



# Matrimonial Homes Act 1983

## 1983 CHAPTER 19

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

- (1) Where one 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 or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to the provisions of this Act, the spouse not so entitled shall have the following rights (in this Act referred to as "rights of occupation")—
  - (a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this section ;
  - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.
- (2) So long as one spouse has rights of occupation, either of the spouses may apply to the court for an order—
  - (a) declaring, enforcing, restricting or terminating those rights, or
  - (b) prohibiting, suspending or restricting the exercise by either spouse of the right to occupy the dwelling house, or
  - (c) requiring either spouse to permit the exercise by the other of that right.
- (3) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the conduct of the spouses in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision—
  - (a) may except part of the dwelling house from a spouse's rights of occupation (and in particular a part used wholly or mainly for or in connection with the trade, business or profession of the other spouse),
  - (b) may order a spouse occupying the dwelling house or any part thereof by virtue of this section to make periodical payments to the other in respect of the occupation,

---

*Status: This is the original version (as it was originally enacted).*

---

- (c) may impose on either spouse obligations as to the repair and maintenance of the dwelling house or the discharge of any liabilities in respect of the dwelling house.
- (4) Orders under this section may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further order.
- (5) Where a spouse is entitled under this section to occupy a dwelling house or any part thereof, 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, rates, mortgage payments or other outgoings affecting the dwelling house shall, whether or not it is made or done in pursuance of an order under this section, be as good as if made or done by the other spouse.
- (6) A spouse's occupation by virtue of this section shall, for the purposes of the Rent (Agriculture) Act 1976, and of the Rent Act 1977 (other than Part V and sections 103 to 106), be treated as possession by the other spouse and for purposes of Chapter II of Part I of the Housing Act 1980 be treated as occupation by the other spouse.
- (7) Where a spouse is entitled under this section to occupy a dwelling house or any part thereof and makes any payment in or towards satisfaction of any liability of the other spouse in respect of mortgage payments affecting the dwelling house, the person to whom the payment is made may treat it as having been made by that other spouse, but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned spouse against the other to an interest in the dwelling house by virtue of the payment.
- (8) Where a spouse is entitled under this section to occupy a dwelling house or part thereof by reason of an interest of the other spouse under a trust, all the provisions of subsections (5) to (7) above shall apply in relation to the trustees as they apply in relation to the other spouse.
- (9) The jurisdiction conferred on the court by this section shall be exercisable by the High Court or by a county court, and shall be exercisable by a county court notwithstanding that by reason of the amount of the net annual value for rating of the dwelling house or otherwise the jurisdiction would not but for this subsection be exercisable by a county court.
- (10) This Act shall not apply to a dwelling house which has at no time been a matrimonial home of the spouses in question ; and a spouse's rights of occupation shall continue only so long as the marriage subsists and the other spouse is entitled as mentioned in subsection (1) above to occupy the dwelling house, except where provision is made by section 2 of this Act for those rights to be a charge on an estate or interest in the dwelling house.
- (11) It is hereby declared that a spouse who has an equitable interest in a dwelling house or in the proceeds of sale thereof, not being a spouse in whom is vested (whether solely or as a joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling house, is to be treated for the purpose only of determining whether he or she has rights of occupation under this section as not being entitled to occupy the dwelling house by virtue of that interest.

## **2 Effect of rights of occupation as charge on dwelling house**

- (1) Where, at any time during the subsistence of a marriage, one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate or interest, then the other spouse's rights of occupation shall be a charge on that estate or interest, having the like priority as if it were an equitable interest created at whichever is the latest of the following dates, that is to say—
  - (a) the date when the spouse so entitled acquires the estate or interest,
  - (b) the date of the marriage, and
  - (c) the 1st January 1968 (which is the date of commencement of the Act of 1967).
- (2) If, at any time when a spouse's rights of occupation are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, no persons, living or unborn, who are or could become beneficiaries under the trust, then those rights shall be a charge also on the estate or interest of the trustees for the other spouse, having the like priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.
- (3) In determining for purposes of subsection (2) above whether there are any persons who are not, but could become, beneficiaries under the trust, there shall be disregarded any potential exercise of a general power of appointment exercisable by either or both of the spouses alone (whether or not the exercise of it requires the consent of another person).
- (4) Notwithstanding that a spouse's rights of occupation are a charge on an estate or interest in the dwelling house, those rights shall be brought to an end by—
  - (a) the death of the other spouse, or
  - (b) the termination (otherwise than by death) of the marriage,unless in the event of a matrimonial dispute or estrangement the court sees fit to direct otherwise by an order made under section 1 above during the subsistence of the marriage.
- (5) Where a spouse's rights of occupation are a charge on the estate or interest of the other spouse or of trustees for the other spouse—
  - (a) any order under section 1 above against the other spouse shall, except in so far as the contrary intention appears, have the like effect against persons deriving title under the other spouse or under the trustees and affected by the charge, and
  - (b) subsections (2) to (8) of section 1 above shall 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.
- (6) Where—
  - (a) a spouse's rights of occupation are a charge on an estate or interest in the dwelling house, and
  - (b) that estate or interest is surrendered so as to merge in some other estate or interest expectant thereon in such circumstances that, but for the merger, the person taking the estate or interest surrendered would be bound by the charge,the surrender shall have effect subject to the charge and the persons thereafter entitled to the other estate or interest shall, for so long as the estate or interest surrendered would have endured if not so surrendered, be treated for all purposes of this Act 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.

