



# Law of Property Act 1925

1925 CHAPTER 20 15 and 16 Geo 5

## PART III

MORTGAGES, RENTCHARGES, AND POWERS OF ATTORNEY

### Modifications etc. (not altering text)

- C1** Certain provisions of Part III applied by [Agriculture \(Miscellaneous Provisions\) Act 1941 \(c. 50\), s. 8\(4\)](#), [Weeds Act 1959 \(c. 54\), s. 3\(3\)](#) and [Leasehold Reform Act 1967 \(c. 88\), s. 19\(8\)](#)

### *Mortgages*

#### **85 Mode of mortgaging freeholds.**

- (1) A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.

- (2) Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in manner following, namely:—
- (a) A first or only mortgagee shall take a term of three thousand years from the date of the mortgage:
  - (b) A second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee:

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and, in this subsection, any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption.

- (3) [<sup>F1</sup>Subsection (2) does not apply to registered land, but, subject to that, this section applies whether or not the land is registered land and whether or not] the mortgage is expressed to be made by way of trust for sale or otherwise.
- (4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the estate for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.
- [<sup>F2</sup>(5) In its application to instruments made after the coming into force of section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 subsection (1) above shall have effect as if for the words “under seal, and a bond or obligation under seal,” there were substituted the words “bond or obligation executed as a deed in accordance with section 1 of the Law of Property (Miscellaneous Provisions) Act 1989”.]

#### Textual Amendments

- F1** Words in s. 85(3) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 133, 136(2), [Sch. 11 para. 2\(6\)](#) (with s. 129); S.I. 2003/1725, [art. 2](#)
- F2** S. 85(5) added by [Law of Property \(Miscellaneous Provisions\) Act 1989 \(c. 34, SIF 98:1\)](#), s. 1(8), [Sch. 1, para. 5](#)

## 86 Mode of mortgaging leaseholds.

- (1) A mortgage of a term of years absolute shall only be capable of being effected at law either by a subdemise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

- (2) Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a subdemise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following, namely:—
- (a) The term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned:
  - (b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned:

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but

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for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

- (3) [<sup>F3</sup>Subsection (2) does not apply to registered land, but, subject to that, this section applies whether or not the land is registered land and whether or not] the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.
- (4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by subdemise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

#### Textual Amendments

- F3** Words in s. 86(3) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 133, 136(2), [Sch. 11 para. 2\(7\)](#) (with s. 129); S.I. 2003/1725, [art. 2](#)

### 87 Charges by way of legal mortgage.

- (1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—
  - (a) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and
  - (b) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.
- (2) Where an estate vested in a mortgagee immediately before the commencement of this Act has by virtue of this Act been converted into a term of years absolute or sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-term had remained subsisting.

The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

- (3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or chattels personal comprised in the mortgage.
- [<sup>F4</sup>(4) Subsection (1) of this section shall not be taken to be affected by section 23(1)(a) of the Land Registration Act 2002 (under which owner's powers in relation to a registered estate do not include power to mortgage by demise or sub-demise).]

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#### Textual Amendments

- F4** S. 87(4) inserted (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 133, 136(2), [Sch. 11 para. 2\(8\)](#) (with s. 129); S.I. 2003/1725, [art. 2](#)

### 88 Realisation of freehold mortgages.

- (1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—
  - (a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;
  - (b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;

and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.
- (2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.
- (3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.
- (4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.
- (5) In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.
- (6) This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

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## **89 Realisation of leasehold mortgages.**

(1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—

(a) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon

(b) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished.

(4) Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid.

(6) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Act, and to a mortgage term created by this Act, but does not apply where the mortgage term does not comprise the whole of the

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land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

[<sup>F5</sup>In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor.]

[<sup>F6</sup>(7) The county court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed [<sup>F7</sup>£30,000].]

