

*Status: Point in time view as at 25/11/2008.*

*Changes to legislation: Family Homes and Domestic Violence (Northern Ireland) Order 1998 is up to date with all changes known to be in force on or before 09 June 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)*

## STATUTORY INSTRUMENTS

# 1998 No. 1071 (N.I. 6)

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

- - - - - 22nd April 1998

### Modifications etc. (not altering text)

- C1** Order: transfer of functions from Lord Chancellor to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), [Sch. 17 para. 47](#) (with arts. 15(6), 28-31); S.I. 2010/977, [art. 1\(2\)](#)

### *Introductory*

### **Title and commencement**

**1.**—(1) This Order may be cited as the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the<sup>F1</sup> Minister of Finance and Personnel] may by order appoint<sup>F2</sup>.

**F1** SI 1999/663

**F2** partly exercised by SR 1999/56,92

### **Interpretation**

**2.**—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“adoption order” has the meaning given by Article 2(2) of the Adoption (Northern Ireland) Order 1987;

“associated”, in relation to a person, is to be read with Article 3(3) to (6);

“child” means a person under the age of 18;

[<sup>F3</sup>“cohabit,”] “cohabitee” and “former cohabitee” have the meaning given by Article 3(1);

“the court” is to be read with Article 34;

“development” means physical, intellectual, emotional, social or behavioural development;

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“dwelling-house” includes (subject to paragraph (5))—

- (a) any building or part of a building which is occupied as a dwelling;
- (b) any caravan, houseboat 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 provisions mentioned in paragraph (3);

“family proceedings court” has the meaning given in Article 38(4);

“harm”

- (a) in relation to a person who has reached the age of 18 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;

[<sup>F4</sup>“home rights” has the meaning given by Article 4;]

“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical;

“legal estate” includes an equity of redemption arising on the conveyance or assignment of a legal estate by way of mortgage;

“matrimonial [<sup>F4</sup>or civil partnership] charge” means a charge created by Article 5;

*Definition rep. by 2004 c. 33*

“molest” includes incite, procure or assist any person to molest;

“mortgage” includes a charge;

“mortgagor” and “mortgagee” include any person deriving title under the original mortgagor or mortgagee;

“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 Article 20(1);

“occupation order” means an order under Article 11, 13, 14, 15 or 16;

“parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995;

“purchaser” means any person (including a lessee or mortgagee) who, for valuable consideration, takes an estate in land;

“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 [<sup>F4</sup> spouse, former spouse, civil partner or former civil partner], or
- (b) the brother, sister, uncle, aunt, niece [<sup>F3</sup>, nephew or first cousin] (whether of the full blood or of the half blood or by affinity) of that person or of that person's [<sup>F4</sup> spouse, former spouse, civil partner or former civil partner] [<sup>F3</sup> or],
- (c) [<sup>F3</sup>the father-in-law, mother-in-law, brother-in-law or sister-in-law of that person,]

and includes, in relation to a person who [<sup>F3</sup> is cohabiting or has cohabited with another person], any person who would fall within [<sup>F3</sup> paragraph (a), (b) or (c)] if the parties were married to each other [<sup>F4</sup> or were civil partners of each other];

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“relevant child”, in relation to any proceedings under this Order, has the meaning given by Article 3(2);

“the relevant judicial authority”, in relation to any order under this Order, 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 court of summary jurisdiction, a resident magistrate;

“rules of court” includes family proceedings rules, county court rules and magistrates' courts rules (as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) The provisions referred to in the definition of “family proceedings” are—

- (a) this Order;
- (b) the Matrimonial Causes (Northern Ireland) Order 1978;
- (c) the Domestic Proceedings (Northern Ireland) Order 1980;
- (d) the Adoption (Northern Ireland) Order 1987;
- (e) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;
- (f) section 30 of the Human Fertilisation and Embryology Act 1990;
- (g) Parts II, III, V and XV of the Children (Northern Ireland) Order 1995.

[<sup>F4</sup>(h) the Civil Partnership Act 2004.]

[<sup>F5</sup>(i) Schedule 1 to the Forced Marriage (Civil Protection) Act 2007.]

(4) 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.

(5) For the purposes of Articles 5 to 10, 30 and 31 and such other provisions of this Order (if any) as may be specified by order made by the Department of Finance and Personnel, this Order shall have effect as if paragraph (b) of the definition of “dwelling-house” in paragraph (2) were omitted.

(6) This Order 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.

(7) In this Order references to cancelling the registration of a matrimonial<sup>F4</sup> or civil partnership] charge shall, where that charge is registered in the Registry of Deeds, be construed as references to vacating the registration of that charge.

**F3** 2005 NI 7

**F4** 2004 c.33

**F5** Art. 2(3)(i) inserted (25.11.2008) by [Forced Marriage \(Civil Protection\) Act 2007 \(c. 20\)](#), ss. 3(1), 4(4), [Sch. 2 para. 4](#); S.R. 2008/446, [art. 2\(c\)](#)

### Meaning of “cohabitees”, “relevant child” and “associated persons”

3.—(1) For the purposes of this Order—

- [<sup>F6</sup>(a) “cohabitees” are<sup>F7</sup> two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship;]]

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- (b) [<sup>F7</sup>“cohabit” and “former cohabitees” are to be read accordingly, but the latter expression] does not include cohabitees who have subsequently married each other<sup>[F6</sup> or become civil partners of each other].
- (2) In this Order “relevant child”, in relation to any proceedings under this Order, 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 Adoption (Northern Ireland) Order 1987 or the Children (Northern Ireland) Order 1995 is in question in the proceedings; and
- (c) any other child whose interests the court considers relevant.
- (3) For the purposes of this Order a person is associated with another person if—
- (a) they are or have been married to each other;
- [<sup>F6</sup>(aa) they are or have been civil partners of each other;]
- (b) they are cohabitees or former cohabitees;
- (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);
- [<sup>F6</sup>(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);]
- (f) in relation to any child, they are both persons falling within paragraph (4); or
- (g) they are parties to the same family proceedings (other than proceedings under this Order).
- (4) A person falls within this paragraph 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 has been freed for adoption by virtue of any of the provisions mentioned in Article 16(1) of the Adoption (Northern Ireland) Order 1987, two persons are also associated with each other for the purposes of this Order 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 paragraph (3)(f) or (g), to be regarded for the purposes of this Order as associated with each other.

**F6** 2004 c.33

**F7** 2005 NI 7

*Rights to occupy matrimonial [<sup>F8</sup>or civil partnership] home*

**F8** 2004 c.33

## **Rights concerning<sup>[F9]</sup> home where one spouse or civil partner] has no estate, etc.**

4.—(1) This Article applies if—

- (a) one spouse<sup>[F9]</sup> or civil partner (“A”)] is entitled to occupy a dwelling-house by virtue of—
  - (i) a beneficial estate or a contract; or
  - (ii) any statutory provision giving<sup>[F9]</sup> A] the right to remain in occupation; and
- (b) the other spouse<sup>[F9]</sup> or civil partner (“B”)] is not so entitled.

(2) Subject to the provisions of this Order,<sup>[F9]</sup> B] has the following rights<sup>[F9]</sup> (“home rights”)]

- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by<sup>[F9]</sup> A] except with the leave of the court given by an order under Article 11;
- (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<sup>[F9]</sup> B] is entitled under this Article to occupy a dwelling-house or any part of a dwelling-house, any payment or tender made or other thing done by<sup>[F9]</sup> B] in or towards satisfaction of any liability of<sup>[F9]</sup> 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 Article 18, as good as if made or done by<sup>[F9]</sup> A].