- (7) Where a spouse's rights of occupation are a charge on the estate or interest of the other spouse or of trustees for the other spouse, and the other spouse—
- (a) is adjudged bankrupt or makes a conveyance or assignment of his or her property (including that estate or interest) to trustees for the benefit of his or her creditors generally, or
  - (b) dies and his or her estate is insolvent,
- then, notwithstanding that it is registered under section 2 of the Land Charges Act 1972 or subsection (8) below, the charge shall be void against the trustee in bankruptcy, the trustees under the conveyance or assignment or the personal representatives of the deceased spouse, as the case may be.
- (8) Where 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 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 Act shall be effected by registering a notice under that Act, and
  - (b) a spouse's rights of occupation shall not be an overriding interest within the meaning of that Act affecting the dwelling house notwithstanding that the spouse is in actual occupation of the dwelling house.
- (9) A spouse's rights of occupation (whether or not constituting a charge) shall not entitle that spouse to lodge a caution under section 54 of the Land Registration Act 1925.
- (10) Where—
- (a) a spouse's rights of occupation are a charge on the estate of the other spouse or of trustees for the other spouse, and
  - (b) that estate is the subject of a mortgage within the meaning of the Law of Property Act 1925,
- then, if, after the date of creation of the mortgage, the charge is registered under section 2 of the Land Charges Act 1972, the charge shall, for the purposes of section 94 of that Act of 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), be deemed to be a mortgage subsequent in date to the first-mentioned mortgage.
- (11) It is hereby declared that a charge under subsection (1) or (2) above is not registrable under section 2 of the Land Charges Act 1972 or subsection (8) above unless it is a charge on a legal estate.

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

Where one spouse is entitled by virtue of section 2 above 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 2 of the Land Charges Act 1972 or section 2(8) above 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.

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

- (1) Where one spouse is entitled by virtue of section 2 above to a charge on an estate in a dwelling house and the charge is registered under section 2 of the Land Charges

Act 1972 or section 2(8) above, 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.

- (2) Subsection (1) above 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 subsection (1) above, 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 subsection (1) above provides shall be deemed to have been performed.
- (4) This section applies only if and so far as a contrary intention is not expressed in the contract.
- (5) This section shall apply to a contract for exchange as it applies to a contract for sale.
- (6) This section 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.

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

- (1) Where a spouse's rights of occupation are a charge on an estate in a dwelling house and the charge is registered under section 2 of the Land Charges Act 1972 or section 2(8) above, the Chief Land Registrar shall, subject to subsection (2) below, 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 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 rights of occupation 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 by virtue of section 2(4) above,then if, after the making of the order, registration of the charge was renewed or the charge registered in pursuance of subsection (3) below, the Chief Land Registrar shall not cancel the registration of the charge in accordance with subsection (1) above 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 subsection (2) above, 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 2 of the Land Charges Act 1972 or section 2(8) above, renew the registration of the charge, and
  - (b) if before the said date the charge was not so registered, register the charge under section 2 of the Land Charges Act 1972 or section 2(8) above.

- (4) Renewal of the registration of a charge in pursuance of subsection (3) above shall be effected in such manner as may be prescribed, and an application for such renewal or for registration of a charge in pursuance of that subsection shall contain such particulars of any order affecting the charge made by virtue of section 2(4) above as may be prescribed.
- (5) The renewal in pursuance of subsection (3) above of the registration of a charge shall not affect the priority of the charge.
- (6) In this section " prescribed " means prescribed by rules made under section 16 of the Land Charges Act 1972 or section 144 of the Land Registration Act 1925, as the circumstances of the case require.

