



Rent Act 1977

1977 CHAPTER 42

PART X

MORTGAGES

129 Mortgages to which Part X applies

- (1) This Part of this Act is concerned with mortgages which—
 - (a) were created before the relevant date, and
 - (b) are either controlled mortgages or regulated mortgages, as defined in sections 130 and 131 of this Act.
- (2) For the purposes of this Part of this Act, "relevant date"—
 - (a) in a case where, on 28th November 1967, land consisting of or including a dwelling-house was subject to a long tenancy which became a regulated tenancy on that date by virtue of section 39 of the Leasehold Reform Act 1967, means, in relation to that land, 28th November 1967;
 - (b) in a case where, on 22nd March 1973, land consisting of or including a dwelling-house was subject to a tenancy which became a regulated tenancy by virtue of section 14 of the Counter-Inflation Act 1973, means, in relation to that land, 22nd March 1973 ;
 - (c) in the case of land consisting of or including a dwelling-house subject to a regulated furnished tenancy, means, in relation to that land, 14th August 1974 ;
and
 - (d) in any other case, means 8th December 1965.

130 Controlled mortgages

For the purposes of this Part of this Act, a mortgage is a controlled mortgage at any time when, had neither the Rent Act 1968 nor this Act been passed, it would have been a mortgage to which the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 would have applied (whether by virtue of the modification of that Act effected by Schedule 1 to the Rent and Mortgage Restrictions Act 1939 or otherwise).

Status: This is the original version (as it was originally enacted).

131 Regulated mortgages

- (1) Subject to subsection (2) below, a mortgage which falls within section 129(1)(a) of this Act but which is not a controlled mortgage is a regulated mortgage if—
 - (a) it is a legal mortgage of land consisting of or including a dwelling-house which is let on or subject to a regulated tenancy, and
 - (b) the regulated tenancy is binding on the mortgagee.
- (2) Notwithstanding that a mortgage falls within subsection (1) above, it is not a regulated mortgage if—
 - (a) the rateable value on the appropriate day of the dwelling house which falls within subsection (1)(a) above or, if there is more than one such dwelling-house comprised in the mortgage, the aggregate of the rateable values of those dwelling-houses on the appropriate day is less than one-tenth of the rateable value on the appropriate day of the whole of the land comprised in the mortgage, or
 - (b) the mortgagor is in breach of covenant, but for this purpose a breach of the covenant for the repayment of the principal money otherwise than by instalments shall be disregarded.
- (3) Subsection (2)(a) above shall have effect, in the case of land consisting of or including a dwelling-house which on 22nd March 1973 was subject to a tenancy which became a regulated tenancy by virtue of section 14 of the Counter-Inflation Act 1973, as if for the reference to the appropriate day there were substituted a reference to 7th March 1973.
- (4) In this section " legal mortgage " includes a charge by way of legal mortgage.
- (5) Any reference in this Part of this Act to a regulated mortgage shall be construed in accordance with this section.

132 Powers of court to mitigate hardship to mortgagors under regulated mortgages

- (1) The powers of the court under this section relate only to regulated mortgages, and those powers become exercisable in relation to such a mortgage only on an application made by the mortgagor within 21 days, or such longer time as the courts may allow, after the occurrence of one of the following events :—
 - (a) the rate of interest payable in respect of the mortgage is increased; or
 - (b) a rent for a dwelling-house comprised in the mortgage is registered under Part IV of this Act and the rent so registered is lower than the rent which was payable immediately before the registration ; or
 - (c) the mortgagee, not being a mortgagee who was in possession on the relevant date, demands payment of the principal money secured by the mortgage or takes any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security.

Paragraph (b) above shall not apply to a case falling within section 129(2)(b) of this Act.

