

SCHEDULES

SCHEDULE 19

FAMILY HOMES AND DOMESTIC VIOLENCE: NORTHERN IRELAND

PART 1

AMENDMENTS OF THE FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER (SI 1998/1071 (NI 6))

- 1 (1) Amend Article 2 (interpretation) as follows.
 - (2) In paragraph (2), after the definition of “health” insert—

““home rights” has the meaning given by Article 4;”.
 - (3) In the definition of “matrimonial charge” in that paragraph, after “matrimonial” insert “or civil partnership”.
 - (4) Omit the definition of “matrimonial home rights” in that paragraph.
 - (5) In the definition of “relative” in that paragraph—
 - (a) in paragraphs (a) and (b) for “spouse or former spouse” substitute “spouse, former spouse, civil partner or former civil partner”, and
 - (b) after “were married to each other” insert “or were civil partners of each other”.
 - (6) After paragraph (3)(g) insert—

“(h) the Civil Partnership Act 2004.”
 - (7) In paragraph (7), after “matrimonial” insert “or civil partnership”.
- 2 (1) Amend Article 3 (meaning of “cohabitees”, “relevant child” and “associated persons”) as follows.
 - (2) For paragraph (1)(a) substitute—

“(a) “cohabitees” are 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;”.
 - (3) In paragraph (1)(b), after “have subsequently married each other” insert “or become civil partners of each other”.
 - (4) After paragraph (3)(a) insert—

“(aa) they are or have been civil partners of each other;”.
 - (5) After paragraph (3)(e) insert—

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“(eza) they have entered into a civil partnership agreement (as defined by section 197 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);”.

3 (1) Amend Article 4 (rights concerning matrimonial home where one spouse has no estate, etc.) as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a)—

(i) after “one spouse” insert “or civil partner (“A”);”, and

(ii) for “that spouse” substitute “A”;

(b) in sub-paragraph (b), after “other spouse” insert “or civil partner (“B”)”.

(3) In paragraph (2)—

(a) for “the spouse not so entitled” substitute “B”;

(b) for “(“matrimonial home rights”)” substitute “(“home rights”)”, and

(c) in sub-paragraph (a), for “the other spouse” substitute “A”.

(4) In paragraph (3)—

(a) for “a spouse” and for “that spouse” substitute “B”, and

(b) for “the other spouse” (in both places) substitute “A”.

(5) In paragraph (4)—

(a) for “A spouse's” substitute “B's”;

(b) in sub-paragraph (a), for “by the other spouse as the other spouse's” substitute “by A as A's”, and

(c) in sub-paragraph (b)—

(i) for “the spouse occupies the dwelling-house as that spouse's” substitute “B occupies the dwelling-house as B's”, and

(ii) for “by the other spouse as the other spouse's” substitute “by A as A's”.

(6) In paragraph (5)—

(a) for “a spouse (“the first spouse”)” substitute “B”, and

(b) in sub-paragraph (b), for “the other spouse (“the second spouse”)” substitute “A”;

(c) for “the second spouse” (in both places) substitute “A”, and

(d) for “the first spouse” substitute “B”.

(7) In paragraph (6)—

(a) for “a spouse” substitute “B”, and

(b) for “the other spouse” (in both places) substitute “A”.

(8) In paragraph (7), for the words from first “which” to the end substitute “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.”

(9) In paragraph (8)—

(a) for “A spouse’s matrimonial home rights” substitute “B’s home rights”;