## **6 Release of rights of occupation and postponement of priority of charge**

- (1) A spouse entitled to rights of occupation 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 2 of the Land Charges Act 1972 or section 2(8) above, then, without prejudice to subsection (1) above, the rights of occupation 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.
- (3) A spouse entitled by virtue of section 2 above 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.

## **7 Transfer of certain tenancies on divorce, etc.**

Schedule 1 to this Act shall have effect.

## **8 Dwelling house subject to mortgage**

- (1) In determining for the purposes of the foregoing provisions of this Act (including Schedule 1) whether a spouse or former spouse is entitled to occupy a dwelling house by virtue of an estate or interest, there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling house under or by virtue of his mortgage, whether the mortgagee is in possession or not; but the other spouse shall not by virtue of the rights of occupation conferred by this Act have any larger right against the mortgagee to occupy the dwelling house than the one first mentioned has by virtue of his or her estate or interest and of any contract with the mortgagee, unless under section 2 above those rights of occupation are a charge, affecting the mortgagee, on the estate or interest mortgaged.
- (2) Where a mortgagee of land which consists of or includes a dwelling house brings an action in any court for the enforcement of his security, a spouse who is not a party to the action and who is enabled by section 1(5) or (8) above to meet the mortgagor's

liabilities under the mortgage, on applying to the court at any time before the action is finally disposed of in that court, shall be entitled to be made a party to the action if the court—

- (a) does not see special reason against it, and
  - (b) is satisfied that the applicant may be expected to make such payments or do such things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings or that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.
- (3) Where a mortgagee of land which consists or substantially consists of a dwelling house brings an action for the enforcement of his security, and at the relevant time there is—
- (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 a notice under section 2(8) above or a notice or caution under section 2(7) of the Act of 1967,
- notice of the action shall be served by the mortgagee on the person on whose behalf the land charge is registered or the notice or caution entered, if that person is not a party to the action.
- (4) For the purposes of subsection (3) above, if there has been issued a certificate of the result of an official search made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (3)(a) or (b) above, and the action is commenced within the priority period, the relevant time is the date of that certificate; and in any other case the relevant time is the time when the action is commenced.
- (5) In subsection (4) above, "priority period" means, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.

## **9 Rights concerning matrimonial home where both spouses have estate, etc.**

- (1) Where each of two spouses is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling house in which they have or at any time have had a matrimonial home, either of them may apply to the court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling house, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.
- (2) In relation to orders under this section, section 1(3), (4) and (9) above shall apply as they apply in relation to orders under that section.
- (3) Where each of two spouses is entitled to occupy a dwelling house by virtue of a contract, or by virtue of any enactment giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.
- (4) In determining for the purposes of this section whether two spouses are entitled to occupy a dwelling house, there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling house under or by virtue of his mortgage, whether the mortgagee is in possession or not.

## 10 Interpretation

(1) In this Act—

" Act of 1967 " means the Matrimonial Homes Act 1967 ;

"Act of 1981 " means the Matrimonial Homes and Property Act 1981 ;

"dwelling house" includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling house and occupied therewith;

" mortgage " includes a charge and " mortgagor" and " mortgagee " shall be construed accordingly ;

" mortgagor " and " mortgagee " includes any person deriving title under the original mortgagor or mortgagee ;

" rights of occupation " has the meaning assigned to it in section 1(1) above.

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

(3) References in this Act to registration under section 2(8) above include (as well as references to registration by notice under section 2(7) of the Act of 1967) references to registration by caution duly lodged under the said section 2(7) before the 14th February 1983 (the date of commencement of section 4(2) of the Act of 1981).

## 11 Transitional provision

Neither section 2(9) above, nor the repeal by section 4(2) of the Act of 1981 of the words " or caution " in section 2(7) of the Act of 1967, affects a caution duly lodged as respects any estate of interest before the said 14th February 1983.

## 12 Consequential amendments and repeals

(1) The Acts specified in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule.

(2) The Acts specified in Schedule 3 to this Act are repealed to the extent specified in the third column of that Schedule.

## 13 Short title, commencement and extent

(1) This Act may be cited as the Matrimonial Homes Act 1983.

(2) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

(3) This Act does not extend to Scotland or Northern Ireland.