

Status: Point in time view as at 01/10/1997.

Changes to legislation: Family Law Act 1996, Part III is up to date with all changes known to be in force on or before 02 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 7 **E+W**

TRANSFER OF CERTAIN TENANCIES ON DIVORCE ETC. OR ON SEPARATION OF COHABITANTS

PART III **E+W**

SUPPLEMENTARY PROVISIONS

Compensation

- 10 (1) If the court makes a Part II order, it may by the order direct the making of a payment by the spouse or cohabitant to whom the tenancy is transferred (“the transferee”) to the other spouse or cohabitant (“the transferor”).
- (2) Without prejudice to that, the court may, on making an order by virtue of sub-paragraph (1) for the payment of a sum—
- (a) direct that payment of that sum or any part of it is to be deferred until a specified date or until the occurrence of a specified event, or
 - (b) direct that that sum or any part of it is to be paid by instalments.
- (3) Where an order has been made by virtue of sub-paragraph (1), the court may, on the application of the transferee or the transferor—
- (a) exercise its powers under sub-paragraph (2), or
 - (b) vary any direction previously given under that sub-paragraph,
- at any time before the sum whose payment is required by the order is paid in full.
- (4) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court shall have regard to all the circumstances including—
- (a) the financial loss that would otherwise be suffered by the transferor as a result of the order;
 - (b) the financial needs and financial resources of the parties; and
 - (c) the financial obligations which the parties have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.
- (5) The court shall not give any direction under sub-paragraph (2) unless it appears to it that immediate payment of the sum required by the order would cause the transferee financial hardship which is greater than any financial hardship that would be caused to the transferor if the direction were given.

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Modifications etc. (not altering text)

- C1** Sch. 7 Pt. III para. 10 applied (1.10.1997) by 1984 c. 42, s. 22 (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
- C2** Sch. 7 para. 10 applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, **Sch. 7 para. 13(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Liabilities and obligations in respect of the dwelling-house

- 11 (1) If the court makes a Part II order, it may by the order direct that both spouses or cohabitants are to be jointly and severally liable to discharge or perform any or all of the liabilities and obligations in respect of the dwelling-house (whether arising under the tenancy or otherwise) which—
- (a) have at the date of the order fallen due to be discharged or performed by one only of them; or
 - (b) but for the direction, would before the date specified as the date on which the order is to take effect fall due to be discharged or performed by one only of them.
- (2) If the court gives such a direction, it may further direct that either spouse or cohabitant is to be liable to indemnify the other in whole or in part against any payment made or expenses incurred by the other in discharging or performing any such liability or obligation.

Modifications etc. (not altering text)

- C3** Sch. 7 Pt. III para. 11 applied (1.10.1997) by 1984 c. 42, s. 22 (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, **art. 3**)
- C4** Sch. 7 para. 11 applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, **Sch. 7 para. 13(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

Date when order made between spouses is to take effect

- 12 (1) In the case of a decree of nullity of marriage, the date specified in a Part II order as the date on which the order is to take effect must not be earlier than the date on which the decree is made absolute.
- (2) In the case of divorce proceedings or separation proceedings, the date specified in a Part II order as the date on which the order is to take effect is to be determined as if the court were making a property adjustment order under section 23A of the ^{M1}Matrimonial Causes Act 1973 (regard being had to the restrictions imposed by section 23B of that Act).

Marginal Citations

- M1** 1973 c. 18.

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Remarriage of either spouse

- 13 (1) If after the making of a divorce order or the grant of a decree annulling a marriage either spouse remarries, that spouse is not entitled to apply, by reference to the making of that order or the grant of that decree, for a Part II order.
- (2) For the avoidance of doubt it is hereby declared that the reference in subparagraph (1) to remarriage includes a reference to a marriage which is by law void or voidable.

Rules of court

- 14 (1) Rules of court shall be made requiring the court, before it makes an order under this Schedule, to give the landlord of the dwelling-house to which the order will relate an opportunity of being heard.
- (2) Rules of court may provide that an application for a Part II order by reference to an order or decree may not, without the leave of the court by which that order was made or decree was granted, be made after the expiration of such period from the order or grant as may be prescribed by the rules.

Modifications etc. (not altering text)

- C5** Sch. 7 Pt. III para. 14(1) applied (1.10.1997) by 1984 c. 42, s. 22 (as substituted (1.10.1997) by 1996 c. 27, s. 66(1), Sch. 8 Pt. III para. 52 (with **Sch. 9 paras. 8-10**); S.I. 1997/1892, art. 3)
- C6** Sch. 7 para. 14(1) applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 72(4), 263, **Sch. 7 para. 13(3)**; S.I. 2005/3175, art. 2(1), Sch. 1

Saving for other provisions of Act

- 15 (1) If a spouse is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule does not affect the operation of sections 30 and 31 in relation to the other spouse's matrimonial home rights.
- (2) If a spouse or cohabitant is entitled to occupy a dwelling-house by virtue of a tenancy, the court's powers to make orders under this Schedule are additional to those conferred by sections 33, 35 and 36.

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