Family Law Act 1996

1996 CHAPTER 27

PART IV

FAMILY HOMES AND DOMESTIC VIOLENCE

Modifications etc. (not altering text)

C1 Pt. 4 modified (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 25(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Rights to occupy matrimonial [F1 or civil partnership] home

Textual Amendments

F1 Words in cross-heading preceding s. 30 substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

30 Rights concerning [F2 home where one spouse or civil partner] has no estate, etc.

(1) This section applies if—

(a) one spouse [F3 or civil partner ("A")] is entitled to occupy a dwelling-house by virtue of—

(i) a beneficial estate or interest or contract; or

(ii) any enactment giving [F4 A] the right to remain in occupation; and

(b) the other spouse [F5 or civil partner ("B")] is not so entitled.

(2) Subject to the provisions of this Part, [F6 B] has the following rights ([F7 home rights"]) —

(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by [F8 A] except with the leave of the court given by an order under section 33;

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(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

(3) If **[**[F9]B**]** is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by **[**[F9]B**]** in or towards satisfaction of any liability of **[**[F10]A**]** in respect of rent, mortgage payments or other outgoings affecting the dwelling-house is, whether or not it is made or done in pursuance of an order under section 40, as good as if made or done by **[**[F10]A**]**.

(4) **[**[F11]B's**]** occupation by virtue of this section—

(a) is to be treated, for the purposes of the [M1]Rent (Agriculture) Act 1976 and the [M2]Rent Act 1977 (other than Part V and sections 103 to 106 of that Act), as occupation **[**[F12]by A as A's**]** residence, and

(b) if **[**[F13]B occupies the dwelling-house as B's**]** only or principal home, is to be treated, for the purposes of the [M3]Housing Act 1985 **[**[F14], Part I of the Housing Act 1988 and Chapter I of Part V of the Housing Act 1996**]**, as occupation **[**[F15]by A as A's**]** only or principal home.

(5) If **[**[F16]B**]**)—

(a) is entitled under this section to occupy a dwelling-house or any part of a dwelling-house, and

(b) makes any payment in or towards satisfaction of any liability of **[**[F17]A**]** in respect of mortgage payments affecting the dwelling-house,

the person to whom the payment is made may treat it as having been made by **[**[F18]A**]**, but the fact that that person has treated any such payment as having been so made does not affect any claim of **[**[F19]B against A**]** to an interest in the dwelling-house by virtue of the payment.

(6) If **[**[F20]B**]** is entitled under this section to occupy a dwelling-house or part of a dwelling-house by reason of an interest of **[**[F21]A**]** under a trust, all the provisions of subsections (3) to (5) apply in relation to the trustees as they apply in relation to **[**[F21]A**]**.

(7) This section does not apply to a dwelling-house **[**[F22] which—

(a) in the case of spouses, has at no time been, and was at no time intended by them to be, a matrimonial home of theirs; and

(b) in the case of civil partners, has at no time been, and was at no time intended by them to be, a civil partnership home of theirs.**]**

(8) **[**[F23]B's home rights**]** continue—

(a) only so long as the marriage **[**[F24]or civil partnership**]** subsists, except to the extent that an order under section 33(5) otherwise provides; and

(b) only so long as **[**[F25]A**]** is entitled as mentioned in subsection (1) to occupy the dwelling-house, except where provision is made by section 31 for those rights to be a charge on an estate or interest in the dwelling-house.

(9) It is hereby declared that **[**[F26]a person**]**—

(a) who has an equitable interest in a dwelling-house or in its proceeds of sale, but

(b) is not **[**[F26]a person**]** in whom there is vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house,

is to be treated, only for the purpose of determining whether he has **[**[F27]home rights**]**, as not being entitled to occupy the dwelling-house by virtue of that interest.

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Textual Amendments

F2 Words in s. 30 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F3 Words in s. 30(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(2)(a)(i)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F4 Words in s. 30(1)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(2)(a)(ii)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F5 Words in s. 30(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(2)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F6 Words in s. 30(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(3)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F7 Words in s. 30(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(3)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F8 Words in s. 30(2)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(3)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F9 Words in s. 30(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F10 Words in s. 30(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F11 Words in s. 30(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(5)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F12 Words in s. 30(4)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(5)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F13 Words in s. 30(4)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(5)(c)(i)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F14 Words in s. 30(4)(b) substituted (12.2.1997) by S.I. 1997/74, art. 2, **Sch. para. 10(a)**

F15 Words in s. 30(4)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(5)(c)(ii)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F16 Words in s. 30(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(6)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F17 Words in s. 30(5)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(6)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F18 Word in s. 30(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(6)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F19 Words in s. 30(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(6)(d)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F20 Word in s. 30(6) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(7)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F21 Word in s. 30(6) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(7)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F22 Words in s. 30(7) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(8)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F23 Words in s. 30(8) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(9)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F24 Words in s. 30(8)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(9)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F25 Word in s. 30(8)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(9)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F26 Words in s. 30(9) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(10)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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F27 Words in s. 30(9) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 1(1)(10)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Marginal Citations

M1 1976 c. 80.
M2 1977 c. 42.
M3 1985 c. 68.

31 Effect of [F28home rights] as charge on dwelling-house.

(1) Subsections (2) and (3) apply if, at any time during a **[**F29marriage or civil partnership, A**]** is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest.

(2) **[**F30B's home rights**]** are a charge on the estate or interest.

(3) The charge created by subsection (2) has the same priority as if it were an equitable interest created at whichever is the latest of the following dates—

(a) the date on which **[**F31A**]** acquires the estate or interest;

(b) the date of the marriage **[**F32or of the formation of the civil partnership**]**; and

(c) 1st January 1968 (the commencement date of the M4Matrimonial Homes Act 1967).

(4) Subsections (5) and (6) apply if, at any time when **[**F33B's home rights**]** are a charge on an interest of **[**F34A**]** under a trust, there are, apart from **[**F35A or B**]**, no persons, living or unborn, who are or could become beneficiaries under the trust.

(5) The rights are a charge also on the estate or interest of the trustees for **[**F36A**]**.

(6) The charge created by subsection (5) has the same priority as if it were an equitable interest created (under powers overriding the trusts) on the date when it arises.

(7) In determining for the purposes of subsection (4) whether there are any persons who are not, but could become, beneficiaries under the trust, there is to be disregarded any potential exercise of a general power of appointment exercisable by either or both of **[**F37A and B**]** alone (whether or not the exercise of it requires the consent of another person).