(4) <sup>[F9]</sup>B's] occupation by virtue of this Article—

- (a) is to be treated, for the purposes of the Rent (Northern Ireland) Order 1978, as occupation<sup>[F9]</sup> by A as A's] residence, and
- (b) if<sup>[F9]</sup> B] occupies the dwelling-house as B's] only or principal home, is to be treated, for the purposes of Chapter II of Part II of the Housing (Northern Ireland) Order 1983, as occupation<sup>[F9]</sup> by A as A's] only or principal home.

(5) If<sup>[F9]</sup> B]

- (a) is entitled under this Article 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<sup>[F9]</sup> 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<sup>[F9]</sup> A], but the fact that that person has treated any such payment as having been so made does not affect any claim of<sup>[F9]</sup> B] against<sup>[F9]</sup> A] to an estate in the dwelling-house by virtue of the payment.

(6) If<sup>[F9]</sup> B] is entitled under this Article to occupy a dwelling-house or part of a dwelling-house by reason of an interest of<sup>[F9]</sup> A] under a trust, the provisions of paragraphs (3) and (5) apply in relation to the trustees as they apply in relation to<sup>[F9]</sup> A].

(7) This Article does not apply to a dwelling-house<sup>[F9]</sup> 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) <sup>[F9]</sup>B's home rights] continue—

- (a) only so long as the marriage<sup>[F9]</sup> or civil partnership] subsists, except to the extent that an order under Article 11(5) otherwise provides, and

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- (b) only so long as<sup>[F9]</sup> A] is entitled as mentioned in paragraph (1) to occupy the dwelling-house, except where provision is made by Article 5 for those rights to be a charge on an estate in the dwelling-house.

(9) Without prejudice to any rights which arise by virtue of an equitable estate,<sup>[F9]</sup> a person] who has only such an estate is to be treated for the purpose of determining whether he has<sup>[F9]</sup> home rights] as not being entitled to occupy the dwelling-house by virtue of that estate; and this Article shall apply accordingly where each of two spouses<sup>[F9]</sup> or civil partners] is so entitled.

**F9** [2004 c.33](#)

### Effect of<sup>[F10]</sup> home rights] as charge on dwelling-house

5.—(1) Paragraphs (2) and (3) apply if, at any time during a<sup>[F10]</sup> marriage or civil partnership, A] is entitled to occupy a dwelling-house by virtue of a beneficial estate.

(2) <sup>[F10]</sup>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<sup>[F10]</sup> A] acquires the estate,
- (b) the date of the marriage<sup>[F10]</sup> 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<sup>[F10]</sup> B's home rights] are a charge on an interest of<sup>[F10]</sup> A] under a trust, there are, apart from<sup>[F10]</sup> 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<sup>[F10]</sup> 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<sup>[F10]</sup> A and B] alone (whether or not the exercise of it requires the consent of another person).

(7) Even though<sup>[F10]</sup> 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<sup>[F10]</sup> A], or
- (b) the termination (otherwise than by death) of the marriage<sup>[F10]</sup> or civil partnership],

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

(8) If—

- (a) <sup>[F10]</sup>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 for all purposes of this Order as deriving title to the other estate under<sup>[F10]</sup> A] or, as the case may be, under the trustees for<sup>[F10]</sup> A], by virtue of the surrender.

**F10** 2004 c.33

### **Registration, etc. of matrimonial<sup>F11</sup> or civil partnership] charge**

**6.**—(1) Where a matrimonial<sup>F11</sup> or civil partnership] charge is a charge on a legal estate, the charge may be registered—

- (a) if it affects registered land, by its entry as a burden in the title register in the Land Registry, or
- (b) if it affects unregistered land, in the Registry of Deeds.

(2) In paragraph (1) “estate” means—

- (a) a freehold estate, or
- (b) a leasehold estate for a term exceeding 21 years, not being a term for securing money.

(3) A matrimonial<sup>F11</sup> or civil partnership] charge shall be void as against a purchaser of an estate affected by the charge, unless the charge is registered before the purchaser—

- (a) enters into a contract to purchase that estate; or
- (b) takes as security for the payment of a sum of money—
  - (i) the deposit of documents of title in pursuance of section 50 of the Land Registration Act (Northern Ireland) 1970, or
  - (ii) in the case of unregistered land, the deposit of title deeds, in relation to that estate.

(4) Section 11(1) of the Land Registration Act (Northern Ireland) 1970 (registration to be conclusive evidence of title) shall not apply to a matrimonial<sup>F11</sup> or civil partnership] charge registered in pursuance of paragraph (1)(a).

(5) Where a matrimonial<sup>F11</sup> or civil partnership] charge affects registered land, its registration in the Land Registry and the cancellation, variation, release or renewal of, or the postponement of the priority of, such registration shall be effected in accordance with Land Registry Rules made under section 85(3) of the Land Registration Act (Northern Ireland) 1970.

(6) Where a matrimonial<sup>F11</sup> or civil partnership] charge affects unregistered land, its registration in the Registry of Deeds and the cancellation, variation, release or renewal of, or the postponement of the priority of, such registration shall be effected by lodging in that registry such documents as may be prescribed by regulations made under paragraph (7).

(7 <sup>F12</sup> The Department of the Environment may make regulations prescribing—

- (a) the documents to be lodged in the Registry of Deeds for or in connection with the matters mentioned in paragraph (6);
- (b) the form and content of such documents and the number of copies to be furnished to the registrar; and
- (c) the manner in which such documents are to be registered.

**F11** 2004 c.33

**F12** functions transf. by SR 1999/481

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### **Restriction on registration where spouse entitled to more than one matrimonial<sup>F13</sup> or civil partnership] charge**

7.—(1) Where one spouse<sup>F13</sup> or civil partner] is entitled by virtue of Article 5 to a registrable matrimonial<sup>F13</sup> or civil partnership] charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse<sup>F13</sup> or civil partner] is so entitled shall be effectively registered under Article 6 at any one time.

(2) The registration of a matrimonial<sup>F13</sup> or civil partnership] charge, in respect of any dwelling-house, in favour of one spouse<sup>F13</sup> or civil partner] shall cease to have effect upon the registration of a matrimonial<sup>F13</sup> or civil partnership] charge, in respect of any other dwelling-house, in favour of that spouse<sup>F13</sup> or civil partner].

(3) A spouse<sup>F13</sup> or civil partner] applying for registration of a matrimonial<sup>F13</sup> or civil partnership] charge shall notify the registrar to whom the application is made, of any subsisting registered matrimonial<sup>F13</sup> or civil partnership] charge in respect of<sup>F13</sup> home rights] to which that spouse<sup>F13</sup> or civil partner] is entitled.

(4) <sup>F14</sup> The Department of the Environment may make regulations prescribing the circumstances and manner in which the registration of a matrimonial<sup>F13</sup> or civil partnership] charge which has ceased to have effect by virtue of paragraph (2) shall be cancelled.

**F13** 2004 c.33

**F14** functions transf. by SR 1999/481

### **Cancellation of registration of matrimonial<sup>F15</sup> or civil partnership] charge before completion of disposal of dwelling-house**

8.—(1) Where a matrimonial<sup>F15</sup> or civil partnership] charge is registered in relation to an estate in a dwelling-house, it shall be a term of any contract for the disposal of that estate, whereby the person disposing of the estate agrees to give vacant possession of the dwelling-house on completion of the contract, that that person will before such completion procure the cancellation of the registration of the charge at his expense.

(2) If, on completion of such a contract as is referred to in paragraph (1), there is delivered to the person acquiring the estate or his solicitor such documents and fees as are required to effect cancellation of the registration of the matrimonial<sup>F15</sup> or civil partnership] charge, the term of the contract, for which paragraph (1) provides, shall be deemed to have been performed.