(b) in sub-paragraph (a), after “marriage” insert “or civil partnership”, and

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- (c) in sub-paragraph (b), for “the other spouse” substitute “A”.
- (10) In paragraph (9)—
 - (a) for “a spouse” substitute “a person”,
 - (b) for “matrimonial home rights” substitute “home rights”, and
 - (c) after “spouses” insert “or civil partners”.
- (11) In the heading to Article 4, for “matrimonial home where one spouse” substitute “home where one spouse or civil partner” and, in the preceding cross-heading, after “matrimonial” insert “or civil partnership”.
- 4 (1) Amend Article 5 (effect of matrimonial home rights as charge on dwelling-house) as follows.
 - (2) In paragraph (1), for “marriage, one spouse” substitute “marriage or civil partnership, A”.
 - (3) In paragraph (2), for “The other spouse’s matrimonial home rights” substitute “B’s home rights”.
 - (4) In paragraph (3)—
 - (a) in sub-paragraph (a), for “the spouse so entitled” substitute “A”, and
 - (b) in sub-paragraph (b), after “marriage” insert “or of the formation of the civil partnership”.
 - (5) In paragraph (4)—
 - (a) for “a spouse’s matrimonial home rights” substitute “B’s home rights”,
 - (b) for “the other spouse” substitute “A”, and
 - (c) for “either of the spouses” substitute “A or B”.
 - (6) In paragraph (5), for “the other spouse” substitute “A”.
 - (7) In paragraph (6), for “the spouses” substitute “A and B”.
 - (8) In paragraph (7)—
 - (a) for “a spouse’s matrimonial home rights” substitute “B’s home rights”,
 - (b) in sub-paragraph (a), for “the other spouse” substitute “A”, and
 - (c) in sub-paragraph (b), after “marriage” insert “or civil partnership”.
 - (9) In paragraph (8)—
 - (a) in sub-paragraph (a), for “a spouse’s matrimonial home rights” substitute “B’s home rights”, and
 - (b) for “the other spouse” (in both places) substitute “A”.
- (10) In the heading to Article 5, for “matrimonial home rights” substitute “home rights”.
- 5 (1) Amend Article 6 (registration, etc. of matrimonial charge) as follows.
 - (2) In paragraphs (1), (3), (4), (5) and (6), after “matrimonial” insert “or civil partnership”.
 - (3) In the heading to Article 6, after “matrimonial” insert “or civil partnership”.
- 6 (1) Amend Article 7 (restriction on registration where spouse entitled to more than one matrimonial charge) as follows.
 - (2) In paragraphs (1), (2) and (3), after “spouse” (in each place) insert “or civil partner”.