(8) Even though **[**F38B's home rights**]** are a charge on an estate or interest in the dwelling-house, those rights are brought to an end by—

(a) the death of **[**F39A**]**, or

(b) the termination (otherwise than by death) of the marriage **[**F40or civil partnership**]**,

unless the court directs otherwise by an order made under section 33(5).

(9) If—

(a) **[**F41B's home rights**]** are a charge on an estate or interest in the dwelling-house, and

(b) that estate or interest is surrendered to merge in some other estate or interest expectant on it in such circumstances that, but for the merger, the person taking the estate or interest would be bound by the charge,

the surrender has effect subject to the charge and the persons thereafter entitled to the other estate or interest are, for so long as the estate or interest surrendered would have endured if not so surrendered, to be treated for all purposes of this Part as deriving title

to the other estate or interest under **[**[F42]A**]** or, as the case may be, under the trustees for **[**[F42]A**]**, by virtue of the surrender.

(10) If the title to the legal estate by virtue of which **[**[F43]A**]** is entitled to occupy a dwelling-house (including any legal estate held by trustees for **[**[F43]A**]**) is registered under the **[**[F44]Land Registration Act 2002**]** or any enactment replaced by that Act—

(a) registration of a land charge affecting the dwelling-house by virtue of this Part is to be effected by registering a notice under that Act; and

[[F45](b) **[**[F46]B's home rights**]** are not to be capable of falling within paragraph 2 of Schedule 1 or 3 to that Act.**]**

(11) [F47]. . . . . .

(12) If—

[[F48](a) B's home rights are a charge on the estate of A or of trustees of A, and**]**

(b) that estate is the subject of a mortgage,

then if, after the date of the creation of the mortgage ("the first mortgage"), the charge is registered under section 2 of the [M5]Land Charges Act 1972, the charge is, for the purposes of section 94 of the [M6]Law of Property Act 1925 (which regulates the rights of mortgagees to make further advances ranking in priority to subsequent mortgages), to be deemed to be a mortgage subsequent in date to the first mortgage.

(13) It is hereby declared that a charge under subsection (2) or (5) is not registrable under subsection (10) or under section 2 of the Land Charges Act 1972 unless it is a charge on a legal estate.

Textual Amendments

F28 Words in s. 31 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(12)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F29 Words in s. 31(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F30 Words in s. 31(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F31 Words in s. 31(3)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F32 Words in s. 31(3)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F33 Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F34 Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F35 Words in s. 31(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(5)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F36 Words in s. 31(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(6)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F37 Words in s. 31(7) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F38 Words in s. 31(8) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F39 Words in s. 31(8)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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F40 Words in s. 31(8)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(8)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F41 Words in s. 31(9)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(9)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F42 Word in s. 31(9) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(9)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F43 Word in s. 31(10) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(10)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F44 Words in s. 31(10) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(2)(a) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

F45 S. 31(10)(b) substituted (13.10.2003) by 2002 c. 9, ss. 133, 136(2), Sch. 11 para. 34(2)(b) (with s. 129); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

F46 Words in s. 31(10)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(10)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F47 S. 31(11) repealed (13.10.2003) by 2002 c. 9, ss. 135, 136(2), Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2(1)** (subject to art. 2(2))

F48 S. 31(12)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 2(1)(11)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Modifications etc. (not altering text)

C2 S. 31(10) restricted (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 2**; S.I. 1997/1892, **art. 3**
S. 31(10) extended (1.10.1997) by 1996 c. 27, s. 32, **Sch. 4 para. 4(3)(b)**; S.I. 1997/1892, **art. 3**

Marginal Citations

M4 1967 c. 75.

M5 1972 c. 61.

M6 1925 c. 20.

[[F49]32 Further provisions relating to home rights.

Schedule 4 (provisions supplementary to sections 30 and 31) has effect.**]**

Textual Amendments

F49 S. 32 substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 3**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Occupation orders

33 Occupation orders where applicant has estate or interest etc. or has [[F50]home rights].

(1) If—

(a) a person ("the person entitled")—

(i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or

(ii) has **[**[F51]home rights**]** in relation to a dwelling-house, and

(b) the dwelling-house—

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(i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or

(ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).

(2) If an agreement to marry is terminated, no application under this section may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

[[F52](2A) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.**]**

(3) An order under this section may—

(a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");

(b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(c) regulate the occupation of the dwelling-house by either or both parties;

(d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;

(e) if the respondent has **[**[F53]home rights**]** in relation to the dwelling-house and the applicant is the other spouse **[**[F54]or civil partner**]**, restrict or terminate those rights;

(f) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(g) exclude the respondent from a defined area in which the dwelling-house is included.

(4) An order under this section may declare that the applicant is entitled as mentioned in subsection (1)(a)(i) or has **[**[F55]home rights**]**.

(5) If the applicant has **[**[F56]home rights**]** and the respondent is the other spouse **[**[F57]or civil partner**]**, an order under this section made during the marriage **[**[F58]or civil partnership**]** may provide that those rights are not brought to an end by—

(a) the death of the other spouse **[**[F59]or civil partner**]**; or

(b) the termination (otherwise than by death) of the marriage **[**[F60]or civil partnership**]**.

(6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and

(d) the conduct of the parties in relation to each other and otherwise.

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(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—

(a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and

(b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

(8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.

(9) An order under this section—

(a) may not be made after the death of either of the parties mentioned in subsection (1); and

(b) except in the case of an order made by virtue of subsection (5)(a), ceases to have effect on the death of either party.

(10) An order under this section may, in so far as it has continuing effect, be made for a specified period, until the occurrence of a specified event or until further order.

Textual Amendments

F50 Words in s. 33 heading substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F51 Words in s. 33(1)(a)(ii) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F52 S. 33(2A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F53 Words in s. 33(3)(e) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F54 Words in s. 33(3)(e) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F55 Words in s. 33(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F56 Words in s. 33(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F57 Words in s. 33(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F58 Words in s. 33(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F59 Words in s. 33(5)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(d)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F60 Words in s. 33(5)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 4(1)(6)(e)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

34 Effect of order under s. 33 where rights are charge on dwelling-house.

(1) If **[**[F61]B's home rights**]** are a charge on the estate or interest of **[**[F62]A**]** or of trustees for **[**[F62]A**]**—

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(a) an order under section 33 against **[**[F62]A**]** has, except so far as a contrary intention appears, the same effect against persons deriving title under **[**[F62]A**]** or under the trustees and affected by the charge, and

(b) sections 33(1), (3), (4) and (10) and 30(3) to (6) apply in relation to any person deriving title under **[**[F62]A**]** or under the trustees and affected by the charge as they apply in relation to **[**[F62]A**]**.