(3) Paragraph (1) shall not apply to any such contract made by a person who is entitled to dispose of the estate in the dwelling-house freed from any such charge.

(4) This Article applies only if and so far as a contrary intention is not expressed in the contract.

**F15** 2004 c.33

### **Cancellation of registration after termination of marriage<sup>F16</sup> or civil partnership], etc.**

9.—(1) Subject to paragraph (2), registration of a<sup>F16</sup> matrimonial or civil partnership charge] may be cancelled where—

- (a) either spouse<sup>F16</sup> or civil partner] is dead,
- (b) the marriage<sup>F16</sup> or civil partnership] in question has been annulled or terminated otherwise than by death, or



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(c) the<sup>F16</sup> spouse's or civil partner's home rights] have been terminated by an order of the court.

(2) Where—

(a) the marriage<sup>F16</sup> or civil partnership] in question has been terminated by the death of the spouse<sup>F16</sup> or civil partner] entitled to an estate in the dwelling-house or otherwise than by death, and

(b) an order affecting the matrimonial<sup>F16</sup> or civil partnership] charge of the spouse<sup>F16</sup> or civil partner] not so entitled had been made by virtue of Article 11(5),

then if, after the making of the order, registration of the matrimonial<sup>F16</sup> or civil partnership] charge was renewed or the charge registered in pursuance of paragraph (3), the registration shall not be cancelled in accordance with paragraph (1) unless the order has ceased to have effect.

(3) Where such an order has been made, then, for the purposes of paragraph (2), the spouse<sup>F16</sup> or civil partner] entitled to the matrimonial<sup>F16</sup> or civil partnership] charge affected by the order may—

(a) if before the date of the order the charge was registered, renew the registration, and

(b) if before the said date the charge was not so registered, register the charge.

(4) The renewal in pursuance of paragraph (3) of the registration of a matrimonial<sup>F16</sup> or civil partnership] charge shall not affect the priority of that charge during the subsistence of the marriage<sup>F16</sup> or civil partnership] in question; but failure to renew such registration shall render the charge void against a purchaser in so far as it extends beyond the termination, by death or otherwise, of the marriage<sup>F16</sup> or civil partnership].

F16 2004 c.33

### **Release of matrimonial<sup>F17</sup> or civil partnership] home rights and postponement of priority of matrimonial<sup>F17</sup> or civil partnership] charge**

10.—(1) A<sup>F17</sup> spouse or civil partner entitled to home rights] may by a release in writing release those rights or release them as respects part only of the dwelling-house affected by them.

(2) Where a contract is made for the disposal of the estate in a dwelling-house affected by a registered<sup>F17</sup> matrimonial or civil partnership charge] then, without prejudice to paragraph (1), the<sup>F17</sup> home rights] constituting the charge shall be deemed to have been released on the happening of whichever of the following events first occurs—

(a) the delivery to the purchaser of such documents as are required to effect cancellation of the registration of the<sup>F17</sup> matrimonial or civil partnership charge]; or

(b) the lodging of such documents in the Land Registry or the Registry of Deeds, as the case may require.

(3) A spouse<sup>F17</sup> or civil partner] entitled by virtue of Article 5 to a<sup>F17</sup> matrimonial or civil partnership charge] may agree in writing that any mortgage of, or other interest in, that estate shall rank in priority to the<sup>F17</sup> matrimonial or civil partnership charge].

F17 2004 c.33

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## *Occupation orders*

### **Occupation orders where applicant has estate, etc. or has<sup>F18</sup> home rights]**

#### **11.—(1) If—**

##### **(a) a person (“the person entitled”)—**

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

(ii) has<sup>F18</sup> home rights] in relation to a dwelling-house, and

##### **(b) the dwelling-house—**

(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 paragraphs (3), (4) and (5).

(2) If an agreement to marry is terminated, no application under this Article may be made by virtue of Article 3(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.

<sup>F18</sup>(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.]

#### **(3) An order under this Article 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 the dwelling-house or part of the dwelling-house;

(c) require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling-house or part of the dwelling-house;

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

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

(f) if the respondent has<sup>F18</sup> home rights] in relation to the dwelling-house and the applicant is the other spouse<sup>F18</sup> or civil partner], restrict or terminate those rights;

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

(h) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order;

(i) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises; or

(j) restrain the respondent from disposing of any estate he has in the dwelling-house (“disposing” for this purpose including any dealing mentioned in paragraphs (a) to (f) of section 45(3) of the Interpretation Act (Northern Ireland) 1954).

(4) An order under this Article may declare that the applicant is entitled as mentioned in paragraph (1)(a)(i) or has<sup>F18</sup> home rights].

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(5) If the applicant has<sup>F18</sup> home rights] and the respondent is the other spouse<sup>F18</sup> or civil partner], an order under this Article made during the marriage<sup>F18</sup> or civil partnership] may provide that those rights are not brought to an end by—

- (a) the death of the other spouse<sup>F18</sup> or civil partner]; or
- (b) the termination (otherwise than by death) of the marriage<sup>F18</sup> or civil partnership].

(6) In deciding whether to exercise its powers under paragraph (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 paragraph (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.

(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 Article containing one or more of the provisions mentioned in paragraph (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 paragraph (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 Article—

- (a) may not be made after the death of either of the parties mentioned in paragraph (1); and
- (b) except in the case of an order made by virtue of paragraph (5)(a), ceases to have effect on the death of either party.

(10) An order under this Article 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.

**F18** 2004 c.33

### **Effect of order under Article 11 where rights are a charge on dwelling-house**

**12.—**(1) If<sup>F19</sup> B's home rights] are a charge on the estate of<sup>F19</sup> A] or of trustees for<sup>F19</sup> A]

- (a) any order under Article 11 against<sup>F19</sup> A] has, except so far as a contrary intention appears, the same effect against persons deriving title under<sup>F19</sup> A] or under the trustees and affected by the charge, and
- (b) Articles 11(1), (3), (4) and (10) and 4(3) to (6) apply in relation to any person deriving title under<sup>F19</sup> A] or under the trustees and affected by the charge as they apply in relation to<sup>F19</sup> A].

(2) The court may make an order under Article 11 by virtue of paragraph (1)(b) if it considers that in all the circumstances it is just and reasonable to do so.

*Status: Point in time view as at 25/11/2008.*

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**F19** 2004 c.33

**One former spouse<sup>F20</sup> or former civil partner] with no existing right to occupy**

**13.—(1)** This Article applies if—

- (a) one former spouse<sup>F20</sup> or former civil partner] is entitled to occupy a dwelling-house by virtue of a beneficial estate or a contract or by virtue of any statutory provision giving him the right to remain in occupation;
- (b) the other former spouse<sup>F20</sup> or former civil partner] is not so entitled; and
- <sup>F20</sup>(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<sup>F20</sup> or former civil partner] not so entitled may apply to the court for an order under this Article against the other former spouse<sup>F20</sup> or former civil partner] ( “the respondent”).

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

- (a) giving the applicant the right to enter 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 Article may also—

- (a) require the respondent to permit the applicant to have peaceful use and enjoyment of 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) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (d) require the respondent to leave the dwelling-house or part of the dwelling-house;
- (e) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order;
- (f) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises specified in the order; or
- (g) restrain the respondent from disposing of any estate he has in the dwelling-house ( “disposing” for this purpose including any dealing mentioned in paragraphs (a) to (f) of section 45(3) of the Interpretation Act (Northern Ireland) 1954).

