

SCHEDULES

SCHEDULE 1

Section 7.

TRANSFER OF CERTAIN TENANCIES ON DIVORCE, ETC

PART I

General

- 1 (1) Where one spouse is entitled, either in his or her own right or jointly with the other spouse, to occupy a dwelling house by virtue of—
 - (a) a protected tenancy or statutory tenancy within the meaning of the Rent Act 1977, or
 - (b) a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, or
 - (c) a secure tenancy within the meaning of section 28 of the Housing Act 1980,then, on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), the court by which the decree is granted may make an order under Part II below.
- (2) References in this Schedule to a spouse being entitled to occupy a dwelling house by virtue of a protected, statutory or secure tenancy apply whether that entitlement is in his or her own right, or jointly with the other spouse.

PART II

Protected or secure tenancy

- 2 (1) Where a spouse is entitled to occupy the dwelling house by virtue of a protected tenancy within the meaning of the Rent Act 1977, or a secure tenancy within the meaning of the Housing Act 1980, 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—
 - (a) the estate or interest which the spouse 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 so entitled is an assignee of such lease or agreement, the liability of that spouse under any covenant of indemnity by the assignee expressed or implied in the assignment of the lease or agreement to that spouse.

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- (2) Where an order is made under this paragraph, any liability or obligation to which the spouse 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.
- (3) Where the spouse so entitled is a successor within the meaning of Chapter II of Part I of the Housing Act 1980, his or her former spouse (or, in the case of judicial separation, his or her spouse) shall be deemed also to be a successor within the meaning of that Chapter.

Statutory tenancy within the meaning of the Rent Act 1977

- 3 (1) Where the spouse is entitled to occupy the dwelling house by virtue of a statutory tenancy within the meaning of the Rent Act 1977, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.
- (2) 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 shall 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

- 4 Where the spouse is entitled to occupy the dwelling house by virtue of a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy; and a spouse who is deemed as aforesaid to be the tenant under a statutory tenancy shall be (within the meaning of that Act) a statutory tenant in his own right, or a statutory tenant by succession, according as the other spouse was a statutory tenant in his own right or a statutory tenant by succession.

PART III

Ancillary jurisdiction

- 5 Where the court makes an order under Part II of this Schedule, it may by the order direct that both spouses shall 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 have at the date of the order fallen due to be discharged or performed by one only of the spouses or which, 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 ; and where the court gives such a direction it may further direct that either spouse shall be liable

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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 is to take effect

- 6 In the case of a decree of divorce or nullity of marriage, the date specified in an order under Part II of this Schedule as the date on which the order is to take effect shall not be earlier than the date on which the decree is made absolute.

Remarriage of either spouse

- 7 If after the grant of a decree dissolving or annulling a marriage either spouse remarries, that spouse shall not be entitled to apply, by reference to the grant of that decree, for an order under Part II of this Schedule.

Rules of court

- 8 (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 an order under this Schedule shall not, without the leave of the court by which the decree of divorce, nullity of marriage or judicial separation was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.
- (3) Rules of court may provide for the transfer of proceedings pending by virtue of this Schedule in the court which granted the decree of divorce, nullity of marriage or judicial separation as follows—
- (a) if the proceedings are pending in the High Court, for the transfer of the proceedings to a divorce county court;
 - (b) if the proceedings are pending in a divorce county court, for the transfer of the proceedings to the High Court or to some other divorce county court;
- and a court shall have jurisdiction to entertain any proceedings transferred to the court by virtue of rules made in pursuance of this sub-paragraph.
- (4) For the purposes of sub-paragraph (3) above—
- (a) any proceedings in the divorce registry shall be treated as pending in a divorce county court; and
 - (b) the power to provide for the transfer of proceedings to a divorce county court shall include power to provide for the transfer of proceedings to the divorce registry.

Savings for sections 1 and 2 of this Act

- 9 Where a spouse is entitled to occupy a dwelling house by virtue of a tenancy, this Schedule shall not affect the operation of sections 1 and 2 of this Act in relation to the other spouse's rights of occupation, and the court's power to make orders under this Schedule shall be in addition to the powers conferred by those sections.

Interpretation

- 10 (1) In this Schedule—

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" divorce county court" means a county court designated under section 1 of the Matrimonial Causes Act 1967 ;

" divorce registry " means the principal registry of the Family Division of the High Court;

" landlord " includes any person from time to time deriving title under the original landlord and also includes, 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 ;

" tenancy " includes sub-tenancy.

- (2) For the avoidance of doubt it is hereby declared that the reference in paragraph 7 above to remarriage includes a reference to a marriage which is by law void or voidable.

SCHEDULE 2

Section 12.

CONSEQUENTIAL AMENDMENTS

LAND REGISTRATION ACT 1925

In sections 64(5) and 112B, for " section 2(7) of the Matrimonial Homes Act 1967 " substitute in each case " section 2(8) of the Matrimonial Homes Act 1983 " .

MATRIMONIAL HOMES ACT 1967

In paragraph 4 of the Schedule, for "Matrimonial Homes Act 1967 " substitute "Matrimonial Homes Act 1983 " .

LAND CHARGES ACT 1972

In section 2(7), for " Matrimonial Homes Act 1967 " substitute " Matrimonial Homes Act 1983 " .

MATRIMONIAL CAUSES ACT 1973

In section 4(4)(b) (inserted by section 62 of the Domestic Proceedings and Magistrates' Courts Act 1978), for sub-paragraphs (i) and (ii) substitute " section 1 or 9 of the Matrimonial Homes Act 1983 " .

In section 50(1)(b), for the words from " section 7 " to the end of the paragraph substitute " Schedule 1 to the Matrimonial Homes Act 1983 (transfer of certain tenancies on divorce, etc.) " .

In section 50(1)(c), for " Matrimonial Homes Act 1967 " substitute " Matrimonial Homes Act 1983 " .

DOMESTIC PROCEEDINGS AND MAGISTRATES' COURTS ACT 1978

In section 28(2)(a), for " Matrimonial Homes Act 1967 " substitute " Matrimonial Homes Act 1983 " .

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In section 28(2)(b), for " section 4 of the Domestic Violence and Matrimonial Proceedings Act 1976 " substitute " section 9 of the Matrimonial Homes Act 1983 " .

SCHEDULE 3

Section 12.

REPEALS

Chapter	Short Title	Extent of Repeal
1967 c. 75.	Matrimonial Homes Act 1967.	The whole Act except section 2(6) so far as it relates to paragraph 4 of the Schedule, and except that paragraph.
1970 c. 45.	Matrimonial Proceedings and Property Act 1970.	Section 38.
1972 c. 61.	Land Charges Act 1972.	In Schedule 3, paragraphs 8 to 12.
1976 c. 50.	Domestic Violence and Matrimonial Proceedings Act 1976.	Sections 3 and 4.
1977 c. 42.	Rent Act 1977.	In Schedule 23, paragraph 40.
1980 c. 51.	Housing Act 1980.	In Schedule 25, paragraph 14.
1981 c. 24.	Matrimonial Homes and Property Act 1981.	Sections 1 to 3. In section 4, subsections (2) and (3). Sections 5 and 6. Schedules 1 and 2.