S. 47(7) extended (1.10.1997) by 1989 c. 41, ss. 38A, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)  
 S. 47(7) extended (1.10.1997) by 1989 c. 41, ss. 44A, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)
- C5** S. 47(11) extended (1.10.1997) by 1989 c. 41, ss. 38A, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)  
 S. 47(11) extended (1.10.1997) by 1989 c. 41, ss. 44A, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)
- C6** S. 47(12) extended (1.10.1997) by 1989 c. 41, ss. 38A, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)  
 S. 47(12) extended (1.10.1997) by 1989 c. 41, ss. 44A, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

#### Marginal Citations

**M20** 1980 c. 43.

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#### 48 Remand for medical examination and report.

- (1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.
- (3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.
- (4) If there is reason to suspect that a person who has been arrested—
  - (a) under section 47(6), or
  - (b) under a warrant issued on an application made under section 47(8),is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order under section 35 of the <sup>M21</sup>Mental Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section.

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

C7 S. 48 extended (1.10.1997) by 1989 c. 41, ss. 38A, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

S. 48 extended (1.10.1998) by 1989 c. 41, ss. 44A, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with Sch. 9 paras. 8-10); S.I. 1997/1892, art. 3)

##### Marginal Citations

M21 1983 c. 20.

#### 49 Variation and discharge of orders.

- (1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
  - (a) the respondent, or
  - (b) the person on whose application the order was made.
- (2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.
- (3) If a spouse's matrimonial home rights are a charge on the estate or interest of the other spouse or of trustees for the other spouse, an order under section 33 against the other spouse may also be varied or discharged by the court on an application by any person deriving title under the other spouse or under the trustees and affected by the charge.
- (4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) 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).

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### *Enforcement powers of magistrates' courts*

#### **50 Power of magistrates' court to suspend execution of committal order.**

- (1) If, under section 63(3) of the <sup>M22</sup>Magistrates' Courts Act 1980, a magistrates' court has power to commit a person to custody for breach of a relevant requirement, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.
- (2) In subsection (1) "a relevant requirement" means—
- (a) an occupation order or non-molestation order;
  - (b) an exclusion requirement included by virtue of section 38A of the <sup>M23</sup>Children Act 1989 in an interim care order made under section 38 of that Act; or
  - (c) an exclusion requirement included by virtue of section 44A of the Children Act 1989 in an emergency protection order under section 44 of that Act.

#### **Marginal Citations**

- M22** 1980 c. 43.  
**M23** 1989 c. 41.

#### **51 Power of magistrates' court to order hospital admission or guardianship.**

- (1) A magistrates' court has the same power to make a hospital order or guardianship order under section 37 of the <sup>M24</sup>Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of a relevant requirement as a magistrates' court has under those sections in the case of a person convicted of an offence punishable on summary conviction with imprisonment.
- (2) In subsection (1) "a relevant requirement" has the meaning given by section 50(2).

#### **Marginal Citations**

- M24** 1983 c. 20.

### *Interim care orders and emergency protection orders*

#### **52 Amendments of Children Act 1989.**

Schedule 6 makes amendments of the provisions of the Children Act 1989 relating to interim care orders and emergency protection orders.

### *Transfer of tenancies*

#### **53 Transfer of certain tenancies.**

Schedule 7 makes provision in relation to the transfer of certain tenancies on divorce etc. or on separation of cohabitants.



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### *Dwelling-house subject to mortgage*

#### **54 Dwelling-house subject to mortgage.**

- (1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.
- (2) Subsection (1) applies whether or not the mortgagee is in possession.
- (3) Where a person (“A”) is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of—
  - (a) any matrimonial home rights conferred by section 30, or
  - (b) any rights conferred by an order under section 35 or 36,have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.
- (4) Subsection (3) does not apply, in the case of matrimonial home rights, if under section 31 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.
- (5) In this section “connected person”, in relation to any person, means that person’s spouse, former spouse, cohabitant or former cohabitant.

#### **55 Actions by mortgagees: joining connected persons as parties.**

- (1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.
- (2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).
- (3) The circumstances are that—
  - (a) the connected person is enabled by section 30(3) or (6) (or by section 30(3) or (6) as applied by section 35(13) or 36(13)), to meet the mortgagor’s liabilities under the mortgage;
  - (b) he has applied to the court before the action is finally disposed of in that court; and
  - (c) the court sees no special reason against his being made a party to the action and is satisfied—
    - (i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor’s liabilities or obligations as might affect the outcome of the proceedings; or
    - (ii) that the expectation of it should be considered under section 36 of the <sup>M25</sup>Administration of Justice Act 1970.
- (4) In this section “connected person” has the same meaning as in section 54.

#### **Marginal Citations**

**M25** 1970 c. 31.

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## 56 Actions by mortgagees: service of notice on certain persons.

- (1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is—
- (a) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or
  - (b) in the case of registered land, a subsisting registration of—
    - (i) a notice under section 31(10);
    - (ii) a notice under section 2(8) of the <sup>M26</sup>Matrimonial Homes Act 1983; or
    - (iii) a notice or caution under section 2(7) of the <sup>M27</sup>Matrimonial Homes Act 1967.
- (2) If the person on whose behalf—
- (a) the land charge is registered, or
  - (b) the notice or caution is entered,
- is not a party to the action, the mortgagee must serve notice of the action on him.
- (3) If—
- (a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (1) (a) or (b),
  - (b) a certificate of the result of the search has been issued, and
  - (c) the action is commenced within the priority period,
- the relevant time is the date of the certificate.
- (4) In any other case the relevant time is the time when the action is commenced.
- (5) The priority period is, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the <sup>M28</sup>Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.

### Marginal Citations

**M26** 1983 c. 19.

**M27** 1967 c. 75.

**M28** 1972 c. 61.

*Jurisdiction and procedure etc.*

## 57 Jurisdiction of courts.

- (1) For the purposes of this Part “the court” means the High Court, a county court or a magistrates’ court.
- (2) Subsection (1) is subject to the provision made by or under the following provisions of this section, to section 59 and to any express provision as to the jurisdiction of any court made by any other provision of this Part.