(6) In deciding whether to make an order under this Article containing provision of the kind mentioned in paragraph (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;

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- (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 paragraph (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<sup>[F20]</sup> or civil partnership] was dissolved or annulled; and
- (g) the existence of any pending proceedings between the parties—
  - (i) for an order under Article 26 of the Matrimonial Causes (Northern Ireland) Order 1978 (property adjustment orders in connection with divorce proceedings, etc.);
  - <sup>[F20]</sup>(ia) for a property adjustment order under Part 2 of Schedule 15 to the Civil Partnership Act 2004;]
  - (ii) for an order under paragraph 2(2)(d) or (e) of Schedule 1 to the Children (Northern Ireland) Order 1995 (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 powers to include one or more of the provisions referred to in paragraph (5) (a “paragraph (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in paragraph (6)(a) to (d).

(8) If the court decides to make an order under this Article and it appears to it that, if the order does not include a paragraph (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 paragraph (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 Article—

- (a) may not be made after the death of either of the former spouses<sup>[F20]</sup> or former civil partners]; and
- (b) ceases to have effect on the death of either of them.

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

(11) Without prejudice to any rights which arise by virtue of an equitable estate, a former spouse<sup>[F20]</sup> or former civil partner] who has only such an estate is to be treated for the purpose of determining whether he is eligible to apply under this Article as not being entitled to occupy the dwelling-house by virtue of that estate.

(12) Paragraph (11) does not prejudice any right of such a former spouse<sup>[F20]</sup> or former civil partner] to apply for an order under Article 11.

(13) So long as an order under this Article remains in force, paragraphs (3) to (6) of Article 4 apply in relation to the applicant—

- <sup>[F20]</sup>(a) as if he were B (the person entitled to occupy the dwelling-house by virtue of that Article); and

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- (b) as if the respondent were A (the person entitled as mentioned in paragraph (1)(a) of that Article).]

F20 2004 c.33

### **One cohabitee or former cohabitee with no existing right to occupy**

14.—(1) This Article applies if—

- (a) one cohabitee or former cohabitee is entitled to occupy a dwelling-house by virtue of a beneficial estate or a contract or by virtue of any statutory provision giving him the right to remain in occupation;
- (b) the other cohabitee or former cohabitee is not so entitled; and
- (c) that dwelling-house is the home in which they<sup>F21</sup> cohabit or a home in which they at any time cohabited or intended to cohabit.]

(2) The cohabitee or former cohabitee not so entitled may apply to the court for an order under this Article against the other cohabitee or former cohabitee (“the respondent”).

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

- (a) giving the applicant the right to enter 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 Article may also—

- (a) require the respondent to permit the applicant to have peaceful use and enjoyment of 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) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the dwelling-house;
- (d) require the respondent to leave the dwelling-house or part of the dwelling-house;
- (e) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order;
- (f) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises specified in the order; or
- (g) restrain the respondent from disposing of any estate he has in the dwelling-house (“disposing” for this purpose including any dealing mentioned in paragraphs (a) to (f) of section 45(3) of the Interpretation Act (Northern Ireland) 1954).

(6) In deciding whether to make an order under this Article containing provision of the kind mentioned in paragraph (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;

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- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under paragraph (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<sup>[F21]</sup> and in particular the level of commitment involved in it];
- (f) the length of time during which they have<sup>[F21]</sup> 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
- (i) the existence of any pending proceedings between the parties—
  - (i) for an order under paragraph 2(2)(d) or (e) of Schedule 1 to the Children (Northern Ireland) Order 1995 (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 paragraph (5) (a “paragraph (5) provision”) and (if so) in what manner, the court shall have regard to all the circumstances including the matters mentioned in paragraph (6)(a) to (d).

(8) If the court decides to make an order under this Article and it appears to it that, if the order does not include a paragraph (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 paragraph (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 Article—

- (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 Article must be limited so as to have effect for a specified period not exceeding twelve months, but may be extended on one or more occasions for a further specified period not exceeding twelve months.

(11) Without prejudice to any rights which arise by virtue of an equitable estate, a person who has only such an estate is to be treated for the purpose of determining whether he is eligible to apply under this Article as not being entitled to occupy the dwelling-house by virtue of that estate.

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

(13) So long as the order remains in force, paragraphs (3) to (6) of Article 4 apply in relation to the applicant—

- <sup>[F22]</sup>(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).]

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**F22** 2004 c.33

**Neither spouse<sup>[F23]</sup> or civil partner] entitled to occupy**

15.—(1) This Article 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 a contract; or
  - (ii) by virtue of any statutory provision giving him the right to remain in occupation.

[<sup>F23</sup>(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.]

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

(3) An order under this Article may—

- (a) require the respondent to permit the applicant to enter the dwelling-house or part of the dwelling-house;
- (b) require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling-house or part of the dwelling-house;
- (c) regulate the occupation of the dwelling-house by either or both of the<sup>[F23]</sup> parties];
- (d) require the respondent to leave the dwelling-house or part of the dwelling-house;
- (e) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order; or
- (f) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises specified in the order.

(4) In deciding whether to exercise its powers under paragraph (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 needs and 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 paragraph (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.

(5) 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 Article containing one or more of the provisions mentioned in paragraph (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



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- (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.

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

F23 2004 c.33

### Neither cohabitee nor former cohabitee entitled to occupy

16.—(1) This Article applies if—

- (a) one cohabitee or former cohabitee and the other cohabitee or former cohabitee occupy a dwelling-house which is the home in which they<sup>F24</sup> cohabit or cohabited]; but
- (b) neither of them is entitled to remain in occupation—
  - (i) by virtue of a beneficial estate or a contract; or
  - (ii) by virtue of any statutory provision 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 Article.

(3) An order under this Article may—

- (a) require the respondent to permit the applicant to enter the dwelling-house or part of the dwelling-house;
- (b) require the respondent to permit the applicant to have peaceful use and enjoyment of the dwelling-house or part of the dwelling-house;
- (c) regulate the occupation of the dwelling-house by either or both of the parties;
- (d) require the respondent to leave the dwelling-house or part of the dwelling-house;
- (e) provide for the respondent to remove from the dwelling-house or part of the dwelling-house personal effects or any furniture or other contents of a kind specified in the order; or
- (f) exclude the respondent from a defined area in which the dwelling-house is included, any other defined area and any premises specified in the order.

(4) In deciding whether to exercise its powers under paragraph (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 paragraph (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.

(5) If the court decides to make an order under this Article and it appears to it that, if the order does not include a paragraph (3) provision, the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent, the court shall include the paragraph (3) 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

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- (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.

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

**F24** 2005 NI 7

### Supplementary provisions

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

(2) If—

- (a) an application for an occupation order is made under Article 11, 13, 14, 15 or 16, and
- (b) the court considers that it has no power to make the order under the Article concerned, but that it has power to make an order under one of the other Articles,

the court may make an order under that other Article.

(3) The fact that a person has applied for an occupation order under Articles 13 to 16, or that an occupation order has been made, does not affect the right of any person to claim an estate in any property in any subsequent proceedings (including subsequent proceedings under this Order).

(4) Where, by reason only of an occupation order, a person is not residing in a dwelling-house during any period, he is not thereby prevented from being in occupation of it during that period for the purposes of the Limitation (Northern Ireland) Order 1989.

(5) Schedule 1 (which contains provisions consequential on an occupation order operating to restrain dispositions) shall have effect.