(2) The court may make an order under section 33 by virtue of subsection (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

Textual Amendments

F61 Words in s. 34(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 5(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F62 Word in s. 34(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 5(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

35 One former spouse **[**[F63]or former civil partner**]** with no existing right to occupy.

(1) This section applies if—

(a) one former spouse **[**[F64]or former civil partner**]** is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract, or by virtue of any enactment giving him the right to remain in occupation;

(b) the other former spouse **[**[F65]or former civil partner**]** is not so entitled; and

[[F66](c) the dwelling-house—

(i) in the case of former spouses, was at any time their matrimonial home or was at any time intended by them to be their matrimonial home, or

(ii) in the case of former civil partners, was at any time their civil partnership home or was at any time intended by them to be their civil partnership home.**]**

(2) The former spouse **[**[F67]or former civil partner**]** not so entitled may apply to the court for an order under this section against the other former spouse **[**[F67]or former civil partner**]**("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision—

(a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and

(b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision—

(a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and

(b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also—

(a) regulate the occupation of the dwelling-house by either or both of the parties;

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(b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;

(d) the conduct of the parties in relation to each other and otherwise;

(e) the length of time that has elapsed since the parties ceased to live together;

(f) the length of time that has elapsed since the marriage **[**[F68]or civil partnership**]** was dissolved or annulled; and

(g) the existence of any pending proceedings between the parties—

(i) for an order under section 23A or 24 of the [M7]Matrimonial Causes Act 1973 (property adjustment orders in connection with divorce proceedings etc.);

[[F69](ia) for a property adjustment order under Part 2 of Schedule 5 to the Civil Partnership Act 2004;**]**

(ii) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the [M8]Children Act 1989 (orders for financial relief against parents); or

(iii) relating to the legal or beneficial ownership of the dwelling-house.

(7) In deciding whether to exercise its power to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in subsection (6)(a) to (e).

(8) If the court decides to make an order under this section and it appears to it that, if the order does not include a subsection (5) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the subsection (5) provision in the order unless it appears to the court that—

(a) the respondent or any relevant child is likely to suffer significant harm if the provision is included in the order; and

(b) the harm likely to be suffered by the respondent or child in that event is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(9) An order under this section—

(a) may not be made after the death of either of the former spouses **[**[F70]or former civil partners**]**; and

(b) ceases to have effect on the death of either of them.

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(10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

(11) A former spouse **[**[F71]or former civil partner**]** who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

(12) Subsection (11) does not prejudice any right of such a former spouse **[**[F72]or former civil partner**]** to apply for an order under section 33.

(13) So long as an order under this section remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—

[[F73](a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and

(b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section).**]**

Textual Amendments

F63 Words in s. 35 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(10)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F64 Words in s. 35(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F65 Words in s. 35(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F66 S. 35(1)(c) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F67 Words in s. 35(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F68 Words in s. 35(6)(f) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F69 S. 35(6)(g)(ia) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(6)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F70 Words in s. 35(9)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(7)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F71 Words in s. 35(11) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(8)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F72 Words in s. 35(12) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(8)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F73 S. 35(13)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 6(1)(9)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Marginal Citations

M7 1973 c. 18.

M8 1989 c. 41.

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36 One cohabitant or former cohabitant with no existing right to occupy.

(1) This section applies if—

(a) one cohabitant or former cohabitant is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation;

(b) the other cohabitant or former cohabitant is not so entitled; and

(c) that dwelling-house is the home in which they **[**[F74]cohabit or a home in which they at any time cohabited or intended to cohabit**]**.

(2) The cohabitant or former cohabitant not so entitled may apply to the court for an order under this section against the other cohabitant or former cohabitant ("the respondent").

(3) If the applicant is in occupation, an order under this section must contain provision—

(a) giving the applicant the right not to be evicted or excluded from the dwelling-house or any part of it by the respondent for the period specified in the order; and

(b) prohibiting the respondent from evicting or excluding the applicant during that period.

(4) If the applicant is not in occupation, an order under this section must contain provision—

(a) giving the applicant the right to enter into and occupy the dwelling-house for the period specified in the order; and

(b) requiring the respondent to permit the exercise of that right.

(5) An order under this section may also—

(a) regulate the occupation of the dwelling-house by either or both of the parties;

(b) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(6) In deciding whether to make an order under this section containing provision of the kind mentioned in subsection (3) or (4) and (if so) in what manner, the court shall have regard to all the circumstances including—

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3) or (4), on the health, safety or well-being of the parties and of any relevant child;

(d) the conduct of the parties in relation to each other and otherwise;

(e) the nature of the parties' relationship **[**[F75]and in particular the level of commitment involved in it**]**;

(f) the length of time during which they have **[**[F76]cohabited**]**;

(g) whether there are or have been any children who are children of both parties or for whom both parties have or have had parental responsibility;

(h) the length of time that has elapsed since the parties ceased to live together; and

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(i) the existence of any pending proceedings between the parties—

(i) for an order under paragraph 1(2)(d) or (e) of Schedule 1 to the [M9]Children Act 1989 (orders for financial relief against parents); or

(ii) relating to the legal or beneficial ownership of the dwelling-house.

(7) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (5) ("a subsection (5) provision") and (if so) in what manner, the court shall have regard to all the circumstances including—

(a) the matters mentioned in subsection (6)(a) to (d); and

(b) the questions mentioned in subsection (8).

(8) The questions are—

(a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (5) provision is not included in the order; and

(b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

(9) An order under this section—

(a) may not be made after the death of either of the parties; and

(b) ceases to have effect on the death of either of them.

(10) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

(11) A person who has an equitable interest in the dwelling-house or in the proceeds of sale of the dwelling-house but in whom there is not vested (whether solely or as joint tenant) a legal estate in fee simple or a legal term of years absolute in the dwelling-house is to be treated (but only for the purpose of determining whether he is eligible to apply under this section) as not being entitled to occupy the dwelling-house by virtue of that interest.

(12) Subsection (11) does not prejudice any right of such a person to apply for an order under section 33.