#### Textual Amendments

- F5** Words added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)  
**F6** [S. 89\(7\)](#) added by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 Pt. II para. 3\(1\)\(3\)](#)  
**F7** Words in [s. 89\(7\)](#) substituted (1.7.1991) by [S.I. 1991/724](#), art. 2(8), [Sch. Pt. I](#) (with art. 12)

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

- C2** [S. 89](#) extended (1.7.1991) by [S.I. 1991/724](#), [art. 2\(4\)](#) (with art. 12)  
**C3** [S. 89\(7\)](#) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), [s. 24\(2\)\(c\)](#)

## 90 Realisation of equitable charges by the court.

- (1) Where an order for sale is made by the court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Act, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.
- (2) This section applies to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been over-reached under the powers conferred by this Act or otherwise.

[<sup>F8</sup>(3) The county court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed [<sup>F9</sup>£30,000]]

#### Textual Amendments

- F8** [S. 90\(3\)](#) added by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 Pt. II para. 3\(1\)\(3\)](#)  
**F9** Words in [s. 90\(3\)](#) substituted (1.7.1991) by [S.I. 1991/724](#), art. 2(8), [Sch. Pt. I](#) (with art. 12)

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

- C4** [S. 90](#) extended (1.7.1991) by [S.I. 1991/724](#), [art. 2\(4\)](#) (with art. 12)  
**C5** [S. 90\(3\)](#) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), [s. 24\(2\)\(c\)](#)

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## **91 Sale of mortgaged property in action for redemption or foreclosure.**

- (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.
- (2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that—
  - (a) any other person dissents; or
  - (b) the mortgagee or any person so interested does not appear in the action;and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.
- (3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.
- (4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.
- (5) This section applies to actions brought either before or after the commencement of this Act.
- (6) In this section “mortgaged property” includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.
- (7) For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the court may think fit; or, in the case of an equitable mortgage, may create and vest a mortgage term in the mortgagee to enable him to carry out the sale as if the mortgage had been made by deed by way of legal mortgage.
- [<sup>F10</sup>(8) The county court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed [<sup>F11</sup>£30,000]]

### **Textual Amendments**

**F10** S. 91(8) added by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), Sch. 2 Pt. II para. 3(1)(3)

**F11** Words in s. 91(8) substituted (1.7.1991) by S.I. 1991/724, art. 2(8), Sch. Pt.I (with art. 12)

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

**C6** S. 91 extended (1.7.1991) by S.I. 1991/724, art. 2(4) (with art. 12)

**C7** S. 91(8) modified by County Courts Act 1984 (c. 28, SIF 34), s. 24(2)(c)



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## 92 Power to authorise land and minerals to be dealt with separately.

[<sup>F12</sup>(1)] Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him and the persons deriving title under him to dispose—

- (a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals; or
- (b) of all or any mines and minerals, with or without the said rights or powers separately from the land;

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

[<sup>F13</sup>(2) The county court has jurisdiction under this section where the amount owing in respect of the mortgage or charge at the commencement of the proceedings does not exceed [<sup>F14</sup>£30,000].]

### Textual Amendments

**F12** S. 92 renumbered as subsection (1) of that section by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. II para. 3(2)**

**F13** S. 92(2) added by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. II para. 3(1)(3)**

**F14** Words in s. 92(2) substituted (1.7.1991) by S.I. 1991/724, art. 2(8), **Sch. Pt.I** (with art. 12)

### Modifications etc. (not altering text)

**C8** S. 92 extended (1.7.1991) by S.I. 1991/724, art. 2(4) (with art. 12)

**C9** S. 92(2) modified by County Courts Act 1984 (c. 28, SIF 34), s. 24(2)(c)

## 93 Restriction on consolidation of mortgages.

(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

This subsection applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(2) This section does not apply where all the mortgages were made before the first day of January, eighteen hundred and eighty-two.

(3) Save as aforesaid, nothing in this Act, in reference to mortgages, affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Act reserving a right to consolidate.

## 94 Tacking and further advances.

(1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

- (a) if an arrangement has been made to that effect with the subsequent mortgagees; or



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- (b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or
- (c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

- (2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge in a local deeds registry, if it was not so registered at the [<sup>F15</sup>time when the original mortgage was created] or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

- (3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

- (4) This section applies to mortgages of land made before or after the commencement of this Act, but not to charges [<sup>F16</sup>on registered land] .