### Additional provisions that may be included in occupation orders

18.—(1) The court may on, or at any time after, making an occupation order—

- (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 a contract or by virtue of any statutory provision 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 a contract or by virtue of any such statutory provision;
- (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;
- (f) prohibit either party from damaging or interfering with services in the dwelling-house or any premises specified in the occupation order;

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- (g) order either party to repair the damage or restore services or to pay the other party or another person a sum specified in the order where the first-mentioned party has before the making of the occupation order—
  - (i) damaged the dwelling-house or its contents or damaged or interfered with services in the dwelling-house;
  - (ii) damaged any premises specified in the occupation order or the contents of those premises or damaged or interfered with services in those premises.
- (2) In deciding whether and, if so, how to exercise its powers under this Article, 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 Article ceases to have effect when the occupation order to which it relates ceases to have effect.

*Art. 19 rep. by 2005 NI 7*

#### *Non-molestation orders*

#### **Non-molestation orders**

**20.**—(1) In this Order 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 paragraph (2) “family proceedings” includes proceedings in which the court has made an emergency protection order under Article 63 of the Children (Northern Ireland) Order 1995 which includes an exclusion requirement (as defined in Article 63A(3) of that Order).

(4) Where an agreement to marry is terminated, no application under paragraph (2)(a) may be made by virtue of Article 3(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.

[<sup>F25</sup>(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.]

(5) In deciding whether to exercise its powers under this Article 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 paragraph (2)(b), the person for whose benefit the order would be made; and

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(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.

[<sup>F26</sup>(6A) A non-molestation order may exclude the respondent from a defined area in which a dwelling-house is included, any other defined area and any premises specified in the order.]

(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.

**F25** 2004 c.33

**F26** 2005 NI 7

*Further provisions relating to occupation and non-molestation orders*

**Leave of court required for applications by children under 16**

**21.**—(1) A child under the age of 16 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 paragraph (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.

**Evidence of agreement to marry[<sup>F27</sup> or form a civil partnership]**

**22.**—(1) Subject to paragraph (2), the court shall not make an order under Article 11 or 20 by virtue of Article 3(3)(e) unless there is produced to it evidence in writing of the existence of the agreement to marry.

(2) Paragraph (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.

[<sup>F27</sup>(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.]

**F27** 2004 c.33

## Ex parte orders

**23.**—(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 paragraph (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 court of summary jurisdiction, 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 paragraph (1), it shall<sup>F28</sup> specify a date for a full hearing.]

(4) If, at a full hearing, the court makes an occupation order ( “the full order”), then for the purposes of calculating the maximum period for which the full order may be made to have effect, the relevant Article shall 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.

(5) In this Article—

“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 paragraph (1); and

“relevant Article” means Article 11(10), 13(10), 14(10), 15(6) or 16(6).

**F28** [2005 NI 7](#)

## Variation and discharge of orders

**24.**—(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 Article 20(2)(b), the order may be varied or discharged by the court even though no such application has been made.

(3) If<sup>F29</sup> B's home rights are, under Article 12,] a charge on the estate of<sup>F29</sup> A] or of trustees for<sup>F29</sup> A], an order under Article 11 against<sup>F29</sup> A] may also be varied or discharged by the court on an application by any person deriving title under<sup>F29</sup> A] or under the trustees and affected by the charge.

**F29** [2004 c.33](#)

Status: Point in time view as at 25/11/2008.

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Enforcement

Offences

- 25. Any person who<sup>F30</sup> without reasonable excuse] contravenes—
  - (a) a non-molestation order;
  - (b) where there is in force a non-molestation order prohibiting that person from molesting another person, an occupation order or an order under Article 18;
  - (c) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
  - (d) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding<sup>F30</sup> level 5] on the standard scale or to imprisonment for a term not exceeding<sup>F30</sup> six months] or to both.

F30 2005 NI 7

Power of arrest without warrant

- 26. <sup>F31</sup> .....

F31 Art. 26 repealed (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), 41, Sch. 2

Further powers of court of summary jurisdiction

27.—(1) Paragraphs (3) to (8) of Article 112 of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of orders other than for the payment of money) apply for the purpose of the enforcement of—

- (a) a non-molestation order;
- (b) an occupation order;
- (c) an order under Article 18;
- (d) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
- (e) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,

as those paragraphs apply in relation to an order mentioned in paragraph (2) of Article 112.

(2) A court of summary jurisdiction has the same power to make a hospital order or guardianship order under Article 44 of the Mental Health (Northern Ireland) Order 1986 or an interim hospital order under Article 45 of that Order in the case of a person who is suffering from mental illness or severe mental impairment who could otherwise be committed to custody for breach of an order or requirement mentioned in paragraph (1) as a court of summary jurisdiction has under those Articles in the case of a person convicted of an offence punishable on summary conviction with imprisonment.

## *Orders under the Children (Northern Ireland) Order 1995*

### **Residence and contact orders**

**28.** After Article 12 of the Children (Northern Ireland) Order 1995 (residence orders and parental responsibility) there shall be inserted the following Article—

#### **“Residence and contact orders and domestic violence**

**12A.**—(1) Where a court is considering whether to make a residence or contact order in favour of a prohibited person, the court shall consider whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill-treatment of another person by the prohibited person.

(2) A person is a prohibited person for the purposes of paragraph (1) if either he is or the court considers that he should be prohibited by a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1997 from molesting another person.

(3) Paragraph (1) is without prejudice to Article 3.”.

### **Interim care orders and emergency protection orders**

**29.**—(1) In Article 2(2) of the Children (Northern Ireland) Order 1995 (interpretation), after the definition of “disabled” there shall be inserted the following definition—

““dwelling-house” includes—

- (a) any building or part of a building which is occupied as a dwelling;
  - (b) any caravan, houseboat or structure which is occupied as a dwelling,
- and any yard, garden, garage or outhouse belonging to it and occupied with it;” .

(2) After Article 57 of that Order there shall be inserted the following Article—

#### **“Power to include exclusion requirement in interim care order**

**57A.**—(1) Where—

- (a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in Article 50(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and
- (b) the conditions mentioned in paragraph (2) are satisfied,

the court may include an exclusion requirement in the interim care order.

(2) The conditions are—

- (a) that there is reasonable cause to believe that, if a person ( “the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and
- (b) that another person (whether a parent of the child or some other person)—
  - (i) is able and willing to live (or continue to live) in the dwelling-house and give to the child the care which it would be reasonable to expect a parent to give him, and
  - (ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this Article an exclusion requirement is any one or more of the following—

*Status: Point in time view as at 25/11/2008.*

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- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated and any other defined area.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.
- (5) Any period specified for the purposes of paragraph (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.
- (6) If, while an interim care order containing an exclusion requirement is in force, the authority has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.”
- (3) In Article 58 of that Order (discharge and variation, etc., of care orders and supervision orders), after paragraph (3) there shall be inserted the following paragraph—
- “(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.”.
- (4) After Article 63 of that Order there shall be inserted the following Article—

**“Power to include exclusion requirement in emergency protection order**

**63A.—(1) Where—**

- (a) on being satisfied as mentioned in Article 63(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child, and
- (b) the conditions mentioned in paragraph (2) are satisfied,

the court may include an exclusion requirement in the emergency protection order.

**(2) The conditions are—**

- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
  - (i) in the case of an order made on the ground mentioned in Article 63(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in Article 63(1)(a)(i) or does not remain as mentioned in Article 63(1)(a)(ii), or
  - (ii) in the case of an order made on the ground mentioned in sub-paragraph (b) or (c) of Article 63(1), the enquiries referred to in that sub-paragraph will cease to be frustrated, and
- (b) that another person (whether a parent of the child or some other person)—
  - (i) is able and willing to live (or continue to live) in the dwelling-house and give to the child the care which it would be reasonable to expect a parent to give him, and
  - (ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this Article an exclusion requirement is any one or more of the following—



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- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated and any other defined area.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.
- (5) Any period specified for the purposes of paragraph (4) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.
- (6) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.”.
- (5) In Article 64 of that Order (duration of emergency protection orders and other supplemental provisions), after paragraph (7) there shall be inserted the following paragraph—
- “(7A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.”.