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- (3) The Lord Chancellor may by order specify proceedings under this Part which may only be commenced in—
  - (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- (4) The Lord Chancellor may by order specify circumstances in which specified proceedings under this Part may only be commenced in—
  - (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- (5) The Lord Chancellor may by order provide that in specified circumstances the whole, or any specified part of any specified proceedings under this Part is to be transferred to—
  - (a) a specified level of court;
  - (b) a court which falls within a specified class of court; or
  - (c) a particular court determined in accordance with, or specified in, the order.
- (6) An order under subsection (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.
- (7) An order under subsection (5) may make such provision as the Lord Chancellor thinks appropriate for excluding specified proceedings from the operation of section 38 or 39 of the <sup>M29</sup>Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings) or any other enactment which would otherwise govern the transfer of those proceedings, or any part of them.
- (8) For the purposes of subsections (3), (4) and (5), there are three levels of court—
  - (a) the High Court;
  - (b) any county court; and
  - (c) any magistrates' court.
- (9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for specified purposes of this Part, or of any provision made under this Part.
- (10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.
- (11) In this section “specified” means specified by an order under this section.

**Marginal Citations**

M29 1984 c. 42.

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## 58 Contempt proceedings.

The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised by the relevant judicial authority.

## 59 Magistrates' courts.

- (1) A magistrates' court shall not be competent to entertain any application, or make any order, involving any disputed question as to a party's entitlement to occupy any property by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, unless it is unnecessary to determine the question in order to deal with the application or make the order.
- (2) A magistrates' court may decline jurisdiction in any proceedings under this Part if it considers that the case can more conveniently be dealt with by another court.
- (3) The powers of a magistrates' court under section 63(2) of the <sup>M30</sup>Magistrates' Courts Act 1980 to suspend or rescind orders shall not apply in relation to any order made under this Part.

### Marginal Citations

M30 1980 c. 43.

PROSPECTIVE

## 60 Provision for third parties to act on behalf of victims of domestic violence.

- (1) Rules of court may provide for a prescribed person, or any person in a prescribed category, ( "a representative") to act on behalf of another in relation to proceedings to which this Part applies.
- (2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.
- (3) Rules made under this section may prescribe—
  - (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
  - (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.
- (4) Any rules made under this section may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.
- (5) Any such rules may be replaced by further rules made under this section.

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## 61 Appeals.

- (1) An appeal shall lie to the High Court against—
  - (a) the making by a magistrates' court of any order under this Part, or
  - (b) any refusal by a magistrates' court to make such an order,but no appeal shall lie against any exercise by a magistrates' court of the power conferred by section 59(2).
- (2) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (3) Where an order is made under subsection (2), the High Court may also make such incidental or consequential orders as appear to it to be just.
- (4) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—
  - (a) of the enforcement of the order, and
  - (b) of any power to vary, revive or discharge orders,be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.
- (5) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under section 57(5).
- (6) Except to the extent provided for in any order made under subsection (5), no appeal may be made against any decision of a kind mentioned in that subsection.

### *General*

## 62 Meaning of “cohabitants”, “relevant child” and “associated persons”.

- (1) For the purposes of this Part—
  - (a) “cohabitants” are a man and a woman who, although not married to each other, are living together as husband and wife; and
  - (b) “former cohabitants” is to be read accordingly, but does not include cohabitants who have subsequently married each other.
- (2) In this Part, “relevant child”, in relation to any proceedings under this Part, means—
  - (a) any child who is living with or might reasonably be expected to live with either party to the proceedings;
  - (b) any child in relation to whom an order under the <sup>M31</sup>Adoption Act 1976 or the <sup>M32</sup>Children Act 1989 is in question in the proceedings; and
  - (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Part, a person is associated with another person if—
  - (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

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- (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to any child, they are both persons falling within subsection (4); or
  - (g) they are parties to the same family proceedings (other than proceedings under this Part).
- (4) A person falls within this subsection in relation to a child if—
- (a) he is a parent of the child; or
  - (b) he has or has had parental responsibility for the child.
- (5) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if—
- (a) one is a natural parent of the child or a parent of such a natural parent; and
  - (b) the other is the child or any person—
    - (i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

#### Marginal Citations

**M31** 1976 c. 36.

**M32** 1989 c. 41.

## 63 Interpretation of Part IV.

(1) In this Part—

“adoption order” has the meaning given by section 72(1) of the <sup>M33</sup>Adoption Act 1976;

“associated”, in relation to a person, is to be read with section 62(3) to (6);

“child” means a person under the age of eighteen years;

“cohabitant” and “former cohabitant” have the meaning given by section 62(1);

“the court” is to be read with section 57;

“development” means physical, intellectual, emotional, social or behavioural development;

“dwelling-house” includes (subject to subsection (4))—

- (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;

“family proceedings” means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children;
- or

- (b) under the enactments mentioned in subsection (2);

“harm”—

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- (a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and
- (b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

“ill-treatment” includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

“matrimonial home rights” has the meaning given by section 30;

“mortgage”, “mortgagor” and “mortgagee” have the same meaning as in the <sup>M34</sup>Law of Property Act 1925;

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by section 42(1);

“occupation order” has the meaning given by section 39;

“parental responsibility” has the same meaning as in the <sup>M35</sup>Children Act 1989;

“relative”, in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse or former spouse, or
- (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person’s spouse or former spouse,

and includes, in relation to a person who is living or has lived with another person as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other;

“relevant child”, in relation to any proceedings under this Part, has the meaning given by section 62(2);

“the relevant judicial authority”, in relation to any order under this Part, means—

- (a) where the order was made by the High Court, a judge of that court;
- (b) where the order was made by a county court, a judge or district judge of that or any other county court; or
- (c) where the order was made by a magistrates’ court, any magistrates’ court.

(2) The enactments referred to in the definition of “family proceedings” are—

- (a) Part II;
- (b) this Part;
- (c) the <sup>M36</sup>Matrimonial Causes Act 1973;
- (d) the <sup>M37</sup>Adoption Act 1976;
- (e) the <sup>M38</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
- (f) Part III of the <sup>M39</sup>Matrimonial and Family Proceedings Act 1984;
- (g) Parts I, II and IV of the <sup>M40</sup>Children Act 1989;
- (h) section 30 of the <sup>M41</sup>Human Fertilisation and Embryology Act 1990.

(3) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

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- (4) For the purposes of sections 31, 32, 53 and 54 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of “dwelling-house” were omitted.
- (5) It is hereby declared that this Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

#### Marginal Citations

- M33** 1976 c. 36.  
**M34** 1925 c. 20.  
**M35** 1989 c. 41.  
**M36** 1973 c. 18.  
**M37** 1976 c. 36.  
**M38** 1978 c. 22.  
**M39** 1984 c. 42.  
**M40** 1989 c. 41.  
**M41** 1990 c. 37.

