
STATUTORY INSTRUMENTS

1998 No. 1071

**Family Homes and Domestic Violence
(Northern Ireland) Order 1998**

Rights to occupy matrimonial [F1 or civil partnership] home

Effect of [F1 home rights] as charge on dwelling-house

5.—(1) Paragraphs (2) and (3) apply if, at any time during a [F1 marriage or civil partnership, A] is entitled to occupy a dwelling-house by virtue of a beneficial estate.

(2) [F1 B's home rights] are a charge on that estate.

(3) The charge created by paragraph (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 [F1 A] acquires the estate,
- (b) the date of the marriage [F1 or of the formation of the civil partnership], and
- (c) 1st September 1989 (the commencement date of Part II of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984).

(4) Paragraph (5) applies if, at any time when [F1 B's home rights] are a charge on an interest of [F1 A] under a trust, there are, apart from [F1 A 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 of the trustees for [F1 A].

(6) In determining for the purposes of paragraph (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 [F1 A and B] alone (whether or not the exercise of it requires the consent of another person).

(7) Even though [F1 B's home rights] are a charge on an estate in the dwelling-house, those rights are brought to an end by—

- (a) the death of [F1 A], or
- (b) the termination (otherwise than by death) of the marriage [F1 or civil partnership],

unless the court directs otherwise by an order made under Article 11(5).

(8) If—

- (a) [F1 B's home rights] are a charge on an estate in the dwelling-house, and
- (b) that estate is surrendered to merge in some other estate expectant on it in such circumstances that, but for the merger, the person taking the estate would be bound by the charge,

the surrender has effect subject to the charge and the persons thereafter entitled to the other estate are, for so long as the estate surrendered would have endured if not so surrendered, to be treated

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for all purposes of this Order as deriving title to the other estate under^{F1} A] or, as the case may be, under the trustees for^{F1} A], by virtue of the surrender.

F1 2004 c.33

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 2(3)(j) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 52\(b\)](#)
- art. 3(7)(8) inserted by [2022 c. 18 \(N.I.\) Sch. 3 para. 53\(c\)](#)