

SCHEDULES

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 Rent Act 1977 or Part II of the 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 Housing Act 1985; or
 - (d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988;
- “spouse”, except in paragraph 2, includes (where the context requires) former spouse; and
- “tenancy” includes sub-tenancy.

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 Matrimonial Causes Act 1973 with respect to the marriage, the court may make a Part II order.

- 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.

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 Rent Act 1977, a secure tenancy within the meaning of the Housing Act 1985 or an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988, 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 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.
- (4) If the spouse or cohabitant so entitled is for the purpose of section 17 of the 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 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.

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 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.

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 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.

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;
 - (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.

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.

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.
- (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 Matrimonial Causes Act 1973 (regard being had to the restrictions imposed by section 23B of that Act).

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.

Status: This is the original version (as it was originally enacted).

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.