#### Textual Amendments

**F15** Words substituted by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**

**F16** Words in s. 94(4) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), ss. 133, 136(2), **Sch. 11 para. 2(9)** (with s. 129); S.I. 2003/1725, **art. 2**

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

**C10** S. 94 modified by Matrimonial Homes Act 1983 (c. 19, SIF 49:5), **s. 2(10)**

**C11** S. 94 modified (1.10.1997) by 1996 c. 27, **ss. 31(12), 63(4)** (with Sch. 9 para. 5(1)(b)(ii)); S.I. 1997/1892, **art.3(1)(a)**

#### Marginal Citations

**M1** 1925 c. 21.

## 95 Obligation to transfer instead of re-conveying, and as to right to take possession.

- (1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of re-conveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.
- (2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the

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mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

- (3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.
- (4) Nothing in this Act affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest.
- (5) This section applies to mortgages made either before or after the commencement of this Act, and takes effect notwithstanding any stipulation to the contrary.

## 96 Regulations respecting inspection, production and delivery of documents, and priorities.

- (1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

This subsection applies to mortgages made after the thirty-first day of December, eighteen hundred and eighty-one, and takes effect notwithstanding any stipulation to the contrary.

- (2) A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or reconveyance or otherwise.

[<sup>F17</sup>In this sub-section notice does not include notice implied by reason of registration under the <sup>M2</sup>Land Charges Act, 1925, [<sup>F18</sup>or in a local deeds register].]

### Textual Amendments

**F17** Proviso added by [Law of Property \(Amendment\) Act 1926 \(c. 11\)](#), [Sch.](#)

**F18** Words repealed (*prosp.*) by [Law of Property Act 1969 \(c. 59\)](#), s. 16(2), [Sch. 2 Pt. I](#) which repeal is no longer prospective as regards the Yorkshire deeds registries, their registers and areas

### Marginal Citations

**M2** [1925 c. 22.](#)

## 97 Priorities as between puisne mortgages.

Every mortgage affecting a legal estate in land made after the commencement of this Act, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act, 1925.

This section does not apply [<sup>F19</sup>to mortgages or charges to which the Land Charges Act 1972 does not apply by virtue of section 14(3) of that Act (which excludes certain

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land charges created by instruments necessitating registration under the [F20Land Registration Act 2002]), or] to mortgages or charges of registered land or of land within the jurisdiction of a local deeds registry.

#### Textual Amendments

- F19** Words substituted by [Land Charges Act 1972 \(c. 61, SIF 98:2\)](#), s. 18, [Sch. 3 para. 1](#)
- F20** Words in s. 97 substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 133, 136(2), [Sch. 11 para. 2\(10\)](#) (with s. 129); S.I. 2003/1725, [art. 2](#)

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

- C12** S. 97 extended by [Middlesex Deeds Act 1940 \(c. 34\)](#), s. 2(3); amended by [Land Charges Act 1972 \(c. 61\)](#), [Sch. 3 para. 1](#)

### 98 Actions for possession by mortgagors.

- (1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.
- (2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.
- (3) This section applies whether the mortgage was made before or after the commencement of this Act.

### 99 Leasing powers of mortgagor and mortgagee in possession.

- (1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised.
- (2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.
- (3) The leases which this section authorises are—
  - (i) agricultural or occupation leases for any term not exceeding twenty-one years, or, in the case of a mortgage made after the commencement of this Act, fifty years; and
  - (ii) building leases for any term not exceeding ninety-nine years, or, in the case of a mortgage made after the commencement of this Act, nine hundred and ninety-nine years.
- (4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

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- (5) Every such lease shall be made to take effect in possession not later than twelve months after its date.
- (6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.
- (7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.
- (8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.
- (9) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute within that time, on the land leased, an improvement for or in connexion with building purposes.
- (10) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.
- (11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.
- (12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.
- (13) <sup>F21</sup>Subject to subsection (13A) below, this section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

<sup>F22</sup>(13A) Subsection (13) of this section—

- (a) shall not enable the application of any provision of this section to be excluded or restricted in relation to any mortgage of agricultural land made after 1st March 1948 but before 1st September 1995, and
- (b) shall not enable the power to grant a lease of an agricultural holding to which, by virtue of section 4 of the Agricultural Tenancies Act 1995, the Agricultural Holdings Act 1986 will apply, to be excluded or restricted in relation to any mortgage of agricultural land made on or after 1st September 1995.