### *Transfer of tenancies*

#### **Transfer of certain tenancies**

**30.** Schedule 2 (which makes provision in relation to the transfer of certain tenancies on divorce, etc. or on separation of cohabitantes) shall have effect.

### *Dwelling-house subject to mortgage*

#### **Dwelling-house subject to mortgage**

**31.**—(1) In determining for the purposes of this Order whether a person is entitled to occupy a dwelling-house by virtue of an estate, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.

(2) Paragraph (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, a connected person does not by virtue of—

- (a) any<sup>F32</sup> home rights] conferred by Article 4, or
- (b) any rights conferred by an order under Article 13 or 14,

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

(4) Paragraph (3) does not apply, in the case of<sup>F32</sup> home rights], if under Article 5 those rights are a charge, affecting the mortgagee, on the estate mortgaged.

(5) In this Article “connected person”, in relation to any person, means that person's spouse, former spouse<sup>F32</sup>, civil partner, former civil partner], cohabitee or former cohabitee.

*Status: Point in time view as at 25/11/2008.*

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**F32** 2004 c.33

### **Actions by mortgagees: joining connected persons as parties**

**32.**—(1) This Article 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 paragraph (3).

(3) The circumstances are that—

- (a) the connected person is enabled by Article 4(3) or (6) (or by Article 4(3) or (6) as applied by Article 13(13) or 14(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 Administration of Justice Act 1970.

(4) In this Article “connected person” has the same meaning as in Article 31.

### **Actions by mortgagees: service of notice on certain persons**

**33.**—(1) This Article 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 registered matrimonial<sup>F33</sup> or civil partnership] charge.

(2) If the person on whose behalf the matrimonial<sup>F33</sup> or civil partnership] charge is registered is not a party to the action, the mortgagee must serve notice of the action on him.

(3) If—

- (a) a certificate of the result of an official search, made on behalf of the mortgagee, in the Land Registry or, as the case may be, of a negative search so made in the Registry of Deeds has been issued; and
- (b) the action is commenced within a period of 14 days after the date of the issue of the certificate,

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.

**F33** 2004 c.33

*Jurisdiction and procedure, etc.*

### **Jurisdiction of courts and procedure**

**34.**—(1) In this Order “the court” means the High Court, a county court or a court of summary jurisdiction.

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(2) Paragraph (1) is subject to the provision made by or under the following provisions of this Article, to Article 38 and to any express provision as to the jurisdiction of any court made by any other provision of this Order.

(3) The Lord Chancellor may<sup>F34</sup>, after consultation with the Lord Chief Justice,] by order specify proceedings under this Order 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<sup>F34</sup>, after consultation with the Lord Chief Justice,] by order specify circumstances in which specified proceedings under this Order 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<sup>F34</sup>, after consultation with the Lord Chief Justice,] by order provide that in specified circumstances the whole or any specified part of any specified proceedings under this Order 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 paragraph (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 paragraph (5) may make such provision as the Lord Chancellor thinks appropriate<sup>F35</sup>, after consultation with the Lord Chief Justice,] for excluding specified proceedings from the operation of any statutory provision which would otherwise govern the transfer of those proceedings or any part of them.

(8) For the purposes of paragraphs (3), (4) and (5), there are three levels of court—

- (a) the High Court;
- (b) a county court; and
- (c) a court of summary jurisdiction.

(9) Except to the extent that the Lord Chancellor<sup>F36</sup>, after consultation with the Lord Chief Justice,] by order otherwise provides, the jurisdiction of any specified county court under this Order shall be exercisable throughout Northern Ireland (and accordingly Article 3(3)(b) of the County Courts (Northern Ireland) Order 1980 (jurisdiction exercisable throughout county court division) shall not apply).

<sup>F37</sup>(9A) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(10) In this Article “specified” means specified by an order under this Article and a class of court so specified may be described by reference to a description of proceedings and may include different levels of court.

**Status:** Point in time view as at 25/11/2008.

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(11) Article 165 of the Children (Northern Ireland) Order 1995 (provision which may be made by rules of court) shall apply for the purpose of giving effect to this Order as it applies for the purpose of giving effect to that Order, except that in the application of that Article by virtue of this paragraph “relevant proceedings” means any application made, or proceedings brought, under this Order and any part of such proceedings.

- F34** Words in art. 34(3) - (5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 110(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)
- F35** Words in art. 34(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 110(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)
- F36** Words in art. 34(9) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 110(4); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)
- F37** Art. 34(9A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 110(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

**Modifications etc. (not altering text)**

- C2** Art. 34(3)-(10) applied (with modifications) (25.11.2008) by Forced Marriage (Civil Protection) Act 2007 (c. 20), ss. 2, 4(4), Sch. 1 para. 8(3)(4); S.R. 2008/446, art. 2(a)

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

**35.**—(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 any family proceedings.

(2) Rules made under this Article 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 Article 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 Order when a representative is acting on behalf of another.

(4) Any rules made under this Article 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 Article.

**Provision for separate representation for children**

**36.**—(1) The Lord Chancellor may by regulations provide for the separate representation of children in proceedings which relate to any matter in respect of which a question has arisen, or may arise, under this Order.

(2) The regulations may provide for such representation only in specified circumstances.

**Contempt proceedings**

**37.** 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 Order may be exercised by the relevant judicial authority.

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## Courts of summary jurisdiction

**38.**—(1) A court of summary jurisdiction 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 a contract or by virtue of any statutory provision 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 court of summary jurisdiction may decline jurisdiction in any proceedings under this Order if it considers that the case can more conveniently be dealt with by another court.

(3) The powers of a court of summary jurisdiction under Article 112(2) of the Magistrates' Courts (Northern Ireland) Order 1981 to suspend or rescind orders shall not apply in relation to any order made under this Order.

(4) A juvenile court (that is to say, a court of summary jurisdiction constituted in accordance with Schedule 2 to the Children and Young Persons Act (Northern Ireland) 1968) sitting for the purpose of exercising any jurisdiction conferred by or under this Order may be known as a family proceedings court.

## Appeals

**39.**—(1) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the High Court against—

- (a) the making by a county court of any order under this Order; or
- (b) any refusal by a county court to make such an order,

as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

(2) An appeal shall not lie to the High Court under paragraph (1)—

- (a) on an appeal from a court of summary jurisdiction; or
- (b) where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings.<sup>[F38]</sup> or]
- <sup>[F38]</sup>(c) where the county court is a civil partnership proceedings county court exercising jurisdiction under the Civil Partnership Act 2004.]

(3) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the county court against—

- (a) the making by a court of summary jurisdiction of any order under this Order; or
- (b) any refusal by a court of summary jurisdiction to make such an order.

(4) If the court of summary jurisdiction referred to in paragraph (3) is a family proceedings court—

- (a) the county court to which the appeal under that paragraph lies shall be such county court as may be specified by order made by the Lord Chancellor<sup>[F39]</sup>, after consultation with the Lord Chief Justice,] for the purposes of this paragraph; and
- (b) section 178 of the Children and Young Persons Act (Northern Ireland) 1968 shall not apply where such a county court deals with such an appeal;

and except to the extent that the Lord Chancellor<sup>[F40]</sup>, after consultation with the Lord Chief Justice,] by order otherwise provides, the jurisdiction of any such specified county court under this Order shall be exercisable throughout Northern Ireland (and accordingly Article 3(3)(b) of the County Courts (Northern Ireland) Order 1980 (jurisdiction exercisable throughout county court division) shall not apply.

