
STATUTORY INSTRUMENTS

1998 No. 1071

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

Occupation orders

One former spouse^[F1] or former civil partner] with no existing right to occupy

13.—(1) This Article applies if—

(a) one former spouse^[F1] 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^[F1] or former civil partner] is not so entitled; and

^[F1](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^[F1] or former civil partner] not so entitled may apply to the court for an order under this Article against the other former spouse^[F1] 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;

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- (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;
 - (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^[F1] 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.);
 - [F1(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^[F1] 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^[F1] 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^[F1] 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—

- [^{F1}(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).]

F1 2004 c.33

Changes to legislation:

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

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

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