- (2) If the court is satisfied on any such application that, by reason of the event in question and of the operation of this Act, the mortgagor would suffer severe financial hardship unless relief were given under this section, the court may by order make such provision—
 - (a) limiting the rate of interest,

- (b) extending the time for the repayment of the principal money, or
 - (c) otherwise varying the terms of the mortgage or imposing any limitation or condition on the exercise of any right or remedy in respect thereof,as it thinks appropriate.
- (3) Where the court makes an order under subsection (2) above in relation to a mortgage which comprises other land as well as a dwelling-house or dwelling-houses subject to a regulated tenancy the order may, if the mortgagee so requests, make provision for apportioning the money secured by the mortgage between that other land and the dwelling-house or dwelling-houses.
- (4) Where such an apportionment is made, the other provisions of the order made by the court shall not apply in relation to the other land referred to in that subsection and the money secured by the other land, and the mortgage shall have effect for all purposes as two separate mortgages of the apportioned parts.
- (5) Where the court has made an order under this section it may vary or revoke it by a subsequent order.
- (6) The court for the purposes of this section is a county court, except that where an application under subsection (1) above is made in pursuance of any step taken by the mortgagee in the High Court it is the High Court.

133 Restrictions applicable to controlled mortgages

- (1) Part I of Schedule 19 to this Act shall have effect with respect to the interest rate on controlled mortgages, and Part II of that Schedule shall have effect, subject to subsection (2) below, with respect to the enforcement of the mortgagee's rights and remedies under a controlled mortgage.
- (2) Where the mortgagee under a controlled mortgage satisfies the county court that greater hardship would be caused if the restrictions imposed on the exercise of the mortgagee's rights and remedies by Part II of Schedule 19 continued to apply to the mortgage than if they were removed or modified, the court may by order allow him to exercise such of those rights and remedies as may be specified in the order, on such terms and conditions as may be so specified.
- (3) Where the county court has made an order under this section it may vary or revoke it by a subsequent order.

134 Apportionment of controlled mortgages

- (1) Where a controlled mortgage comprises other land as well as a dwelling-house or dwelling-houses to which, immediately before 8th June 1968, the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 applied, the mortgagee may apportion the principal money secured by the mortgage between that other land and the dwelling-house or dwelling-houses by giving one month's notice in writing to the mortgagor, stating the particulars of the apportionment.
- (2) At any time before the expiry of a month's notice given under subsection (1) above, the mortgagor may dispute the amounts apportioned by the notice and, in default of agreement, the apportionment of the principal money secured by the mortgage shall be determined by a single arbitrator appointed by the President of the Royal Institution of Chartered Surveyors.

Status: This is the original version (as it was originally enacted).

- (3) Where a notice is given under subsection (1) above then, as from the expiry of the month's notice, this Part of this Act shall cease to apply to the mortgage in question so far as it relates to the other land referred to in subsection (1) above and the money secured by the other land, and the mortgage shall have effect for all purposes as two separate mortgages of the apportioned parts.

135 Recovery of sums paid in excess of permitted rate of interest under controlled mortgage

- (1) Where a mortgagor under a controlled mortgage has paid on account of mortgage interest any amount which, by virtue of Schedule 19 to this Act, is irrecoverable by the mortgagee, the mortgagor who paid it shall be entitled to recover that amount from the mortgagee who received it or his personal representatives.
- (2) Any amount which a mortgagor is entitled to recover under subsection (1) above may, without prejudice to any other method of recovery, be deducted by the mortgagor from any mortgage interest payable by him to the mortgagee.
- (3) No amount which a mortgagor is entitled to recover under subsection (1) above shall be recoverable at any time after the expiry of 2 years from the date of payment.

136 Interpretation of Part X

In this Part of this Act, except where the context otherwise requires—

- (a) " mortgagee " and " mortgagor " include any person from time to time deriving title under the original mortgagee or mortgagor; and
- (b) " legal mortgage " in relation to regulated mortgages, and " mortgage ", in relation to controlled mortgages, include any charge registered under the Land Registration Act 1925.