(13) So long as the order remains in force, subsections (3) to (6) of section 30 apply in relation to the applicant—

[[F77](a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that section); and

(b) as if the respondent were A (the person entitled as mentioned in subsection (1)(a) of that section).**]**

Textual Amendments

F74 Words in s. 36(1)(c) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(2)**; S.I. 2005/3196, **art. 2(c)**

F75 Words in s. 36(6)(e) inserted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 2(2)**, 60; S.I. 2005/3196, **art. 2(a)**

F76 Word in s. 36(6)(f) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 34(3)**; S.I. 2005/3196, **art. 2(c)**

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F77 S. 36(13)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 7**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Marginal Citations

M9 1989 c. 41.

37 Neither spouse [F78or civil partner] entitled to occupy.

(1) This section applies if—

(a) one spouse or former spouse and the other spouse or former spouse occupy a dwelling-house which is or was the matrimonial home; but

(b) neither of them is entitled to remain in occupation—

(i) by virtue of a beneficial estate or interest or contract; or

(ii) by virtue of any enactment giving him the right to remain in occupation.

[F79(1A) This section also applies if—

(a) one civil partner or former civil partner and the other civil partner or former civil partner occupy a dwelling-house which is or was the civil partnership home; but

(b) neither of them is entitled to remain in occupation—

(i) by virtue of a beneficial estate or interest or contract; or

(ii) by virtue of any enactment giving him the right to remain in occupation.]

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may—

(a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(b) regulate the occupation of the dwelling-house by either or both of the [F80parties];

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) Subsections (6) and (7) of section 33 apply to the exercise by the court of its powers under this section as they apply to the exercise by the court of its powers under subsection (3) of that section.

(5) An order under this section must be limited so as to have effect for a specified period not exceeding six months, but may be extended on one or more occasions for a further specified period not exceeding six months.

Textual Amendments

F78 Words in s. 37 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 8(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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F79 S. 37(1A) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 8(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F80 Word in s. 37(3)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 8(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

38 Neither cohabitant or former cohabitant entitled to occupy.

(1) This section applies if—

(a) one cohabitant or former cohabitant and the other cohabitant or former cohabitant occupy a dwelling-house which is the home in which they **[**[F81]cohabit or cohabited**]**; but

(b) neither of them is entitled to remain in occupation—

(i) by virtue of a beneficial estate or interest or contract; or

(ii) by virtue of any enactment giving him the right to remain in occupation.

(2) Either of the parties may apply to the court for an order against the other under this section.

(3) An order under this section may—

(a) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;

(b) regulate the occupation of the dwelling-house by either or both of the parties;

(c) require the respondent to leave the dwelling-house or part of the dwelling-house; or

(d) exclude the respondent from a defined area in which the dwelling-house is included.

(4) In deciding whether to exercise its powers to include one or more of the provisions referred to in subsection (3) ("a subsection (3) provision") and (if so) in what manner, the court shall have regard to all the circumstances including—

(a) the housing needs and housing resources of each of the parties and of any relevant child;

(b) the financial resources of each of the parties;

(c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child;

(d) the conduct of the parties in relation to each other and otherwise; and

(e) the questions mentioned in subsection (5).

(5) The questions are—

(a) whether the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if the subsection (3) provision is not included in the order; and

(b) whether the harm likely to be suffered by the respondent or child if the provision is included is as great as or greater than the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the provision is not included.

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(6) An order under this section shall be limited so as to have effect for a specified period not exceeding six months, but may be extended on one occasion for a further specified period not exceeding six months.

Textual Amendments

F81 Words in s. 38(1)(a) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 35**; S.I. 2005/3196, **art. 2(c)**

39 Supplementary provisions.

(1) In this Part an "occupation order" means an order under section 33, 35, 36, 37 or 38.

(2) An application for an occupation order may be made in other family proceedings or without any other family proceedings being instituted.

(3) If—

(a) an application for an occupation order is made under section 33, 35, 36, 37 or 38, and

(b) the court considers that it has no power to make the order under the section concerned, but that it has power to make an order under one of the other sections,

the court may make an order under that other section.

(4) The fact that a person has applied for an occupation order under sections 35 to 38, or that an occupation order has been made, does not affect the right of any person to claim a legal or equitable interest in any property in any subsequent proceedings (including subsequent proceedings under this Part).

40 Additional provisions that may be included in certain occupation orders.

(1) The court may on, or at any time after, making an occupation order under section 33, 35 or 36—

(a) impose on either party obligations as to—

(i) the repair and maintenance of the dwelling-house; or

(ii) the discharge of rent, mortgage payments or other outgoings affecting the dwelling-house;

(b) order a party occupying the dwelling-house or any part of it (including a party who is entitled to do so by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation) to make periodical payments to the other party in respect of the accommodation, if the other party would (but for the order) be entitled to occupy the dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any such enactment;

(c) grant either party possession or use of furniture or other contents of the dwelling-house;

(d) order either party to take reasonable care of any furniture or other contents of the dwelling-house;

(e) order either party to take reasonable steps to keep the dwelling-house and any furniture or other contents secure.

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(2) In deciding whether and, if so, how to exercise its powers under this section, the court shall have regard to all the circumstances of the case including—
  (a) the financial needs and financial resources of the parties; and
  (b) the financial obligations which they have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(3) An order under this section ceases to have effect when the occupation order to which it relates ceases to have effect.

41 Additional considerations if parties are cohabitants or former cohabitants.

F82 . . . . . .

Textual Amendments

F82 S. 41 repealed (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 2(1), 58(2), 60, **Sch. 11**; S.I. 2005/3196, **art. 2(a)(d)**

Non-molestation orders

42 Non-molestation orders.

(1) In this Part a "non-molestation order" means an order containing either or both of the following provisions—
  (a) provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;
  (b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order—
  (a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
  (b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

(3) In subsection (2) "family proceedings" includes proceedings in which the court has made an emergency protection order under section 44 of the [M10]Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).

(4) Where an agreement to marry is terminated, no application under subsection (2)(a) may be made by virtue of section 62(3)(e) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.

[[F83](4ZA) If a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) is terminated, no application under this section may be made by virtue of section 62(3)(eza) by reference to that agreement after the end of the period of three years beginning with the day on which it is terminated.**]**

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(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
  (a) of the applicant or, in a case falling within subsection (2)(b), the person for whose benefit the order would be made; and
  (b) of any relevant child.

(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.

(7) A non-molestation order may be made for a specified period or until further order.

(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

Textual Amendments

F83 S. 42(4ZA) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 9**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Marginal Citations

M10 1989 c. 41.

VALID FROM 01/07/2007

[F84 42A Offence of breaching non-molestation order

(1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.