VALID FROM 25/11/2008

## [<sup>F6</sup>PART 4A

### FORCED MARRIAGE

#### Textual Amendments

- F6** Pt. 4A inserted (25.11.2008 except in regard to the insertion of s. 63N) by [Forced Marriage \(Civil Protection\) Act 2007 \(c. 20\)](#), **ss. 1, 4(2)**; S.I. 2008/2779, **art. 2(a)** (as amended (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 11 para. 210** Table; S.I. 2014/954, **art. 2(e)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11))

#### *Forced marriage protection orders*

#### **63A Forced marriage protection orders**

- (1) The court may make an order for the purposes of protecting—
- (a) a person from being forced into a marriage or from any attempt to be forced into a marriage; or
  - (b) a person who has been forced into a marriage.
- (2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.



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- (3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.
- (4) For the purposes of this Part a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A's free and full consent.
- (5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
- (6) In this Part—
  - “force” includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and
  - “forced marriage protection order” means an order under this section.

### **63B Contents of orders**

- (1) A forced marriage protection order may contain—
  - (a) such prohibitions, restrictions or requirements; and
  - (b) such other terms;as the court considers appropriate for the purposes of the order.
- (2) The terms of such orders may, in particular, relate to—
  - (a) conduct outside England and Wales as well as (or instead of) conduct within England and Wales;
  - (b) respondents who are, or may become, involved in other respects as well as (or instead of) respondents who force or attempt to force, or may force or attempt to force, a person to enter into a marriage;
  - (c) other persons who are, or may become, involved in other respects as well as respondents of any kind.
- (3) For the purposes of subsection (2) examples of involvement in other respects are—
  - (a) aiding, abetting, counselling, procuring, encouraging or assisting another person to force, or to attempt to force, a person to enter into a marriage; or
  - (b) conspiring to force, or to attempt to force, a person to enter into a marriage.

### **63C Applications and other occasions for making orders**

- (1) The court may make a forced marriage protection order—
  - (a) on an application being made to it; or
  - (b) without an application being made to it but in the circumstances mentioned in subsection (6).
- (2) An application may be made by—
  - (a) the person who is to be protected by the order; or
  - (b) a relevant third party.
- (3) An application may be made by any other person with the leave of the court.
- (4) In deciding whether to grant leave, the court must have regard to all the circumstances including—

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- (a) the applicant's connection with the person to be protected;
  - (b) the applicant's knowledge of the circumstances of the person to be protected; and
  - (c) the wishes and feelings of the person to be protected so far as they are reasonably ascertainable and so far as the court considers it appropriate, in the light of the person's age and understanding, to have regard to them.
- (5) An application under this section may be made in other family proceedings or without any other family proceedings being instituted.
- (6) The circumstances in which the court may make an order without an application being made are where—
- (a) any other family proceedings are before the court (“the current proceedings”);
  - (b) the court considers that a forced marriage protection order should be made to protect a person (whether or not a party to the current proceedings); and
  - (c) a person who would be a respondent to any such proceedings for a forced marriage protection order is a party to the current proceedings.
- (7) In this section—
- “family proceedings” has the same meaning as in Part 4 (see section 63(1) and (2)) but also includes—
- (a) proceedings under the inherent jurisdiction of the High Court in relation to adults;
  - (b) proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 (c. 41) which includes an exclusion requirement (as defined in section 44A(3) of that Act); and
  - (c) proceedings in which the court has made an order under section 50 of the Act of 1989 (recovery of abducted children etc.); and
- “relevant third party” means a person specified, or falling within a description of persons specified, by order of the Lord Chancellor.
- (8) An order of the Lord Chancellor under subsection (7) may, in particular, specify the Secretary of State.

*Further provision about orders*

**63D Ex parte orders: Part 4A**

- (1) The court may, in any case where it considers that it is just and convenient to do so, make a forced marriage protection order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In deciding whether to exercise its powers under subsection (1), the court must have regard to all the circumstances including—
- (a) any risk of significant harm to the person to be protected or another person if the order is not made immediately;
  - (b) whether it is likely that an applicant will be deterred or prevented from pursuing an application if an order is not made immediately; and
  - (c) whether there is reason to believe that—

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- (i) the respondent is aware of the proceedings but is deliberately evading service; and
  - (ii) the delay involved in effecting substituted service will cause serious prejudice to the person to be protected or (if a different person) an applicant.
- (3) The court must give the respondent an opportunity to make representations about any order made by virtue of subsection (1).
- (4) The opportunity must be—
  - (a) as soon as just and convenient; and
  - (b) at a hearing of which notice has been given to all the parties in accordance with rules of court.

### **63E Undertakings instead of orders**

- (1) The court may, subject to subsection (3), accept an undertaking from the respondent to proceedings for a forced marriage protection order if it has power to make such an order.
- (2) No power of arrest may be attached to an undertaking given under subsection (1).
- (3) The court may not accept an undertaking under subsection (1) instead of making an order if a power of arrest would otherwise have been attached to the order.
- (4) An undertaking given to the court under subsection (1) is enforceable as if the court had made the order in terms corresponding to those of the undertaking.
- (5) This section is without prejudice to the powers of the court apart from this section.

### **63F Duration of orders**

A forced marriage protection order may be made for a specified period or until varied or discharged.

### **63G Variation of orders and their discharge**

- (1) The court may vary or discharge a forced marriage protection order on an application by—
  - (a) any party to the proceedings for the order;
  - (b) the person being protected by the order (if not a party to the proceedings for the order); or
  - (c) any person affected by the order.
- (2) In addition, the court may vary or discharge a forced marriage protection order made by virtue of section 63C(1)(b) even though no application under subsection (1) above has been made to the court.
- (3) Section 63D applies to a variation of a forced marriage protection order as it applies to the making of such an order.
- (4) Section 63E applies to proceedings for a variation of a forced marriage protection order as it applies to proceedings for the making of such an order.

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- (5) Accordingly, references in sections 63D and 63E to making a forced marriage protection order are to be read for the purposes of subsections (3) and (4) above as references to varying such an order.
- (6) Subsection (7) applies if a power of arrest has been attached to provisions of a forced marriage protection order by virtue of section 63H.
- (7) The court may vary or discharge the order under this section so far as it confers a power of arrest (whether or not there is a variation or discharge of any other provision of the order).