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- (3) In paragraphs (1), (2), (3) and (4), after “matrimonial” (in each place) insert “or civil partnership”.
- (4) In paragraph (3), for “matrimonial home rights” substitute “home rights”.
- (5) In the heading to Article 7, after “matrimonial” insert “or civil partnership”.
- 7 (1) Amend Article 8 (cancellation of registration of matrimonial charge before completion of disposal of dwelling-house) as follows.
- (2) In paragraphs (1) and (2), after “matrimonial” insert “or civil partnership”.
- (3) In the heading to Article 8, after “matrimonial” insert “or civil partnership”.
- 8 (1) Amend Article 9 (cancellation of registration after termination of marriage, etc.) as follows.
- (2) In paragraph (1), for “matrimonial charge” substitute “matrimonial or civil partnership charge”.
- (3) In paragraphs (1)(a), (2)(a) and (b) and (3), after “spouse” insert “or civil partner”.
- (4) In paragraphs (1)(b), (2)(a) and (4), after “marriage” (in each place) insert “or civil partnership”.
- (5) In paragraphs (1)(c), (2), (3) and (4), after “matrimonial” (in each place) insert “or civil partnership”.
- (6) In paragraph (1)(c), for “spouse’s matrimonial home rights” substitute “spouse’s or civil partner’s home rights”.
- (7) In the heading to Article 9, after “marriage” insert “or civil partnership”.
- 9 (1) Amend Article 10 (release of matrimonial home rights and postponement of priority of matrimonial charge) as follows.
- (2) In paragraph (1), for “spouse entitled to matrimonial home rights” substitute “spouse or civil partner entitled to home rights”.
- (3) In paragraphs (2) and (3), for “matrimonial charge” (in each place) substitute “matrimonial or civil partnership charge”.
- (4) In paragraph (2), for “matrimonial home rights” substitute “home rights”.
- (5) In paragraph (3), after “spouse” insert “or civil partner”.
- (6) In the heading to Article 10, after “matrimonial” (in each place) insert “or civil partnership”.
- 10 (1) Amend Article 11 (occupation orders where applicant has estate or interest etc. or has matrimonial home rights) as follows.
- (2) In paragraph (1)(a)(ii), for “matrimonial home rights” substitute “home rights”.
- (3) After paragraph (2) insert—
- “(2A) If a civil partnership agreement (within the meaning of the Civil Partnership Act 2004) is terminated, no application under this Article may be made by virtue of Article 3(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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- (4) In paragraph (3)(f)—
- (a) for “matrimonial home rights” substitute “home rights”, and
 - (b) after “spouse” insert “or civil partner”.
- (5) In paragraph (4), for “matrimonial home rights” substitute “home rights”.
- (6) In paragraph (5)—
- (a) for “matrimonial home rights” substitute “home rights”,
 - (b) after “is the other spouse” insert “or civil partner”,
 - (c) after “during the marriage” insert “or civil partnership”,
 - (d) in sub-paragraph (a), after “spouse” insert “or civil partner”, and
 - (e) in sub-paragraph (b), after “marriage” insert “or civil partnership”.
- (7) In the heading to Article 11, for “matrimonial home rights” substitute “home rights”.
- 11 In Article 12 (effect of order under Article 11 where rights are charge on dwelling-house), in paragraph (1)—
- (a) for “a spouse’s matrimonial home rights” substitute “B’s home rights”, and
 - (b) for “the other spouse” (in each place) substitute “A”.
- 12 (1) Amend Article 13 (one former spouse with no existing right to occupy) as follows.
- (2) In paragraph (1)(a) and (b), after “former spouse” insert “or former civil partner”.
- (3) For paragraph (1)(c) substitute—
- “(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.”
- (4) In paragraph (2), after “former spouse” (in both places) insert “or former civil partner”.
- (5) In paragraph (6)(f), after “marriage” insert “or civil partnership”.
- (6) After paragraph (6)(g)(i), insert—
- “(ia) for a property adjustment order under Part 2 of Schedule 15 to the Civil Partnership Act 2004;”.
- (7) In paragraph (9)(a), after “former spouses” insert “or former civil partners”.
- (8) In paragraphs (11) and (12), after “former spouse” insert “or former civil partner”.
- (9) For paragraph (13)(a) and (b) substitute—
- “(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that Article); and
 - (b) as if the respondent were A (the person entitled as mentioned in paragraph (1)(a) of that Article).”
- (10) In the heading to Article 13, after “former spouse” insert “or former civil partner”.

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- 13 In Article 14 (one cohabitee or former cohabitee with no existing right to occupy), for paragraph (13)(a) and (b) substitute—
- “(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that Article); and
 - (b) as if the respondent were A (the person entitled as mentioned in paragraph (1)(a) of that Article).”
- 14 (1) Amend Article 15 (neither spouse entitled to occupy) as follows.
- (2) After paragraph (1) insert—
- “(1A) This Article 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 contract; or
 - (ii) by virtue of any statutory provision giving him the right to remain in occupation.”
- (3) In paragraph (3)(c), for “spouses” substitute “parties”.
- (4) In the heading to Article 15, after “spouse” insert “or civil partner”.
- 15 In Article 20 (non-molestation orders), after paragraph (4) insert—
- “(4ZA) If a civil partnership agreement (within the meaning of the Civil Partnership Act 2004) is terminated, no application under this Article may be made by virtue of Article 3(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.”
- 16 (1) In Article 22 (evidence of agreement to marry), after paragraph (2) insert—
- “(3) Subject to paragraph (4), the court shall not make an order under Article 11 or 20 by virtue of Article 3(3)(eza) unless there is produced to it evidence in writing of the existence of the civil partnership agreement (within the meaning of the Civil Partnership Act 2004).
- (4) Paragraph (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.”
- (2) In the heading to Article 22, after “marry” insert “or form a civil partnership”.
- 17 In Article 24 (variation and discharge of orders), in paragraph (3)—
- (a) for “a spouse’s matrimonial home rights are” substitute “B’s home rights are, under Article 12,”, and
 - (b) for “the other spouse” (in each place) substitute “A”.
- 18 (1) Amend Article 31 (dwelling-house subject to mortgage) as follows.
- (2) In paragraphs (3)(a) and (4), for “matrimonial home rights” substitute “home rights”.