<sup>F22</sup>(13B) In subsection (13A) of this section—

“agricultural holding” has the same meaning as in the Agricultural Holdings Act 1986; and

“agricultural land” has the same meaning as in the Agriculture Act 1947.]

- (14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or

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other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

- (15) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act and the enactments replaced by this section had not been passed:

Provided that, in the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

- (16) Subject as aforesaid, this section applies to any mortgage made after the thirty-first day of December, eighteen hundred and eighty-one, but the provisions thereof, or any of them, may, by agreement in writing made after that date between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.
- (17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (18) For the purposes of this section “mortgagor” does not include an incumbrancer deriving title under the original mortgagor.
- (19) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

#### Textual Amendments

- F21** Words in s. 99(13) inserted (1.9.1995) by 1995 c. 8, ss. 31(1)(2), 41(2), (with s. 37)  
**F22** S. 99(13A)(13B) inserted (1.9.1995) by 1995 c. 8, ss. 31(3), 41(2) (with s. 37)

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

- C13** S. 99 extended by Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), s. 30(6) and Landlord and Tenant Act 1954 (c. 56), s. 36(4)  
**C14** S. 99(13) amended by Agricultural Holdings Act 1948 (c. 63), Sch. 7; excluded by Landlord and Tenant Act 1954 (c. 56), s. 36(4)  
**C15** S. 99(13) excluded by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 12(1)(2)

## 100 Powers of mortgagor and mortgagee in possession to accept surrenders of leases.

- (1) For the purpose only of enabling a lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while

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- in possession shall, as against every incumbrancer, have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased, the rent may be apportioned.
- (2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.
  - (3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.
  - (4) Where any consideration for the surrender, other than an agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.
  - (5) No surrender shall, by virtue of this section, be rendered valid unless:—
    - (a) An authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and
    - (b) The term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and
    - (c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.
  - (6) A contract to make or accept a surrender under this section may be enforced by or against every person on whom the surrender, if completed, would be binding.
  - (7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.
  - (8) This section applies to a mortgage made after the thirty-first day of December, nineteen hundred and eleven, but the provisions of this section, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement

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shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

- (9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.
- (10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

- (11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Act and the enactments replaced by this section had not been passed.
- (12) For the purposes of this section “mortgagor” does not include an incumbrancer deriving title under the original mortgagor.
- (13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

## **101 Powers incident to estate or interest of mortgagee.**

- (1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):
- (i) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and
  - (ii) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
  - (iii) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged



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property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and

- (iv) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

[<sup>F23</sup>(1A) Subsection (1)(i) is subject to section 21 of the Commonhold and Leasehold Reform Act 2002 (no disposition of part-units)]

(2) Where the mortgage deed is executed after the thirty-first day of December, nineteen hundred and eleven, the power of sale aforesaid includes the following powers as incident thereto (namely):—

- (i) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:
- (ii) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:—

- (a) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the property remaining in mortgage or any part thereof, or to any property sold: and
- (b) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers or working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold: and
- (c) With or without covenants by the purchaser to expend money on the land sold.

(3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(4) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.

(5) Save as otherwise provided, this section applies where the mortgage deed is executed after the thirty-first day of December, eighteen hundred and eighty-one.

(6) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages.

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#### Textual Amendments

**F23** S. 101(1A) added (27.9.2004) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), ss. 68, 181(1), [Sch. 5 para. 2](#); S.I. 2004/1832, [art. 2](#)

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

**C16** S. 101 excluded (28.6.1995) by [1995 c. iii, s. 10\(3\)](#) (with s. 25)

### 102 Provision as to mortgages of undivided shares in land.

- (1) A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his [<sup>F24</sup>interest under the trust to which the land is subject], as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the [<sup>F24</sup>trustees] in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.
- (2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

#### Textual Amendments

**F24** Words in s. 102(1) substituted (1.1.1997) by [1996 c. 47, s. 25\(1\)](#), [Sch. 3 para. 4\(13\)\(a\)\(b\)](#) (with ss. 24(2), 25(4)); S.I. 1996/2974, [art.2](#)

### 103 Regulation of exercise of power of sale.

A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

- (i) Notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or
- (ii) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or
- (iii) There has been a breach of some provision contained in the mortgage deed or in this Act, or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

### 104 Conveyance on sale.

- (1) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey or may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage.