#### *Arrest for breach of orders*

### **63H Attachment of powers of arrest to orders**

- (1) Subsection (2) applies if the court—
  - (a) intends to make a forced marriage protection order otherwise than by virtue of section 63D; and
  - (b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.
- (2) The court must attach a power of arrest to one or more provisions of the order unless it considers that, in all the circumstances of the case, there will be adequate protection without such a power.
- (3) Subsection (4) applies if the court—
  - (a) intends to make a forced marriage protection order by virtue of section 63D; and
  - (b) considers that the respondent has used or threatened violence against the person being protected or otherwise in connection with the matters being dealt with by the order.
- (4) The court may attach a power of arrest to one or more provisions of the order if it considers that there is a risk of significant harm to a person, attributable to conduct of the respondent, if the power of arrest is not attached to the provisions immediately.
- (5) The court may provide for a power of arrest attached to any provisions of an order under subsection (4) to have effect for a shorter period than the other provisions of the order.
- (6) Any period specified for the purposes of subsection (5) may be extended by the court (on one or more occasions) on an application to vary or discharge the order.
- (7) In this section “respondent” includes any person who is not a respondent but to whom an order is directed.

### **63I Arrest under attached powers**

- (1) Subsection (2) applies if a power of arrest is attached to provisions of a forced marriage protection order under section 63H.

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- (2) A constable may arrest without warrant a person whom the constable has reasonable cause for suspecting to be in breach of any such provision or otherwise in contempt of court in relation to the order.
- (3) A person arrested under subsection (2) must be brought before the relevant judge within the period of 24 hours beginning at the time of the person's arrest.
- (4) In calculating any period of 24 hours for the purposes of subsection (3), Christmas Day, Good Friday and any Sunday are to be ignored.

### **63J Arrest under warrant**

- (1) Subsection (2) applies if the court has made a forced marriage protection order but—
  - (a) no power of arrest is attached to any provision of the order under section 63H;
  - (b) such a power is attached only to certain provisions of the order; or
  - (c) such a power was attached for a shorter period than other provisions of the order and that period has expired.
- (2) An interested party may apply to the relevant judge for the issue of a warrant for the arrest of a person if the interested party considers that the person has failed to comply with the order or is otherwise in contempt of court in relation to the order.
- (3) The relevant judge must not issue a warrant on an application under subsection (2) unless—
  - (a) the application is substantiated on oath; and
  - (b) the relevant judge has reasonable grounds for believing that the person to be arrested has failed to comply with the order or is otherwise in contempt of court in relation to the order.
- (4) In this section “interested party”, in relation to a forced marriage protection order, means—
  - (a) the person being protected by the order;
  - (b) (if a different person) the person who applied for the order; or
  - (c) any other person;but no application may be made under subsection (2) by a person falling within paragraph (c) without the leave of the relevant judge.

### **63K Remand: general**

- (1) The court before which an arrested person is brought under section 63I(3) or by virtue of a warrant issued under section 63J may, if the matter is not then disposed of immediately, remand the person concerned.
- (2) Schedule 5 has effect in relation to the powers of the court to remand a person by virtue of this section but as if the following modifications were made to the Schedule.
- (3) The modifications are that—
  - (a) in paragraph 2(1) of Schedule 5, the reference to section 47 is to be read as a reference to this section; and
  - (b) in paragraph 2(5)(b) of the Schedule, the reference to section 48(1) is to be read as a reference to section 63L(1).

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- (4) Subsection (5) applies if a person remanded under this section is granted bail under Schedule 5 as modified above.
- (5) The person may be required by the relevant judge to comply, before release on bail or later, with such requirements as appear to the relevant judge to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

### **63L Remand: medical examination and report**

- (1) Any power to remand a person under section 63K(1) may be exercised for the purpose of enabling a medical examination and report to be made if the relevant judge has reason to consider that a medical report will be required.
- (2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judge remands the accused in custody.
- (3) If the relevant judge remands the accused in custody, the adjournment must not be for more than 3 weeks at a time.
- (4) Subsection (5) applies if there is reason to suspect that a person who has been arrested—
  - (a) under section 63I(2); or
  - (b) under a warrant issued on an application made under section 63J(2);
 is suffering from mental illness or severe mental impairment.
- (5) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (c. 20) (remand for report on accused's mental condition) as the Crown Court has under section 35 of that Act in the case of an accused person within the meaning of that section.

### *Jurisdiction and procedure*

### **63M Jurisdiction of courts: Part 4A**

- (1) For the purposes of this Part “the court” means the High Court or a county court.
- (2) Subsection (1) is subject to any provision made by virtue of subsections (3) and (4).
- (3) Section 57(3) to (12) (allocation of proceedings to courts etc.) apply for the purposes of this Part as they apply for the purposes of Part 4 but as if the following modification were made.
- (4) The modification is that section 57(8) is to be read as if there were substituted for it—
  - “(8) For the purposes of subsections (3), (4) and (5), there are two levels of court—
    - (a) the High Court; and
    - (b) any county court.”

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PROSPECTIVE

**F7 63N Power to extend jurisdiction to magistrates' courts**

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**Textual Amendments**

- F7** S. 63N repealed (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 140](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

**63O Contempt proceedings: Part 4A**

The powers of the court in relation to contempt of court arising out of a person's failure to comply with a forced marriage protection order or otherwise in connection with such an order may be exercised by the relevant judge.

**63P Appeals: Part 4A**

- (1) The Lord Chancellor may, after consulting the Lord Chief Justice, by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of an order made under section 57(5) as applied by section 63M(3) and (4).
- (2) Except so far as provided for in any order made under subsection (1), no appeal may be made against any decision of a kind mentioned in that subsection.
- (3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise the Lord Chief Justice's functions under this section.

*Supplementary*

**63Q Guidance**

- (1) The Secretary of State may from time to time prepare and publish guidance to such descriptions of persons as the Secretary of State considers appropriate about—
  - (a) the effect of this Part or any provision of this Part; or
  - (b) other matters relating to forced marriages.
- (2) A person exercising public functions to whom guidance is given under this section must have regard to it in the exercise of those functions.
- (3) Nothing in this section permits the Secretary of State to give guidance to any court or tribunal.

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### **63R Other protection or assistance against forced marriage**

- (1) This Part does not affect any other protection or assistance available to a person who—
- (a) is being, or may be, forced into a marriage or subjected to an attempt to be forced into a marriage; or
  - (b) has been forced into a marriage.
- (2) In particular, it does not affect—
- (a) the inherent jurisdiction of the High Court;
  - (b) any criminal liability;
  - (c) any civil remedies under the Protection from Harassment Act 1997 (c. 40);
  - (d) any right to an occupation order or a non-molestation order under Part 4 of this Act;
  - (e) any protection or assistance under the Children Act 1989 (c. 41);
  - (f) any claim in tort; or
  - (g) the law of marriage.