*Status: Point in time view as at 25/11/2008.*

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(5) Where a court of summary jurisdiction has power, in relation to any proceedings under this Order, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise of that power by that court of summary jurisdiction.

(6) Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980 (cases stated), rules of court shall make provision for an appeal to the Court of Appeal from any order made by a county court under this Order, or from the dismissal of any application for such an order, upon a point of law, a question of fact or the admission or rejection of any evidence, where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings<sup>[F38]</sup> or a civil partnership proceedings county court exercising jurisdiction under the Civil Partnership Act 2004 in the same proceedings].

(7) In paragraphs (8) to (10) “appellate court” means the High Court or the county court, as the case may be.

(8) On an appeal under this Article, the appellate court may make such orders as may be necessary to give effect to its determination of the appeal.

(9) Where an order is made under paragraph (8), the appellate court may also make such incidental or consequential orders as appear to it to be just.

(10) Any order of the appellate court made on an appeal under this Article (other than one directing that an application be re-heard by the county court or a court of summary jurisdiction) 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 court from which the appeal was brought and not an order of the appellate court.

(11) The Lord Chancellor may<sup>[F41]</sup>, after consultation with 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 Article 34(5).

<sup>[F42]</sup>(11A) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (4) or (11)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(12) Except to the extent provided for in any order made under paragraph (11), no appeal may be made against any decision of a kind mentioned in that paragraph.

**F38** 2004 c.33

**F39** Words in art. 39(4)(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 111(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

**F40** Words in art. 39(4)(b) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 111(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

**F41** Words in art. 39(11) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 111(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

**F42** Art. 39(11A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 111(4); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(b)

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## Orders and regulations

**40.**—(1) Orders and regulations made under this Order by the Lord Chancellor shall be subject to annulment in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(2) Orders made under this Order by the Lord Chancellor<sup>F43</sup> . . . may make such incidental, supplemental, consequential and transitional provision as he considers expedient.

(3) Orders made under this Article by the Department of Finance and Personnel and regulations made under this Order by the Department of the Environment shall be subject to negative resolution.

(4) Orders made under this Order by the Department of Finance and Personnel and regulations made under this Order by the Department of the Environment may make such incidental, supplemental, consequential and transitional provision as it considers expedient.

**F43** SI 1999/663

## Amendments, saving and transitional provisions, and repeals

*Para. (1)—Amendments*

(2) Schedule 4 (which contains saving and transitional provisions) shall have effect.

*Para. (3)—Repeals*

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## SCHEDULES

### SCHEDULE 1

Article 17(5).

#### PROVISIONS CONSEQUENTIAL ON ORDER OPERATING TO RESTRAIN DISPOSITIONS

1. An occupation order ( “the order”) to the extent that by virtue of Article 11(3)(j), 13(5)(g) or 14(5)(g) it makes provision restraining the respondent from making a disposition of any land in Northern Ireland which is specified in the order,—

- (a) shall create on the land a statutory charge within the meaning of section 87 of the Land Registration Act (Northern Ireland) 1970 (matters registrable in the Statutory Charges Register); and
- (b) subject to section 88 of that Act (statutory charge to be void against purchaser in certain circumstances), shall render liable to be set aside by the court, at the instance of the applicant for the order, any disposition of the land in contravention of the order.

2.—(1) The registration of a statutory charge such as is mentioned in paragraph 1 shall cease to have effect when the provision mentioned in that paragraph ceases to have effect.

(2) This paragraph is without prejudice to section 91 of the Land Registration Act (Northern Ireland) 1970.

3. When the registration has ceased to have effect the Registrar of Titles may cancel it.

4. An application for the renewal of the registration of a charge may be made in the same manner as the application for the original registration.

### SCHEDULE 2

Article 30.

#### TRANSFER OF CERTAIN TENANCIES ON DIVORCE ETC. OR ON SEPARATION OF COHABITEES

### PART I

#### GENERAL

##### *Interpretation*

1.—(1) In this Schedule the following words and expressions have the same meaning as in the Rent (Northern Ireland) Order 1978—

- (a) dwelling-house;
- (b) the landlord;
- (c) protected tenancy;
- (d) Rent Restriction Acts;



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(e) statutory tenancy.

(2) In this Schedule—

[<sup>F44</sup>“civil partner”, except in paragraph 2, includes (where the context requires) former civil partner;]

“cohabitee”, except in paragraph 3, includes (where the context requires) former cohabitee;

“the court” does not include a court of summary jurisdiction;

“Part II order” means an order under Part II of this Schedule;

“secure tenancy” has the meaning assigned to it by Article 25 of the Housing (Northern Ireland) Order 1983;

“spouse” includes a party to a void or voidable marriage and, except in paragraph 2, includes (where the context requires) former spouse.

**F44** 2004 c.33

#### *Cases in which court may make order*

2.—(1) This paragraph applies if one spouse[<sup>F45</sup> or civil partner] is entitled, either in his own right or jointly with the other spouse[<sup>F45</sup> or civil partner], to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy.

[<sup>F45</sup>(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.]

(3) On the application of the other spouse[<sup>F45</sup> or civil partner] within three months after an occupation order is made, the court may make a Part II order.

**F45** 2004 c.33

3.—(1) This paragraph applies if one cohabitee is entitled, either in his own right or jointly with the other cohabitee, to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy.

(2) If the cohabitees cease to[<sup>F46</sup> cohabit], the court may make a Part II order.

(3) On the application of the other cohabitee within three months after an occupation order is made, the court may make a Part II order.

**F46** 2005 NI 7

4.—(1) The court shall not make a Part II order unless the dwelling-house is or was—

(a) in the case of spouses, a matrimonial home;<sup>F47</sup> . . .

[<sup>F47</sup>(aa) in the case of civil partners, a civil partnership home; or]

(b) in the case of cohabitees, a home in which they[<sup>F48</sup> cohabited].

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(2) Where while an occupation order is in force an application is made for a Part II order, the court may make the order applied for notwithstanding that, at the time when it does so, the occupation order has ceased to have effect otherwise than by reason of its revocation; and where a Part II order is made it shall not be affected by an occupation order subsequently ceasing to have effect.

**F47** 2004 c.33

**F48** 2005 NI 7

*Matters to which court must have regard*

5. In determining whether to exercise its powers under Part II and, if so, in what manner, the court shall have regard to all the circumstances of the case including—

- (a) the circumstances in which the tenancy was granted to either or both of the spouses<sup>[F49]</sup>, civil partners] or cohabittees or, as the case requires, the circumstances in which either or both of them became tenant under the tenancy;
- (b) the matters mentioned in Article 11(6)(a), (b), (c) and (d) and, where the parties are cohabittees and only one of them is entitled to occupy the dwelling-house by virtue of the tenancy, the further matters mentioned in Article 14(6)(e), (f), (g) and (h); and
- (c) the suitability of the parties as tenants.

**F49** 2004 c.33

## PART II

### ORDERS THAT MAY BE MADE

*References to entitlement to occupy*

6. References in this Part to a spouse<sup>[F50]</sup>, civil partner] or a cohabitee being entitled to occupy a dwelling-house by virtue of a protected tenancy or a secure tenancy apply whether that entitlement is in his own right or jointly with the other spouse<sup>[F50]</sup>, civil partner] or cohabitee.