(2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.

(3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.

(4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.

(5) A person guilty of an offence under this section is liable—
  (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
  (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

(6) A reference in any enactment to proceedings under this Part, or to an order under this Part, does not include a reference to proceedings for an offence under this section or to an order made in such proceedings.

"Enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30).]

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Textual Amendments

F84 S. 42A inserted (1.7.2007) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 1**, 60 (with transitional provisions in Sch. 12 para. 1); S.I. 2007/1845, **art. 2(a)** (with art. 3)

Further provisions relating to occupation and non-molestation orders

43 Leave of court required for applications by children under sixteen.

(1) A child under the age of sixteen may not apply for an occupation order or a non-molestation order except with the leave of the court.

(2) The court may grant leave for the purposes of subsection (1) only if it is satisfied that the child has sufficient understanding to make the proposed application for the occupation order or non-molestation order.

44 Evidence of agreement to marry [F85or form a civil partnership].

(1) Subject to subsection (2), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.

(2) Subsection (1) does not apply if the court is satisfied that the agreement to marry was evidenced by—

(a) the gift of an engagement ring by one party to the agreement to the other in contemplation of their marriage, or

(b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.

[F86(3) Subject to subsection (4), the court shall not make an order under section 33 or 42 by virtue of section 62(3)(eza) unless there is produced to it evidence in writing of the existence of the civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004).

(4) Subsection (3) does not apply if the court is satisfied that the civil partnership agreement was evidenced by—

(a) a gift by one party to the agreement to the other as a token of the agreement, or

(b) a ceremony entered into by the parties in the presence of one or more other persons assembled for the purpose of witnessing the ceremony.]

Textual Amendments

F85 Words in s. 44 heading inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 10(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F86 S. 44(3)(4) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 10(1)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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45 Ex parte orders.

(1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.

(2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—

(a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;

(b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and

(c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—

(i) where the court is a magistrates' court, in effecting service of proceedings; or

(ii) in any other case, in effecting substituted service.

(3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

(4) If, at a full hearing, the court makes an occupation order ("the full order"), then—

(a) for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant section is to apply as if the period for which the full order will have effect began on the date on which the initial order first had effect; and

(b) the provisions of section 36(10) or 38(6) as to the extension of orders are to apply as if the full order and the initial order were a single order.

(5) In this section—

"full hearing" means a hearing of which notice has been given to all the parties in accordance with rules of court;

"initial order" means an occupation order made by virtue of subsection (1); and

"relevant section" means section 33(10), 35(10), 36(10), 37(5) or 38(6).

46 Undertakings.

(1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) The court shall not accept an undertaking under subsection (1) in any case where apart from this section a power of arrest would be attached to the order.

(4) An undertaking given to a court under subsection (1) is enforceable as if it were an order of the court.

(5) This section has effect without prejudice to the powers of the High Court and the county court apart from this section.

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47 Arrest for breach of order.

(1) In this section "a relevant order" means an occupation order or a non-molestation order.

(2) If—
- (a) the court makes a relevant order; and
- (b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

(3) Subsection (2) does not apply in any case where the relevant order is made by virtue of section 45(1), but in such a case the court may attach a power of arrest to one or more provisions of the order if it appears to it—
- (a) that the respondent has used or threatened violence against the applicant or a relevant child; and
- (b) that there is a risk of significant harm to the applicant or child, attributable to conduct of the respondent, if the power of arrest is not attached to those provisions immediately.

(4) If, by virtue of subsection (3), the court attaches a power of arrest to any provisions of a relevant order, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the order.

(5) Any period specified for the purposes of subsection (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the relevant order.

(6) If, by virtue of subsection (2) or (3), a power of arrest is attached to certain provisions of an order, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be in breach of any such provision.

(7) If a power of arrest is attached under subsection (2) or (3) to certain provisions of the order and the respondent is arrested under subsection (6)—
- (a) he must be brought before the relevant judicial authority within the period of 24 hours beginning at the time of his arrest; and
- (b) if the matter is not then disposed of forthwith, the relevant judicial authority before whom he is brought may remand him.

In reckoning for the purposes of this subsection any period of 24 hours, no account is to be taken of Christmas Day, Good Friday or any Sunday.

(8) If the court has made a relevant order but—
- (a) has not attached a power of arrest under subsection (2) or (3) to any provisions of the order, or
- (b) has attached that power only to certain provisions of the order,

then, if at any time the applicant considers that the respondent has failed to comply with the order, he may apply to the relevant judicial authority for the issue of a warrant for the arrest of the respondent.

(9) The relevant judicial authority shall not issue a warrant on an application under subsection (8) unless—
- (a) the application is substantiated on oath; and

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(b) the relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.

(10) If a person is brought before a court by virtue of a warrant issued under subsection (9) and the court does not dispose of the matter forthwith, the court may remand him.

(11) Schedule 5 (which makes provision corresponding to that applying in magistrates' courts in civil cases under sections 128 and 129 of the [M11]Magistrates' Courts Act 1980) has effect in relation to the powers of the High Court and a county court to remand a person by virtue of this section.

(12) If a person remanded under this section is granted bail (whether in the High Court or a county court under Schedule 5 or in a magistrates' court under section 128 or 129 of the Magistrates' Courts Act 1980), he may be required by the relevant judicial authority to comply, before release on bail or later, with such requirements as appear to that authority to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

Modifications etc. (not altering text)

C3 S. 47(7) extended (1.10.1997) by 1989 c. 41, **ss. 38A**, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
S. 47(7) extended (1.10.1997) by 1989 c. 41, **ss. 44A**, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)

C4 S. 47(11) extended (1.10.1997) by 1989 c. 41, **ss. 38A**, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
S. 47(11) extended (1.10.1997) by 1989 c. 41, **ss. 44A**, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)

C5 S. 47(12) extended (1.10.1997) by 1989 c. 41, **ss. 38A**, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
S. 47(12) extended (1.10.1997) by 1989 c. 41, **ss. 44A**, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)

Marginal Citations

M11 1980 c. 43.

48 Remand for medical examination and report.

(1) If the relevant judicial authority has reason to consider that a medical report will be required, any power to remand a person under section 47(7)(b) or (10) may be exercised for the purpose of enabling a medical examination and report to be made.

(2) If such a power is so exercised, the adjournment must not be for more than 4 weeks at a time unless the relevant judicial authority remands the accused in custody.

(3) If the relevant judicial authority so remands the accused, the adjournment must not be for more than 3 weeks at a time.