### **63S Interpretation of Part 4A**

In this Part—

“the court” is to be read with section 63M;

“force” (and related expressions), in relation to a marriage, are to be read in accordance with section 63A(4) to (6);

“forced marriage protection order” has the meaning given by section 63A(6);

“marriage” means any religious or civil ceremony of marriage (whether or not legally binding); and

“the relevant judge”, in relation to any order under this Part, means—

- (a) where the order was made by the High Court, a judge of that court; and
- (b) where the order was made by a county court, a judge or district judge of that or any other county court.]

## **PART V**

### **SUPPLEMENTAL**

PROSPECTIVE

### **64 Provision for separate representation for children.**

- (1) The Lord Chancellor may by regulations provide for the separate representation of children in proceedings in England and Wales which relate to any matter in respect of which a question has arisen, or may arise, under—
- <sup>F8</sup>(a) . . . . .
  - (b) Part IV;
  - (c) the 1973 Act; <sup>F9</sup> . . .
  - (d) the <sup>M42</sup>Domestic Proceedings and Magistrates’ Courts Act 1978 [<sup>F10</sup> or



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(e) Schedule 5 or 6 to the Civil Partnership Act 2004.]

(2) The regulations may provide for such representation only in specified circumstances.

#### Textual Amendments

- F8** S. 64(1)(a) repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), **ss. 18(2)(c)**, 139(4)
- F9** Word in s. 64(1)(c) repealed (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1)(4), 263, Sch. 27 para. 152(1)(2), **Sch. 30**; S.I. 2005/3175, **art. 2(2)(6)**
- F10** S. 64(1)(e) and word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1)(4), 263, **Sch. 27 para. 152(1)(3)**; S.I. 2005/3175, **art. 2(2)**

#### Marginal Citations

- M42** 1978 c. 22.

## 65 Rules, regulations and orders.

- (1) Any power to make rules, orders or regulations which is conferred by this Act is exercisable by statutory instrument.
- (2) Any statutory instrument made under this Act may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Lord Chancellor considers appropriate; and
  - (b) make different provision for different purposes.
- (3) Any statutory instrument containing an order, rules or regulations made under this Act, other than an order made under section 5(8) or 67(3), shall be subject to annulment by a resolution of either House of Parliament.
- (4) No order shall be made under section 5(8) unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) This section does not apply to rules of court made, or any power to make rules of court, for the purposes of this Act.

#### Subordinate Legislation Made

- P1** S. 65 power partly exercised (28.7.1997): different dates appointed for specified provisions by [S.I. 1997/1892](#), **art. 3**
- S. 65 power partly exercised (19.10.1998): 1.11.1998 appointed for specified provisions by [S.I. 1998/2572](#), **art. 3** (with transitional provisions in [art. 4](#))

## 66 Consequential amendments, transitional provisions and repeals.

- (1) Schedule 8 makes minor and consequential amendments.
- (2) Schedule 9 provides for the making of other modifications consequential on provisions of this Act, makes transitional provisions and provides for savings.
- (3) Schedule 10 repeals certain enactments.

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### Commencement Information

- I2** S. 66 partly in force; s. 66 not in force at Royal Assent see s. 67(3); s. 66(1)(3) in force for certain purposes at 21.3.1997 by S.I. 1997/1077, **art. 2**; s. 66(1)(2)(3) in force for certain purposes at 1.10.1997 by S.I. 1997/1892, **art. 3**

## 67 Short title, commencement and extent.

- (1) This Act may be cited as the Family Law Act 1996.
- (2) Section 65 and this section come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Lord Chancellor may by order appoint; and different days may be appointed for different purposes.
- (4) This Act, other than section 17, extends only to England and Wales, except that—
  - (a) in Schedule 8—
    - (i) the amendments of section 38 of the <sup>M43</sup>Family Law Act 1986 extend also to Northern Ireland;
    - (ii) the amendments of the <sup>M44</sup>Judicial Proceedings (Regulation of Reports) Act 1926 extend also to Scotland; and
    - (iii) the amendments of the <sup>M45</sup>Maintenance Orders Act 1950, the <sup>M46</sup>Civil Jurisdiction and Judgments Act 1982, the <sup>M47</sup>Finance Act 1985 and sections 42 and 51 of the Family Law Act 1986 extend also to both Northern Ireland and Scotland; and
  - (b) in Schedule 10, the repeal of section 2(1)(b) of the <sup>M48</sup>Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 extends also to Scotland.

### Subordinate Legislation Made

- P2** S. 67 power partly exercised (21.3.1997): 21.3.1997 appointed for specified provisions by S.I. 1997/1077, **art. 2**  
S. 67 power partly exercised (28.7.1997): different dates appointed for specified provisions by S.I. 1997/1892, **arts. 2, 3** (with transitional provisions in art. 4)  
S. 67 power partly exercised (19.10.1998): 1.11.1998 appointed for specified provisions by S.I. 1998/2572, **art. 3** (with transitional provisions in art. 4)

### Marginal Citations

- M43** 1986 c. 55.  
**M44** 1926 c. 61.  
**M45** 1950 c. 37.  
**M46** 1982 c. 27.  
**M47** 1985 c. 54.  
**M48** 1968 c. 63.

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## SCHEDULES

PROSPECTIVE

### <sup>F11</sup>SCHEDULE 1

Section 9(6).

#### ARRANGEMENTS FOR THE FUTURE

##### Textual Amendments

<sup>F11</sup> Sch. 1 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(1), 139(4)

##### <sup>F11</sup> The first exemption

<sup>F11</sup>1 .....

##### <sup>F11</sup> The second exemption

<sup>F11</sup>2 .....

##### <sup>F11</sup> The third exemption

<sup>F11</sup>3 .....

##### <sup>F11</sup> The fourth exemption

<sup>F11</sup>4 .....

##### <sup>F11</sup> Court orders and agreements

<sup>F11</sup>5 .....

##### <sup>F11</sup> Financial arrangements

<sup>F11</sup>6 .....

##### <sup>F11</sup> Negotiated agreements

<sup>F11</sup>7 .....

##### <sup>F11</sup> Declarations

<sup>F11</sup>8 .....

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*F11 Interpretation*

F119 .....

PROSPECTIVE

**F12**SCHEDULE 2

Section 15.

FINANCIAL PROVISION

**Textual Amendments**

**F12** Sch. 2 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(1), 139(4)

*F12 Introductory*

F121 .....