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- (2) Where a conveyance is made in exercise of the power of sale conferred by this Act, or any enactment replaced by this Act, the title of the purchaser shall not be impeachable on the ground—
- (a) that no case had arisen to authorise the sale; or
  - (b) that due notice was not given; or
  - (c) where the mortgage is made after the commencement of this Act, that leave of the court, when so required, was not obtained; or
  - (d) whether the mortgage was made before or after such commencement, that the power was otherwise improperly or irregularly exercised;
- and a purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.
- (3) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

## 105 Application of proceeds of sale.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

### Modifications etc. (not altering text)

C17 [S. 105](#) modified (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), [ss. 54, 136\(2\)](#) (with [s. 129](#)); [S.I. 2003/1725](#), [art. 2](#)

## 106 Provisions as to exercise of power of sale.

- (1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.
- (2) The power of sale conferred by this Act does not affect the right of foreclosure.
- (3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith, or, where the mortgage is executed after the thirty-first day of December, nineteen hundred and eleven, of any power or provision contained in the mortgage deed.
- (4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other

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than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

### **107 Mortgagee's receipts, discharges, &c.**

- (1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.
- (2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

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

**C18** S. 107(1) extended by [Housing and Building Control Act 1984 \(c. 29, SIF 61\)](#), s. 19, [Sch. 5 para. 3\(4\)](#)

**C19** S. 107(1) extended by [Housing Act 1985 \(c. 68, SIF 61\)](#), s. 452, [Sch. 17 para. 3\(4\)](#)

### **108 Amount and application of insurance money.**

- (1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, two third parts of the amount that would be required, in case of total destruction, to restore the property insured.
- (2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):
  - (i) Where there is a declaration in the mortgage deed that no insurance is required:
  - (ii) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:
  - (iii) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.
- (3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.
- (4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of

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mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

### **109 Appointment, powers, remuneration and duties of receiver.**

- (1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.
- (2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.
- (3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.
- (4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.
- (5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.
- (6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.
- (7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.
- (8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:
  - (i) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and
  - (ii) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and
  - (iii) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

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- (iv) In payment of the interest accruing due in respect of any principal money due under the mortgage; and
- (v) In or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

### **110 Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver.**

- (1) Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor <sup>F25</sup> . . . being adjudged a bankrupt, such power shall not be exercised only on account of the <sup>F25</sup> . . . adjudication, without the leave of the court.
- (2) This section applies only where the mortgage deed is executed after the commencement of this Act. <sup>F25</sup> . . .

#### **Textual Amendments**

**F25** Words repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(3), [Sch. 10 Pt. III](#) (with saving in [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 437, [Sch. 11 para. 10](#))

### **111 Effect of advance on joint account.**

- (1) Where—
  - (a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or
  - (b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly;

the mortgage money, or other money or money’s worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money’s worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money’s worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

- (2) This section applies if and so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and has effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.
- (3) This section applies to any mortgage obligation or transfer made after the thirty-first day of December, eighteen hundred and eighty-one.

### **112 Notice of trusts on transfer of mortgage.**

<sup>F26</sup> .....

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### Textual Amendments

**F26** S. 112 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), Sch. 1 Pt. 12

## 113 Notice of trusts affecting mortgage debts.

- (1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—
  - (a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and
  - (b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof;

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.
- (2) This section applies to mortgages made before or after the commencement of this Act, but only as respects dealings effected after such commencement.
- (3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

## 114 Transfers of mortgages.

- (1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—
  - (a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and
  - (b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and
  - (c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.
- (2) In this section “transferee” includes his personal representatives and assigns.
- (3) A transfer of mortgage may be made in the form contained in the Third Schedule to this Act with such variations and additions, if any, as the circumstances may require.
- (4) This section applies, whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.
- (5) This section does not extend to a transfer of a bill of sale of chattels by way of security.