(4) If there is reason to suspect that a person who has been arrested—

(a) under section 47(6), or

(b) under a warrant issued on an application made under section 47(8),

is suffering from mental illness or severe mental impairment, the relevant judicial authority has the same power to make an order under section 35 of the [M12]Mental

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Health Act 1983 (remand for report on accused's mental condition) as the Crown Court has under section 35 of the Act of 1983 in the case of an accused person within the meaning of that section.

Modifications etc. (not altering text)

C6 S. 48 extended (1.10.1997) by 1989 c. 41, **ss. 38A**, 38B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 1 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
S. 48 extended (1.10.1998) by 1989 c. 41, **ss. 44A**, 44B (as inserted (1.10.1997) by 1996 c. 27, s. 52, Sch. 6 para. 3 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)

Marginal Citations

M12 1983 c. 20.

49 Variation and discharge of orders.

(1) An occupation order or non-molestation order may be varied or discharged by the court on an application by—
  (a) the respondent, or
  (b) the person on whose application the order was made.

(2) In the case of a non-molestation order made by virtue of section 42(2)(b), the order may be varied or discharged by the court even though no such application has been made.

(3) If **[**[F87]B's home rights are, under section 31,**]** are a charge on the estate or interest of **[**[F88]A**]** or of trustees for **[**[F88]A**]**, an order under section 33 against **[**[F88]A**]** may also be varied or discharged by the court on an application by any person deriving title under **[**[F88]A**]** or under the trustees and affected by the charge.

(4) If, by virtue of section 47(3), a power of arrest has been attached to certain provisions of an occupation order or non-molestation order, the court may vary or discharge the order under subsection (1) in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

Textual Amendments

F87 Words in s. 49(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 11(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F88 Words in s. 49(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 11(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Enforcement powers of magistrates' courts

50 Power of magistrates' court to suspend execution of committal order.

(1) If, under section 63(3) of the [M13]Magistrates' Courts Act 1980, a magistrates' court has power to commit a person to custody for breach of a relevant requirement, the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify.

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(2) In subsection (1) "a relevant requirement" means—

(a) an occupation order or non-molestation order;

(b) an exclusion requirement included by virtue of section 38A of the [M14]Children Act 1989 in an interim care order made under section 38 of that Act; or

(c) an exclusion requirement included by virtue of section 44A of the Children Act 1989 in an emergency protection order under section 44 of that Act.

Marginal Citations

M13 1980 c. 43.

M14 1989 c. 41.

51 Power of magistrates' court to order hospital admission or guardianship.

(1) A magistrates' court has the same power to make a hospital order or guardianship order under section 37 of the [M15]Mental Health Act 1983 or an interim hospital order under section 38 of that Act in the case of a person suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of a relevant requirement as a magistrates' court has under those sections in the case of a person convicted of an offence punishable on summary conviction with imprisonment.

(2) In subsection (1) "a relevant requirement" has the meaning given by section 50(2).

Marginal Citations

M15 1983 c. 20.

Interim care orders and emergency protection orders

52 Amendments of Children Act 1989.

Schedule 6 makes amendments of the provisions of the Children Act 1989 relating to interim care orders and emergency protection orders.

Transfer of tenancies

53 Transfer of certain tenancies.

Schedule 7 makes provision in relation to the transfer of certain tenancies on divorce etc. or on separation of cohabitants.

Dwelling-house subject to mortgage

54 Dwelling-house subject to mortgage.

(1) In determining for the purposes of this Part whether a person is entitled to occupy a dwelling-house by virtue of an estate or interest, any right to possession of the

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dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.

(2) Subsection (1) applies whether or not the mortgagee is in possession.

(3) Where a person ("A") is entitled to occupy a dwelling-house by virtue of an estate or interest, a connected person does not by virtue of—

(a) any **[**[F89]home rights**]** conferred by section 30, or

(b) any rights conferred by an order under section 35 or 36,

have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate or interest and of any contract with the mortgagee.

(4) Subsection (3) does not apply, in the case of **[**[F89]home rights**]**, if under section 31 those rights are a charge, affecting the mortgagee, on the estate or interest mortgaged.

(5) In this section "connected person", in relation to any person, means that person's spouse, former spouse **[**[F90], civil partner, former civil partner**]**, cohabitant or former cohabitant.

Textual Amendments

F89 Words in s. 54(3)(a)(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 12(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F90 Words in s. 54(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 12(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

55 Actions by mortgagees: joining connected persons as parties.

(1) This section applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.

(2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in subsection (3).

(3) The circumstances are that—

(a) the connected person is enabled by section 30(3) or (6) (or by section 30(3) or (6) as applied by section 35(13) or 36(13)), to meet the mortgagor's liabilities under the mortgage;

(b) he has applied to the court before the action is finally disposed of in that court; and

(c) the court sees no special reason against his being made a party to the action and is satisfied—

(i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings; or

(ii) that the expectation of it should be considered under section 36 of the [M16]Administration of Justice Act 1970.

(4) In this section "connected person" has the same meaning as in section 54.

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Marginal Citations
M16 1970 c. 31.

56 Actions by mortgagees: service of notice on certain persons.

(1) This section applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is—

(a) in the case of unregistered land, a land charge of Class F registered against the person who is the estate owner at the relevant time or any person who, where the estate owner is a trustee, preceded him as trustee during the subsistence of the mortgage; or

(b) in the case of registered land, a subsisting registration of—

(i) a notice under section 31(10);

(ii) a notice under section 2(8) of the [M17]Matrimonial Homes Act 1983; or

(iii) a notice or caution under section 2(7) of the [M18]Matrimonial Homes Act 1967.

(2) If the person on whose behalf—

(a) the land charge is registered, or

(b) the notice or caution is entered,

is not a party to the action, the mortgagee must serve notice of the action on him.

(3) If—

(a) an official search has been made on behalf of the mortgagee which would disclose any land charge of Class F, notice or caution within subsection (1)(a) or (b),

(b) a certificate of the result of the search has been issued, and

(c) the action is commenced within the priority period,

the relevant time is the date of the certificate.

(4) In any other case the relevant time is the time when the action is commenced.

(5) The priority period is, for both registered and unregistered land, the period for which, in accordance with section 11(5) and (6) of the [M19]Land Charges Act 1972, a certificate on an official search operates in favour of a purchaser.

Marginal Citations
M17 1983 c. 19.
M18 1967 c. 75.
M19 1972 c. 61.

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Jurisdiction and procedure etc.