*F12 The orders*

F122 .....

*F12 Financial provision: divorce and separation*

F123 .....

*F12 Financial provision: nullity of marriage*

F124 .....

*F12 Property adjustment orders: divorce and separation*

F125 .....

*F12 Property adjustment orders: nullity*

F126 .....

*F12 Pension sharing orders: divorce and nullity*

F126A .....

*F12 Period of secured and unsecured payments orders*

F127 .....

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*F12 Variations et cetera etc. following reconciliations*

F12<sub>8</sub> .....

PROSPECTIVE

**F13** SCHEDULE 3

Section 19(5).

STAY OF PROCEEDINGS

**Textual Amendments**

**F13** Sch. 3 repealed (13.5.2014) by Children and Families Act 2014 (c. 6), ss. 18(1), 139(4)

*F13 Introductory*

F13<sub>1</sub> .....

*F13 Interpretation*

F13<sub>2</sub> .....

F13<sub>3</sub> .....

F13<sub>4</sub> .....

*F13 Duty to furnish particulars of concurrent proceedings*

F13<sub>5</sub> .....

*F13 Obligatory stays in divorce cases*

F13<sub>6</sub> .....

*F13 Discretionary stays*

F13<sub>7</sub> .....

*F13 Discharge of orders*

F13<sub>8</sub> .....

*F13 Ancillary matters*

F13<sub>9</sub> .....

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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>M49</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**

**M49** 1985 c. 61.

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

- 2 Where one spouse 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 is so entitled shall be registered under section 31(10) or under section 2 of the <sup>M50</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.

**Marginal Citations**

**M50** 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 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 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.

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- (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 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.

*Cancellation of registration after termination of marriage, etc.*

- 4 (1) Where a spouse's matrimonial 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 <sup>M51</sup>Land Charges Act 1972, the Chief Land Registrar shall, subject to sub-paragraph (2), cancel the registration of the charge if he is satisfied—
  - (a) by the production of a certificate or other sufficient evidence, that either spouse is dead, or
  - (b) by the production of an official copy of a decree or order of a court, that the marriage in question has been terminated otherwise than by death, or
  - (c) by the production of an order of the court, that the spouse's matrimonial home rights constituting the charge have been terminated by the order.
- (2) Where—
  - (a) the marriage in question has been terminated by the death of the spouse entitled to an estate in the dwelling-house or otherwise than by death, and
  - (b) an order affecting the charge of the spouse 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 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

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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 section 144 of the <sup>M52</sup>Land Registration Act 1925, as the circumstances of the case require.

#### Marginal Citations

**M51** 1972 c. 61.

**M52** 1925 c. 21.

#### *Release of matrimonial home rights*

- 5 (1) A spouse entitled to matrimonial 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 matrimonial 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 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.

#### *Postponement of priority of charge*

- 6 A spouse 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 is so entitled.

### SCHEDULE 5

Section 47(11).

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

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

**C8** 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)



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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 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

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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>M53</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,
 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,

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- (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.

### **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.

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(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.”

**Marginal Citations**

**M53** 1989 c. 41.

2 In section 39 of the <sup>M54</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**

**M54** 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—

(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

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- (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.
- (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).

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- (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>M55</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**

**M55** 1989 c. 41.

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

“ “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.”.

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## SCHEDULE 7

Section 53.

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

## PART I

## GENERAL

*Interpretation*

- 1 In this Schedule—
- “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>M56</sup>Rent Act 1977 or Part II of the <sup>M57</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>M58</sup>Housing Act 1985; <sup>F14</sup> . . .
  - (d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the <sup>M59</sup>Housing Act 1988; <sup>F15</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.]

**Textual Amendments**

**F14** 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)

**F15** 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**

**M56** 1977 c. 42.

**M57** 1976 c. 80.

**M58** 1985 c. 68.

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**M59** 1988 c. 50.

*Cases in which the court may make an order*

- 2 (1) This paragraph applies if one spouse is entitled, either in his own right or jointly with the other spouse, to occupy a dwelling-house by virtue of a relevant tenancy.
- (2) At any time when it has power to make a property adjustment order under section 23A (divorce or separation) or 24 (nullity) of the <sup>M60</sup>Matrimonial Causes Act 1973 with respect to the marriage, the court may make a Part II order.

**Marginal Citations**

**M60** 1973 c. 18.

- 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 to live together as husband and wife, the court may make a Part II order.
- 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; or
  - (b) in the case of cohabitants, a home in which they lived together as husband and wife.

*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 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.



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## PART II

### ORDERS THAT MAY BE MADE

#### *References to entitlement to occupy*

- 6 References in this Part of this Schedule to a spouse 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 or cohabitant.

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

- 7 (1) If a spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a protected tenancy within the meaning of the <sup>M61</sup>Rent Act 1977, a secure tenancy within the meaning of the <sup>M62</sup>Housing Act 1985 [<sup>F16</sup>, an assured tenancy] or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988 [<sup>F17</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 or cohabitant—
- (a) the estate or interest which the spouse 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 or cohabitant so entitled is an assignee of such lease or agreement, the liability of that spouse or cohabitant under any covenant of indemnity by the assignee express or implied in the assignment of the lease or agreement to that spouse or cohabitant.
- (2) If an order is made under this paragraph, any liability or obligation to which the spouse 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 or cohabitant.
- (3) If the spouse so entitled is a successor within the meaning of Part IV of the <sup>M63</sup>Housing Act 1985, his former spouse or former cohabitant (or, if a separation order is in force, his spouse) shall be deemed also to be a successor within the meaning of that Part.
- [<sup>F18</sup>(3A) If the Spouse or cohabitant so entitled is a successor within the meaning of section 132 of the Housing Act 1996, his former spouse or former cohabitant (or, if a separation order is in force, his spouse) shall be deemed also to be a successor within the meaning of that section.]
- (4) If the spouse or cohabitant so entitled is for the purpose of section 17 of the <sup>M64</sup>Housing Act 1988 a successor in relation to the tenancy or occupancy, his former spouse or former cohabitant (or, if a separation order is in force, his spouse) is to be

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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 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) In this paragraph, references to a separation order being in force include references to there being a judicial separation in force.