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## **115 Reconveyances of mortgages by endorsed receipts.**

- (1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release—
  - (a) Where a mortgage takes effect by demise or subdemise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;
  - (b) Where the mortgage does not take effect by demise or subdemise, as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.
- (2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him; unless—
  - (a) it is otherwise expressly provided; or
  - (b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.
- (3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.
- (4) This section does not affect the right of any person to require a reassignment, surrender, release, or transfer to be executed in lieu of a receipt.
- (5) A receipt may be given in the form contained in the Third Schedule to this Act, with such variations and additions, if any, as may be deemed expedient; <sup>F27</sup> . . .
- (6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.
- (7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.
- (8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Act, but only as respects discharges effected after such commencement.
- (9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building

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<sup>F28</sup> . . . society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society

<sup>F27</sup> . . .

- (10) This section does not apply to the discharge of a [<sup>F29</sup>registered charge (within the meaning of the Land Registration Act 2002)].
- (11) In this section “mortgaged property” means the property remaining subject to the mortgage at the date of the receipt.

#### Textual Amendments

- F27** Words repealed by [Finance Act 1971 \(c. 68\), Sch. 14 Pt. VI](#)
- F28** Words repealed by [Industrial and Provident Societies Act 1965 \(c. 12\), Sch. 5](#) and [Friendly Societies Act 1971 \(c. 66\), Sch. 3](#)
- F29** Words in s. 115(10) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\), ss. 133, 136\(2\), Sch. 11 para. 2\(11\)](#) (with s. 129); S.I. 2003/1725, [art. 2](#)

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

- C20** S. 115 extended by [Industrial and Provident Societies Act 1965 \(c. 12\), s. 33](#); s. 115 extended by [Friendly Societies Act 1974 \(c. 46, SIF 55:1\), s. 57](#)
- C21** S. 115(1)(3)(6)(8) extended by [Building Societies Act 1986 \(c. 53, SIF 16\), ss. 13\(7\), 54\(3\)\(a\)\(5\), 119\(5\), Sch. 4 para. 2\(2\)](#); and (1.12.1997) by 1986 c. 53, [Sch. 2A para. 1\(2\)](#) (as inserted (1.12.1997) by 1997 c. 32, s. 7(2), [Sch. 2](#); S.I. 1997/2668, art. 2, [Sch. Pt.I](#))
- C22** S. 115(9) excluded by [Building Societies Act 1986 \(c. 53, SIF 16\), ss. 13\(7\), 54\(3\)\(a\)\(5\), 119\(5\), Sch. 4 para. 2\(3\)](#); and (1.12.1997) by 1986 c. 53, [Sch. 2A para. 1\(3\)](#) (as inserted (1.12.1997) by 1997 c. 32, s. 7(2), [Sch.2](#); S.I. 1997/2668, art. 2, [Sch. Pt.I](#))

### 116 Cesser of mortgage terms.

Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.

### 117 Forms of statutory legal charges.

- (1) As a special form of charge by way of legal mortgage, a mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in one of the forms (Nos. 1 or 4) set out in the Fourth Schedule to this Act, with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.
- (2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in such a mortgage deed—

First, a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect following, namely:

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee (as well after as before any judgment is obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated

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rate, by equal half-yearly payments the first thereof to be made at the end of six months from the day stated for payment of the mortgage money:

Secondly, a provision to the following effect (namely):

That if the mortgagor on the stated day pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

This subsection applies to a mortgage deed made under section twenty-six of the <sup>M3</sup>Conveyancing Act, 1881, with a substitution of a reference to “the person therein expressed to convey as mortgagor” for the reference in this subsection to “the person therein expressed to charge as mortgagor.”

#### Marginal Citations

M3 1881 c. 41.

### 118 Forms of statutory transfers of legal charges.

- (1) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (Nos. 2, 3 or 4) set out in the Fourth Schedule to this Act as may be appropriate to the case with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.
- (2) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):—
  - (i) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred (who, with his personal representatives and assigns, is in this section designated the transferee), the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:
  - (ii) All the term and interest, if any, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.
- (3) If a covenantor joins in the deed of transfer, there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

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- (4) If the deed of transfer is made in the Form No. 4, it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.
- (5) This section applies to the transfer of a statutory mortgage created under any enactment replaced by this Act.

