

*Status: Point in time view as at 01/10/1997.*

**Changes to legislation:** Family Law Act 1996, Part I is up to date with all changes known to be in force on or before 27 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 7

#### 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>M1</sup>Rent Act 1977 or Part II of the <sup>M2</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>M3</sup>Housing Act 1985; <sup>F1</sup> . . .
    - (d) an assured tenancy or assured agricultural occupancy within the meaning of Part I of the <sup>M4</sup>Housing Act 1988; [<sup>F2</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

**F1** 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)

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**F2** 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**

**M1** 1977 c. 42.  
**M2** 1976 c. 80.  
**M3** 1985 c. 68.  
**M4** 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>M5</sup>Matrimonial Causes Act 1973 with respect to the marriage, the court may make a Part II order.

**Marginal Citations**

**M5** 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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