57 Jurisdiction of courts.

(1) For the purposes of this Part "the court" means the High Court, a county court or a magistrates' court.

(2) Subsection (1) is subject to the provision made by or under the following provisions of this section, to section 59 and to any express provision as to the jurisdiction of any court made by any other provision of this Part.

(3) The Lord Chancellor may **[**[F91], after consulting the Lord Chief Justice,**]** by order specify proceedings under this Part which may only be commenced in—
  (a) a specified level of court;
  (b) a court which falls within a specified class of court; or
  (c) a particular court determined in accordance with, or specified in, the order.

(4) The Lord Chancellor may **[**[F92], after consulting the Lord Chief Justice,**]** by order specify circumstances in which specified proceedings under this Part may only be commenced in—
  (a) a specified level of court;
  (b) a court which falls within a specified class of court; or
  (c) a particular court determined in accordance with, or specified in, the order.

(5) The Lord Chancellor may **[**[F93], after consulting the Lord Chief Justice,**]** by order provide that in specified circumstances the whole, or any specified part of any specified proceedings under this Part is to be transferred to—
  (a) a specified level of court;
  (b) a court which falls within a specified class of court; or
  (c) a particular court determined in accordance with, or specified in, the order.

(6) An order under subsection (5) may provide for the transfer to be made at any stage, or specified stage, of the proceedings and whether or not the proceedings, or any part of them, have already been transferred.

(7) An order under subsection (5) may make such provision as the Lord Chancellor thinks appropriate **[**[F94], after consulting the Lord Chief Justice**]** for excluding specified proceedings from the operation of section 38 or 39 of the [M20]Matrimonial and Family Proceedings Act 1984 (transfer of family proceedings) or any other enactment which would otherwise govern the transfer of those proceedings, or any part of them.

(8) For the purposes of subsections (3), (4) and (5), there are three levels of court—
  (a) the High Court;
  (b) any county court; and
  (c) any magistrates' court.

(9) The Lord Chancellor may **[**[F95], after consulting the Lord Chief Justice,**]** by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for specified purposes of this Part, or of any provision made under this Part.

(10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient **[**[F96], after consulting the Lord Chief Justice,**]** for the purpose of applying (with or without modifications) provisions which apply in relation to the

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procedure in county courts to the principal registry when it acts as if it were a county court.

(11) In this section "specified" means specified by an order under this section.

[[F97](12) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F91 Words in s. 57(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F92 Words in s. 57(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F93 Words in s. 57(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F94 Words in s. 57(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F95 Words in s. 57(9) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F96 Words in s. 57(10) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(5)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F97 S. 57(12) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 253(6)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

Marginal Citations

M20 1984 c. 42.

58 Contempt proceedings.

The powers of the court in relation to contempt of court arising out of a person's failure to comply with an order under this Part may be exercised by the relevant judicial authority.

59 Magistrates' courts.

(1) A magistrates' court shall not be competent to entertain any application, or make any order, involving any disputed question as to a party's entitlement to occupy any property by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, unless it is unnecessary to determine the question in order to deal with the application or make the order.

(2) A magistrates' court may decline jurisdiction in any proceedings under this Part if it considers that the case can more conveniently be dealt with by another court.

(3) The powers of a magistrates' court under section 63(2) of the [M21]Magistrates' Courts Act 1980 to suspend or rescind orders shall not apply in relation to any order made under this Part.

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Marginal Citations
M21 1980 c. 43.

PROSPECTIVE

60 Provision for third parties to act on behalf of victims of domestic violence.

(1) Rules of court may provide for a prescribed person, or any person in a prescribed category, ("a representative") to act on behalf of another in relation to proceedings to which this Part applies.

(2) Rules made under this section may, in particular, authorise a representative to apply for an occupation order or for a non-molestation order for which the person on whose behalf the representative is acting could have applied.

(3) Rules made under this section may prescribe—
  (a) conditions to be satisfied before a representative may make an application to the court on behalf of another; and
  (b) considerations to be taken into account by the court in determining whether, and if so how, to exercise any of its powers under this Part when a representative is acting on behalf of another.

(4) Any rules made under this section may be made so as to have effect for a specified period and may make consequential or transitional provision with respect to the expiry of the specified period.

(5) Any such rules may be replaced by further rules made under this section.

61 Appeals.

(1) An appeal shall lie to the High Court against—
  (a) the making by a magistrates' court of any order under this Part, or
  (b) any refusal by a magistrates' court to make such an order,

  but no appeal shall lie against any exercise by a magistrates' court of the power conferred by section 59(2).

(2) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.

(3) Where an order is made under subsection (2), the High Court may also make such incidental or consequential orders as appear to it to be just.

(4) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—
  (a) of the enforcement of the order, and
  (b) of any power to vary, revive or discharge orders,

  be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.

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(5) The Lord Chancellor may **[**[F98], after consulting the Lord Chief Justice,**]** by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under section 57(5).

(6) Except to the extent provided for in any order made under subsection (5), no appeal may be made against any decision of a kind mentioned in that subsection.

[[F99](7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F98 Words in s. 61(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 254(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

F99 S. 61(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 254(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(v)

General

62 Meaning of "cohabitants", "relevant child" and "associated persons".

(1) For the purposes of this Part—

(a) "cohabitants" are **[**[F100]**[**[F101]two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners;**]** and**]**

(b) **[**[F102] "cohabit" and "former cohabitants" are to be read accordingly, but the latter expression**]** does not include cohabitants who have subsequently married each other **[**[F103]or become civil partners of each other**]**.

(2) In this Part, "relevant child", in relation to any proceedings under this Part, means—

(a) any child who is living with or might reasonably be expected to live with either party to the proceedings;

(b) any child in relation to whom an order under the [M22]Adoption Act 1976 **[**[F104], the Adoption and Children Act 2002**]** or the [M23]Children Act 1989 is in question in the proceedings; and

(c) any other child whose interests the court considers relevant.

(3) For the purposes of this Part, a person is associated with another person if—

(a) they are or have been married to each other;

[[F105](aa) they are or have been civil partners of each other;**]**

(b) they are cohabitants or former cohabitants;

(c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement has been terminated);

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[[F106](eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);**]**

(f) in relation to any child, they are both persons falling within subsection (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Part).

(4) A person falls within this subsection in relation to a child if—

(a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or **[**[F107]falls within subsection (7)**]**, two persons are also associated with each other for the purposes of this Part if—

(a) one is a natural parent of the child or a parent of such a natural parent; and

(b) the other is the child or any person—

(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or

(ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of subsection (3)(f) or (g), to be regarded for the purposes of this Part as associated with each other.