#### Textual Amendments

- F16** Words in *Sch. 7 para. 7(1)* substituted (12.2.1997) by *S.I. 1997/74, art. 2, Sch. para. 10(b)(ii)*  
**F17** Words in *Sch. 7 para. 7(1)* inserted (12.2.1997) by *S.I. 1997/74, art. 2, Sch. para. 10(b)(ii)*  
**F18** *Sch. 7 para. 7(3A)* inserted (12.2.1997) by *S.I. 1997/74, art. 2, Sch. para. 10(b)(iii)*

#### Marginal Citations

- M61** 1977 c. 42.  
**M62** 1985 c. 68.  
**M63** 1985 c. 68.  
**M64** 1988 c. 50.

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

- 8 (1) This paragraph applies if the spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the <sup>M65</sup>Rent Act 1977.
- (2) The court may by order direct that, as from the date specified in the order—
- (a) that spouse or cohabitant is to cease to be entitled to occupy the dwelling-house; and
  - (b) the other spouse 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 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.

#### Marginal Citations

- M65** 1977 c. 42.

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

- 9 (1) This paragraph applies if the spouse or cohabitant is entitled to occupy the dwelling-house by virtue of a statutory tenancy within the meaning of the <sup>M66</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 or cohabitant is to cease to be entitled to occupy the dwelling-house; and
  - (b) the other spouse 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 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 or cohabitant was a statutory tenant in his own right or a statutory tenant by succession.

#### **Marginal Citations**

**M66** 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 or cohabitant to whom the tenancy is transferred (“the transferee”) to the other spouse 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;

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- (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.

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

- C9** 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)
- C10** 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 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.
- (2) If the court gives such a direction, it may further direct that either spouse 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.

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

- C11** 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)
- C12** 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

*Date when order made between spouses is to take effect*

- 12 (1) In the case of a decree of nullity of marriage, the date specified in a Part II order as the date on which the order is to take effect must not be earlier than the date on which the decree is made absolute.

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- (2) In the case of divorce proceedings or separation proceedings, the date specified in a Part II order as the date on which the order is to take effect is to be determined as if the court were making a property adjustment order under section 23A of the <sup>M67</sup>Matrimonial Causes Act 1973 (regard being had to the restrictions imposed by section 23B of that Act).

#### Marginal Citations

M67 1973 c. 18.

#### *Remarriage of either spouse*

- 13 (1) If after the making of a divorce order or the grant of a decree annulling a marriage either spouse remarries, that spouse is not entitled to apply, by reference to the making of that order or the grant of that decree, for a Part II order.
- (2) For the avoidance of doubt it is hereby declared that the reference in subparagraph (1) to remarriage includes a reference to a marriage which is by law void or voidable.

#### *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)

**C13** 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)

**C14** 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 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 spouse's matrimonial home rights.
- (2) If a spouse 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.

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SCHEDULE 8

Section 66(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS CONNECTED WITH PART II

PROSPECTIVE

*The Wills Act 1837 (c. 26)*

F19<sub>1</sub> .....

**Textual Amendments**

**F19** 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)*

F19<sub>2</sub> .....

**Textual Amendments**

**F19** 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)*

F19<sub>3</sub> .....

**Textual Amendments**

**F19** 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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VALID FROM 01/11/1998

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

PROSPECTIVE

4 The 1973 Act is amended as follows.

PROSPECTIVE

F195 .....

**Textual Amendments**

**F19** 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

F196 .....

**Textual Amendments**

**F19** 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

F197 .....

**Textual Amendments**

**F19** 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

F198 .....

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**Textual Amendments**

**F19** 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

**F19**<sup>9</sup> .....

**Textual Amendments**

**F19** 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

**F19**<sup>10</sup> .....

**Textual Amendments**

**F19** 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

**F19**<sup>11</sup> .....

**Textual Amendments**

**F19** 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

**F19**<sup>11A</sup> .....

**Textual Amendments**

**F19** 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

F19 12 .....

**Textual Amendments**

**F19** 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

F19 13 .....

**Textual Amendments**

**F19** 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

F19 14 .....

**Textual Amendments**

**F19** 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

F19 15 .....

**Textual Amendments**

**F19** 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;”;

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- (c) in paragraph (dd), for “23(1)(c)” substitute “ 21(1)(c) ”;
- (d) after paragraph (dd) insert—
  - “(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;”.

(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 ”.

(4) After subsection (4) insert—

“(4A) In relation to an order which falls within subsection (2)(de) or (ea) above ( “the subsection (2) order”)—

- (a) the powers conferred by this section may be exercised—
  - (i) only on an application made before the subsection (2) order has or, but for paragraph (b) below, would have taken effect; and
  - (ii) only if, at the time when the application is made, no divorce order has been made in relation to the marriage and no separation order has been so made since the subsection (2) order was made; and
- (b) an application made in accordance with paragraph (a) above prevents the subsection (2) order from taking effect before the application has been dealt with.

(4B) 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.”

(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;”;
- (b) for “section 23”, in each place, substitute “ section 22A or 23 ”.

(6) In subsection (7)(a)—

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- (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
- (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.”

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**Commencement Information**

**I3** 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

**F19** 16A .....

**Textual Amendments**

**F19** 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

**F19** 17 .....

**Textual Amendments**

**F19** 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

**F19** 18 .....

**Textual Amendments**

**F19** 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

**F19** 19 .....

**Textual Amendments**

**F19** 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

F1920 .....

**Textual Amendments**

**F19** 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

F1921 .....

**Textual Amendments**

**F19** 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

F1922 .....

**Textual Amendments**

**F19** 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

F1923 .....

**Textual Amendments**

**F19** 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

F1924 .....

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**Textual Amendments**

**F19** 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

**F19**25 .....

**Textual Amendments**

**F19** 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

**F19**25A .....

**Textual Amendments**

**F19** 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)*

**F19**26 .....

**Textual Amendments**

**F19** 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)*

**F19**27 .....

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**Textual Amendments**

**F19** 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)*

**F19**<sup>28</sup> .....

**Textual Amendments**

**F19** 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)*

**F19**<sup>29</sup> .....

**Textual Amendments**

**F19** 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 Supreme Court Act 1981 (c. 54)*

PROSPECTIVE

**F19**<sup>30</sup> .....

**Textual Amendments**

**F19** 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 Civil Jurisdiction and Judgments Act 1982 (c. 27)*

F1931 .....

**Textual Amendments**

**F19** 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)*

F1932 .....

**Textual Amendments**

**F19** 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)*

F1933 .....

**Textual Amendments**

**F19** 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 1985 (c. 68)*

F1934 .....

**Textual Amendments**

**F19** 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 Associations Act 1985 (c. 69)*

F1935 .....

**Textual Amendments**

**F19** 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)*

F1936 .....