**F50** 2004 c.33

*Protected or secure tenancy*

7.—(1) If a spouse<sup>[F51]</sup>, civil partner] or cohabitee is entitled to occupy the dwelling-house by virtue of a protected tenancy or a secure tenancy the court may by order direct that, as from such date as may be specified in the order, there shall, by virtue of the order and without further assurance, be transferred to, and vested in, the other spouse<sup>[F51]</sup>, civil partner] or cohabitee—

- (a) the estate which the spouse<sup>[F51]</sup>, civil partner] or cohabitee so entitled had in the dwelling-house immediately before that date by virtue of the lease or agreement creating the tenancy and any assignment of that lease or agreement, with all rights, privileges and appurtenances attaching to that estate but subject to all covenants, obligations, liabilities and incumbrances to which it is subject, and

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- (b) where the spouse<sup>[F51]</sup>, civil partner] or cohabitee so entitled is an assignee of such lease or agreement, the liability of that spouse<sup>[F51]</sup>, civil partner] or cohabitee under any covenant of indemnity by the assignee expressed or implied in the assignment of the lease or agreement to that spouse<sup>[F51]</sup>, civil partner] or cohabitee.

(2) If an order is made under this paragraph, any liability or obligation to which the spouse<sup>[F51]</sup>, civil partner] or cohabitee so entitled is subject under any covenant having reference to the dwelling-house in the lease, agreement or assignment, being a liability or obligation falling due to be discharged or performed on or after the date so specified, shall not be enforceable against that spouse<sup>[F51]</sup>, civil partner] or cohabitee.

<sup>[F51]</sup>(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),  
(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.]

**F51** 2004 c.33

#### *Statutory tenancy*

**8.—**(1) This paragraph applies if the spouse<sup>[F52]</sup>, civil partner] or cohabitee is entitled to occupy the dwelling-house by virtue of a statutory tenancy.

(2) The court may by order direct that, as from the date specified in the order,—

- (a) that spouse<sup>[F52]</sup>, civil partner] or cohabitee is to cease to be entitled to occupy the dwelling-house; and  
(b) the other spouse<sup>[F52]</sup>, civil partner] or cohabitee is to be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.

(3) The question whether the provisions of paragraph 1 to 4, <sup>F53</sup> . . . of Schedule 1 to the Rent (Northern Ireland) Order 1978, as to the succession by the widow or widower<sup>[F52]</sup> or surviving civil partner] of a deceased tenant, or by a member of the deceased tenant's family, to the right to retain possession are capable of having effect in the event of the death of the person deemed by an order under this paragraph to be the tenant or sole tenant under the statutory tenancy is to be determined according as those provisions or the corresponding provisions of the Rent Restriction Acts have or have not already had effect in relation to the statutory tenancy.

**F52** 2004 c.33

**F53** Words in Sch. 2 para. 8(3) repealed (1.4.2007) by *Private Tenancies (Northern Ireland) Order 2006* (S.I. 2006/1459 (N.I. 10)), arts. 1(3), 75, **Sch. 5**; S.R. 2006/428, **art. 3(c)**

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## PART III

### SUPPLEMENTARY PROVISIONS

#### *Compensation*

**9.—**(1) If the court makes a Part II order, it may by the order direct the making of a payment by the spouse<sup>[F54]</sup>, civil partner] or cohabitee to whom the tenancy is transferred ( “the transferee”) to the other spouse<sup>[F54]</sup>, civil partner] or cohabitee ( “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 anytime 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.

**F54** 2004 c.33

#### *Liabilities and obligations in respect of the dwelling-house*

**10.—**(1) If the court makes a Part II order, it may by order direct that both spouses<sup>[F55]</sup>, civil partners] or cohabitees 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<sup>[F55]</sup>, civil partner] or cohabitee 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.

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**F55** 2004 c.33

*[<sup>F56</sup>Date when order made between spouses or civil partners takes effect*

**F56** 2004 c.33

**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.]

*[<sup>F57</sup>Effect of remarriage or subsequent civil partnership*

**F57** 2004 c.33

**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.]

*Rules of court*

**13.**—(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 a decree shall not, without the leave of the court by which that decree was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.

*Saving for other provisions of this Order*

**14.**—(1) If a spouse<sup>[<sup>F58</sup> or civil partner]</sup> is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule does not affect the operation of Articles 4 and 5 in relation to the other<sup>[<sup>F58</sup> spouse's or civil partner's home rights]</sup>.

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(2) If a spouse<sup>F58</sup>, civil partner] 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 Articles 11, 13 and 14.

**F58** 2004 c.33

### Schedule 3—Amendments

## SCHEDULE 4

Article 41(2).

### SAVING AND TRANSITIONAL PROVISIONS

#### *Interpretation*

**1.** In this Schedule—

“the Order of 1980” means the Domestic Proceedings (Northern Ireland) Order 1980;

“the Order of 1984” means the Family Law (Miscellaneous Provisions) (Northern Ireland) 1984; and

“the Order of 1989” means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

#### *Pending applications*

**2.** Nothing in this Order affects any application for an order under Article 18 or 21 of the Order of 1980 or Article 4 or 13 of the Order of 1984 which is pending immediately before the commencement of the repeal of that Article.

**3.** Nothing in this Order affects any application for an order under Schedule 1 to the Order of 1989 which is pending immediately before the commencement of the repeal of that Schedule.

#### *Existing orders*

**4.—(1)** In this paragraph an “existing order” means any order under Article 18 or 21 of the Order of 1980 or Article 4 or 13 of the Order of 1984 which—

(a) is in force immediately before the commencement of the repeal of that Article; or

(b) was made or granted after that commencement in proceedings brought before that commencement.

(2) Subject to sub-paragraphs (3) and (4), nothing in this Order prevents an existing order from remaining in force or affects the enforcement of such an order.

(3) Nothing in this Order affects any application to vary or discharge an existing order, but the court may, if it thinks it is just and reasonable to do so, treat the application as an application for an order under this Order.

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(4) The making of an order under this Order between parties with respect to whom an existing order is in force discharges the existing order.

*Matrimonial home rights, etc.*

**5.—**(1) Any reference (however expressed) in any statutory provision or any other instrument or document (whether that provision, instrument or document is passed or made before, on, or after the date on which this Order is made) to rights of occupation under, or within the meaning of, Part II of the Order of 1984 shall be construed, so far as is required for continuing the effect of the instrument or document, as being or as the case requires including a reference to matrimonial home rights under, or within the meaning of, this Order.

(2) Any reference (however expressed) in any statutory provision (including this Order and any statutory provision amended by Schedule 3) or any other instrument or document to matrimonial home rights under, or within the meaning of, this Order shall be construed as including, in relation to times, circumstances and purposes before the commencement of Articles 4 to 10, a reference to rights of occupation under, or within the meaning of, the Order of 1984.

**6.—**(1) Any reference (however expressed) in any statutory provision or any other instrument or document (whether that provision, instrument or document is passed or made before, on or after the date on which this Order is made) to registration under the Order of 1980 or 1984 shall, in relation to any time after the commencement of Schedule 1 or as the case requires Articles 4 to 10, be construed as being or as the case requires including a reference to registration under this Order.

(2) Any reference (however expressed) in any statutory provision (including this Order and any statutory provision amended by Schedule 3) or any other instrument or document to registration under this Order shall be construed as including a reference to registration under the Order of 1980 or, as the case may require, 1984.

**7.** In Articles 4 to 9—

- (a) any reference to an order made under Article 11 shall be construed as including a reference to an order made under Article 4 of the Order of 1984; and
- (b) any reference to an order made under Article 11(5) shall be construed as including a reference to an order made under Article 4 of the Order of 1984 by virtue of Article 5(4) of that Order.

**8.** Nothing in this Schedule shall be taken to prejudice the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954.

*Schedule 5—Repeals*

**Status:**

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**Changes to legislation:**

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