[[F108](7) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or

(b) he is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976,

(ii) in Scotland, under section 18 of the Adoption (Scotland) Act 1978, or

(iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987.**]**

Textual Amendments

F100 Words in s. 62(1)(a) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), **ss. 3**, 60; S.I. 2005/3196, **art. 2(b)**

F101 Words in s. 62(1)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 13(1)(2)(a)**; S.I. 2005/3175, **art. 2(8)**

F102 Words in s. 62(1)(b) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 40**; S.I. 2005/3196, **art. 2(c)**

F103 Words in s. 62(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 13(1)(2)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F104 Words in s. 62(2)(b) inserted (30.12.2005) by 2002 c. 38, ss. 139(1), 148(1), Sch. 3 para. 86(a) (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

F105 S. 62(3)(aa) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 13(1)(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F106 S. 62(3)(eza) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 13(1)(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F107 Words in s. 62(5) substituted (30.12.2005) by 2002 c. 38, ss. 139(1), 148(1), Sch. 3 para. 86(b) (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

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F108 S. 62(7) inserted (30.12.2005) by 2002 c. 38, ss. 139(1), 148(1), Sch. 2 para. 87 (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

Marginal Citations

M22 1976 c. 36.

M23 1989 c. 41.

63 Interpretation of Part IV.

(1) In this Part—

[[F109] "adoption order" means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002;**]**

"associated", in relation to a person, is to be read with section 62(3) to (6);

"child" means a person under the age of eighteen years;

[[F110] "cohabit",**]** "cohabitant" and "former cohabitant" have the meaning given by section 62(1);

"the court" is to be read with section 57;

"development" means physical, intellectual, emotional, social or behavioural development;

"dwelling-house" includes (subject to subsection (4))—

(a) any building or part of a building which is occupied as a dwelling,

(b) any caravan, house-boat or structure which is occupied as a dwelling,

and any yard, garden, garage or outhouse belonging to it and occupied with it;

"family proceedings" means any proceedings—

(a) under the inherent jurisdiction of the High Court in relation to children; or

(b) under the enactments mentioned in subsection (2);

"harm"—

(a) in relation to a person who has reached the age of eighteen years, means ill-treatment or the impairment of health; and

(b) in relation to a child, means ill-treatment or the impairment of health or development;

"health" includes physical or mental health;

[[F111]"home rights" has the meaning given by section 30;**]**

"ill-treatment" includes forms of ill-treatment which are not physical and, in relation to a child, includes sexual abuse;

[F112] . . . . . .

"mortgage", "mortgagor" and "mortgagee" have the same meaning as in the [M24]Law of Property Act 1925;

"mortgage payments" includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

"non-molestation order" has the meaning given by section 42(1);

"occupation order" has the meaning given by section 39;

"parental responsibility" has the same meaning as in the [M25]Children Act 1989;

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"relative", in relation to a person, means—

(a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's **[**[F113]spouse, former spouse, civil partner or former civil partner**]**, or

(b) the brother, sister, uncle, aunt, niece **[**[F114], nephew or first cousin**]** (whether of the full blood or of the half blood or **[**[F115]by marriage or civil partnership)**]** of that person or of that person's **[**[F113]spouse, former spouse, civil partner or former civil partner**]**,

and includes, in relation to a person who **[**[F116]is cohabiting or has cohabited with another person**]**, any person who would fall within paragraph (a) or (b) if the parties were married to each other **[**[F117]or were civil partners of each other**]**;

"relevant child", in relation to any proceedings under this Part, has the meaning given by section 62(2);

"the relevant judicial authority", in relation to any order under this Part, means—

(a) where the order was made by the High Court, a judge of that court;

(b) where the order was made by a county court, a judge or district judge of that or any other county court; or

(c) where the order was made by a magistrates' court, any magistrates' court.

(2) The enactments referred to in the definition of "family proceedings" are—

(a) Part II;

(b) this Part;

(c) the [M26]Matrimonial Causes Act 1973;

(d) the [M27]Adoption Act 1976;

(e) the [M28]Domestic Proceedings and Magistrates' Courts Act 1978;

(f) Part III of the [M29]Matrimonial and Family Proceedings Act 1984;

(g) Parts I, II and IV of the [M30]Children Act 1989;

(h) section 30 of the [M31]Human Fertilisation and Embryology Act 1990.

[[F118](i) the Adoption and Children Act 2002.**]**

[[F119](j) Schedules 5 to 7 to the Civil Partnership Act 2004.**]**

(3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(4) For the purposes of sections 31, 32, 53 and 54 and such other provisions of this Part (if any) as may be prescribed, this Part is to have effect as if paragraph (b) of the definition of "dwelling-house" were omitted.

(5) It is hereby declared that this Part applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

Textual Amendments

F109 S. 63(1): definition of "adoption order" substituted (30.12.2005) by 2002 c. 38, ss. 139(1), 148(1), Sch. 3 para. 88(a) (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

F110 Word in s. 63(1) inserted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 41(2)**; S.I. 2005/3196, **art. 2(c)**

F111 S. 63(1): definition of "home rights" inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 14(1)(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F112 S. 63(1): definition of "matrimonial home rights" repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 261(4), 263, Sch. 9 para. 14(1)(3), **Sch. 30**; S.I. 2005/3175, **art. 2(1)(6)**, Sch. 1

F113 S. 63(1): words in the definition of "relative" substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 14(1)(4)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F114 Words in s. 63(1) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 41(3)(a)**; S.I. 2005/3196, **art. 2(c)**

F115 S. 63(1): words in paragraph (b) in the definition of "relative" substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 14(1)(4)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F116 Words in s. 63(1) substituted (5.12.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 41(3)(b)**; S.I. 2005/3196, **art. 2(c)**

F117 S. 63(1): words in the definition of "relative" inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 14(1)(4)(c)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F118 S. 63(2)(i) inserted (30.12.2005) by 2002 c. 38, ss. 139(1), 148(1), Sch. 3 para. 88(b) (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(o)**

F119 S. 63(2)(j) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 13(1)(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Marginal Citations

M24 1925 c. 20.

M25 1989 c. 41.

M26 1973 c. 18.

M27 1976 c. 36.

M28 1978 c. 22.

M29 1984 c. 42.

M30 1989 c. 41.

M31 1990 c. 37.

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