**Textual Amendments**

**F19** 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)*

F1937 .....

**Textual Amendments**

**F19** 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 Landlord and Tenant Act 1987 (c. 31)*

F1938 .....

**Textual Amendments**

**F19** 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 Legal Aid Act 1988 (c. 34)*

F1939 .....

**Textual Amendments**

**F19** 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)*

F1940 .....

**Textual Amendments**

**F19** 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)*

F1941 .....

**Textual Amendments**

**F19** 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 Local Government and Housing Act 1989 (c. 42)*

F1942 .....

**Textual Amendments**

**F19** 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

*Pensions Act 1995 (c. 26)*

F19 43 .....

**Textual Amendments**

**F19** 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>F20</sup> *The Welfare Reform and Pensions Act 1999*]

**Textual Amendments**

**F20** 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)**

F19 43A .....

**Textual Amendments**

**F19** 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)

**PART II**

AMENDMENTS CONNECTED WITH PART III

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

- 44 (1) The 1988 Act is amended as follows.
- (2) In section 1, after “III” insert “ IIIA ”.
- (3) In sections 1, 2(11), 3(2), 4(1), (2) and (4), 5(1) and (6), 6(2)(a) and (3)(a), 34(2)(c) and (d) and (11), 38(1) and (6) and 39(1) and (4)(a), after “assistance”, in each place, insert “, mediation”.
- (4) In section 3(9), after paragraph (a) insert—  
“(aa) the provision of mediation;”.
- (5) In section 6, after subsection (3)(c) insert—

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“(ca) any sum which is to be paid out of property on which it is charged under regulations under section 13C(5) below”.

(6) In section 15—

- (a) in subsection (1), after “(3D)” insert “ and (3F) ”; and
- (b) in subsection (3D), after “(3)” insert “ and (3F) ”.

(7) In section 16(9), leave out “and” at the end of paragraph (a).

(8) In section 38—

- (a) in subsection (1)(f), after “legal representatives” insert “ or mediators ”; and
- (b) in subsection (6), after “legal representative” insert “ or mediator ”.

(9) In section 43—

- (a) after “ “assistance” ” insert “ , “mediation” ”
- (b) after “(3)” insert “ , (3A) ”; and
- (c) after the definition of “financial resources” insert—

“ “family matters” has the meaning assigned by section 13A(2);”.

### PART III

#### AMENDMENTS CONNECTED WITH PART IV

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

- 45 In section 64 of the Land Registration Act 1925 (certificates to be produced and noted on dealings) in subsection (5) for “section 2(8) of the Matrimonial Homes Act 1983” substitute “ section 31(10) of the Family Law Act 1996 ” and for “rights of occupation” substitute “ matrimonial home rights ”.

##### *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) ”.

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- (3) In subsection (2)(a), for “rights of occupation” substitute “matrimonial home rights”.

*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—  
“(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.

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- (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.
- (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”; and
- (b) for “those rights of occupation” substitute “those matrimonial home rights”.
- (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.”
- 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”, and
- (b) for “those rights of occupation” substitute “those matrimonial home rights”.
- (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.”

*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>M68</sup>Domestic Proceedings and Magistrates’ Courts Act 1978), for “sections 16(5)(c) and” substitute “section”.

**Marginal Citations**  
M68 1978 c. 22.

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

- 61 In section 58 of the Courts and Legal Services Act 1990 (conditional fee agreements) in subsection (10), omit paragraphs (b) and (e) and immediately before the “or” following paragraph (g) insert—  
“(gg) Part IV of the Family Law Act 1996”.

SCHEDULE 9

Section 66(2).

MODIFICATIONS, SAVING AND TRANSITIONAL

PROSPECTIVE

*Transitional arrangements for those who have been living apart*

F21 1



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### Textual Amendments

**F21** 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

F22<sub>2</sub> .....

### Textual Amendments

**F22** 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>M69</sup>Interpretation Act 1978.

### Marginal Citations

**M69** 1978 c. 30.

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

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- (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>M70</sup>Interpretation Act 1978.

**Marginal Citations**

**M70** 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>M71</sup>Matrimonial Homes Act 1983.

**Marginal Citations**

**M71** 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>M72</sup>Domestic Violence and Matrimonial Proceedings Act 1976;
  - (b) sections 16 to 18 of the <sup>M73</sup>Domestic Proceedings and Magistrates’ Courts Act 1978; and
  - (c) sections 1 and 9 of the 1983 Act.
- (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**

**M72** 1976 c. 50.

**M73** 1978 c. 22.

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*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.
- 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>M74</sup>Matrimonial Homes Act 1967 or section 2(8) of the 1983 Act, and

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- (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>M75</sup>Matrimonial Homes and Property Act 1981).

#### Marginal Citations

**M74** 1967 c. 75.

**M75** 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>M76</sup>Interpretation Act 1978 (which relate to the effect of repeals).

#### Marginal Citations

**M76** 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\(4\)\(b\)](#).

#### Commencement Information

**I4** 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).

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1973 c. 18.

The Matrimonial Causes Act 1973. Sections 1 to 7.

In section 8(1)(b), the words “or before the decree nisi is made absolute”.

Sections 9 and 10.

Sections 17 and 18.

Section 20.

Section 22.

In section 24A(3), the words “divorce or”.

In section 25(2)(h), the words “in the case of proceedings for divorce or nullity of marriage,”.

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.

In section 29(2), the words from “may begin” to “but”.

In section 30, the words “divorce” and “or judicial separation”.

In section 31, in subsection (2)(a), the words “order for maintenance pending suit and any”.

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 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.

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1973 c. 45.	The Domicile and Matrimonial Proceedings Act 1973.	<p>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).</p> <p>Section 6(3) and (4).</p> <p>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”.</p>
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.	<p>In section 1, paragraphs (c) and (d) and the word “or” preceding paragraph (c).</p> <p>In section 7(1), the words “neither party having deserted the other”.</p> <p>Sections 16 to 18.</p> <p>Section 28(2).</p> <p>Section 63(3).</p> <p>In Schedule 2, paragraphs 38 and 53.</p>
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.
1983 c. 19.	The Matrimonial Homes Act 1983.	The whole Act.
1984 c. 42.	The Matrimonial and Family Proceedings Act 1984.	<p>Section 1.</p> <p>In section 21(f) the words “except subsection (2)(e) and subsection (4)”.</p>

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		In section 27, the definition of “secured periodical payments order”.
		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.
		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). In Schedule 11, paragraph 6(b). 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). 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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