### **119 Implied covenants, joint and several.**

In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey or charge as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

### **120 Form of discharge of statutory mortgage or charge.**

A statutory mortgage may be surrendered or discharged by a receipt in the form (No. 5) set out in the Fourth Schedule to this Act with such variations and additions, if any, as circumstances may require.

### *Rentcharges*

### **121 Remedies for the recovery of annual sums charged on land.**

- (1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the annual sum shall have such remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.
- (2) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.
- (3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession,

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and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

- (4) In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the means hereinafter mentioned, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed:

Provided that this subsection shall not authorise the creation of a legal term of years absolute after the commencement of this Act, save where the annual sum is a rentcharge held for a legal estate.

The surplus, if any, of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

The means by which such annual sum, arrears, costs, and expenses may be raised includes—

- (a) the creation of a legal mortgage or a sale (effected by assignment or subdemise) of the term created in the land charged or any part thereof,
- (b) the receipt of the income of the land comprised in the term.

- (5) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

<sup>F30</sup>(6) .....

- (7) The powers and remedies conferred by this section apply where the instrument creating the annual sum comes into operation after the thirty-first day of December, eighteen hundred and eighty-one, and whether the instrument conferring the power under which the annual sum was authorised to be created came into operation before or after that date, unless the instrument creating the power or under which the annual sum is created otherwise directs.

**Textual Amendments**

**F30** S. 121(6) repealed (6.4.2010) by [Perpetuities and Accumulations Act 2009 \(c. 18\)](#), ss. 4(a), 22(2), [Schs.](#) (with s. 15(1)(4)1718); S.I. 2010/37, art. 2

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

**C23** S. 121 saved by [Perpetuities and Accumulations Act 1964 \(c. 55\)](#), s. 11(1); extended by [Statute Law \(Repeals\) Act 1969 \(c. 52\)](#), s. 3

**122 Creation of rentcharges charged on another rentcharge and remedies for recovery thereof.**

- (1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half yearly or otherwise may be granted, reserved, charged or created out of or on another

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rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like manner as the same could have been made to issue out of land.

- (2) If at any time the annual sum so created or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver, shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.
- (3) The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by the last preceding section, but subsection (6) of that section shall apply and have effect as if herein re-enacted and in terms made applicable to the powers conferred by this section.
- (4) This section applies to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the court made before the commencement of this Act, operates to confirm any annual sum which would have been validly created if this section had been in force.

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

C24 S. 122 saved by [Perpetuities and Accumulations Act 1964 \(c. 55\)](#), s. 11(1)

*Powers of Attorney*

123 ..... F31

**Textual Amendments**

F31 Ss. 123, 124, 125(1), 126–129 repealed by [Powers of Attorney Act 1971 \(c. 27\)](#), Sch. 2.

124 ..... F32

**Textual Amendments**

F32 Ss. 123, 124, 125(1), 126–129 repealed by [Powers of Attorney Act 1971 \(c. 27\)](#), Sch. 2.

125 † **Powers of attorney relating to land to be filed.**

<sup>F33</sup>(1) .....

- (2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land [<sup>F34</sup>(not being registered land)] shall be entitled to have any instrument

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creating a power of attorney which affects his title, or [<sup>F35</sup>a copy] thereof or of the material portions thereof delivered to him free of expense.

- (3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

**Textual Amendments**

- F33** Ss. 123, 124, 125(1), 126–129 repealed by Powers of Attorney Act 1971 (c. 27), **Sch. 2**.  
**F34** Words in s. 125(2) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), ss. 133, 136(2), **Sch. 11 para. 2(12)** (with s. 129); S.I. 2003/1725, **art. 2**  
**F35** Words substituted by Law of Property (Amendment) Act 1926 (c. 11), **Sch.**

**126–** ..... <sup>F36</sup>  
**129**

**Textual Amendments**

- F36** Ss. 123, 124, 125(1), 126–129 repealed by Powers of Attorney Act 1971 (c. 27), **Sch. 2**.



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