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- (3) In paragraph (5), after “spouse, former spouse” insert “, civil partner, former civil partner”.
- 19 (1) Amend Article 33 (actions by mortgagees: service of notice on certain persons) as follows.
- (2) In paragraphs (1) and (2), after “matrimonial” insert “or civil partnership”.
- 20 (1) Amend Article 39 (appeals) as follows.
- (2) At the end of paragraph (2)(b) insert “or
- (c) where the county court is a civil partnership proceedings county court exercising jurisdiction under the Civil Partnership Act 2004.”
- (3) At the end of paragraph (6) insert “or a civil partnership proceedings county court exercising jurisdiction under the Civil Partnership Act 2004 in the same proceedings”.
- 21 (1) Amend Schedule 2 (transfer of certain tenancies on divorce etc. or on separation of cohabittees) as follows.
- (2) In paragraph 1(2), before the definition of “cohabitee” insert—
- ““civil partner”, except in paragraph 2, includes (where the context requires) former civil partner;”.
- (3) In paragraph 2(1), after “spouse” (in both places) insert “or civil partner”.
- (4) For paragraph 2(2) substitute—
- “(2) The court may make a Part II order—
- (a) on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), or
- (b) at any time when it has power to make a property adjustment order under Part 2 of Schedule 15 to the Civil Partnership Act 2004 with respect to the civil partnership.”
- (5) In paragraph 2(3), after “spouse” insert “or civil partner”.
- (6) Omit “or” at the end of paragraph 4(1)(a) and insert—
- “(aa) in the case of civil partners, a civil partnership home; or”.
- (7) In paragraph 5(a), after “spouses” insert “, civil partners”.
- (8) In paragraph 6, after “spouse” (in both places) insert “, civil partner”.
- (9) In paragraph 7(1) and (2), after “spouse” (in each place) insert “, civil partner”.
- (10) For paragraph 7(3) substitute—
- “(3) If the spouse, civil partner or cohabitee so entitled is a successor within the meaning of Chapter 2 of Part 2 of the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118 (N.I. 15))—
- (a) his former spouse (or, in the case of judicial separation, his spouse),

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(b) his former civil partner (or, if a separation order is in force, his civil partner), or

(c) his former cohabitee,

is to be deemed also to be a successor within the meaning of that Chapter.”

(11) In paragraph 8(1) and (2)(a) and (b), after “spouse” insert “, civil partner”.

(12) In paragraph 8(3), after “widower” insert “or surviving civil partner”.

(13) In paragraph 9(1) (in both places), after “spouse” insert “, civil partner”.

(14) In paragraph 10(1), after “spouses” insert “, civil partners”.

(15) In paragraph 10(2), after “spouse” insert “, civil partner”.

(16) For paragraph 11 and the heading preceding it, substitute—

“Date when order made between spouses or civil partners takes effect

11 The date specified in a Part II order as the date on which the order is to take effect must not be earlier than—

(a) in the case of a marriage in respect of which a decree of divorce or nullity has been granted, the date on which the decree is made absolute;

(b) in the case of a civil partnership in respect of which a dissolution or nullity order has been made, the date on which the order is made final.”

(17) For paragraph 12 and the heading preceding it substitute—

“Effect of remarriage or subsequent civil partnership

12 (1) If after the grant of a decree dissolving or annulling a marriage either spouse remarries or forms a civil partnership, that spouse is not entitled to apply, by reference to the grant of that decree, for a Part II order.

(2) If after the making of a dissolution or nullity order either civil partner forms a subsequent civil partnership or marries, that civil partner is not entitled to apply, by reference to the making of that order, for a Part II order.

(3) In sub-paragraphs (1) and (2)—

(a) the references to remarrying and marrying, include references to cases where the marriage is by law void or voidable, and

(b) the references to forming a civil partnership, include references to cases where the civil partnership is by law void or voidable.”

(18) In paragraph 14(1)—

(a) after “spouse” insert “or civil partner”, and

(b) for “spouse’s matrimonial home rights” substitute “spouse’s or civil partner’s home rights”.

(19) In paragraph 14(2), after “spouse” insert “, civil partner”.