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STATUTORY INSTRUMENTS

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**1998 No. 1071**

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

*Rights to occupy matrimonial home*

**Rights concerning matrimonial home where one spouse has no estate, etc.**

- 4.—(1) This Article applies if—
- (a) one spouse is entitled to occupy a dwelling-house by virtue of—
    - (i) a beneficial estate or a contract; or
    - (ii) any statutory provision giving that spouse the right to remain in occupation; and
  - (b) the other spouse is not so entitled.
- (2) Subject to the provisions of this Order, the spouse not so entitled has the following rights (“matrimonial home rights”)—
- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse 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 a spouse 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 that spouse in or towards satisfaction of any liability of the other spouse 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 the other spouse.
- (4) A spouse’s occupation by virtue of this Article—
- (a) is to be treated, for the purposes of the Rent (Northern Ireland) Order 1978, as occupation by the other spouse as the other spouse’s residence, and
  - (b) if the spouse occupies the dwelling-house as that spouse’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 by the other spouse as the other spouse’s only or principal home.
- (5) If a spouse (“the first spouse”)—
- (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 the other spouse (“the second spouse”) 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 the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an estate in the dwelling-house by virtue of the payment.

(6) If a spouse is entitled under this Article to occupy a dwelling-house or part of a dwelling-house by reason of an interest of the other spouse under a trust, the provisions of paragraphs (3) and (5) apply in relation to the trustees as they apply in relation to the other spouse.

(7) This Article does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.

(8) A spouse's matrimonial home rights continue—

- (a) only so long as the marriage subsists, except to the extent that an order under Article 11(5) otherwise provides, and
- (b) only so long as the other spouse 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, a spouse who has only such an estate is to be treated for the purpose of determining whether he has matrimonial 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 is so entitled.

#### **Effect of matrimonial home rights as charge on dwelling-house**

5.—(1) Paragraphs (2) and (3) apply if, at any time during a marriage, one spouse is entitled to occupy a dwelling-house by virtue of a beneficial estate.

(2) The other spouse's matrimonial 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 the spouse so entitled acquires the estate,
- (b) the date of the marriage, 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 a spouse's matrimonial home rights are a charge on an interest of the other spouse under a trust, there are, apart from either of the spouses, 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 the other spouse.

(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 the spouses alone (whether or not the exercise of it requires the consent of another person).

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

- (a) the death of the other spouse, or
- (b) the termination (otherwise than by death) of the marriage,

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

(8) If—

- (a) a spouse's matrimonial 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 the other spouse or, as the case may be, under the trustees for the other spouse, by virtue of the surrender.

### **Registration, etc. of matrimonial charge**

- 6.—(1) Where a matrimonial 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 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 charge registered in pursuance of paragraph (1)(a).
- (5) Where a matrimonial 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 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) 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.

### **Restriction on registration where spouse entitled to more than one matrimonial charge**

- 7.—(1) Where one spouse is entitled by virtue of Article 5 to a registrable matrimonial charge in respect of each of two or more dwelling-houses, only one of the charges to which that spouse is so entitled shall be effectively registered under Article 6 at any one time.
- (2) The registration of a matrimonial charge, in respect of any dwelling-house, in favour of one spouse shall cease to have effect upon the registration of a matrimonial charge, in respect of any other dwelling-house, in favour of that spouse.

(3) A spouse applying for registration of a matrimonial charge shall notify the registrar to whom the application is made, of any subsisting registered matrimonial charge in respect of matrimonial home rights to which that spouse is entitled.

(4) The Department of the Environment may make regulations prescribing the circumstances and manner in which the registration of a matrimonial charge which has ceased to have effect by virtue of paragraph (2) shall be cancelled.

### **Cancellation of registration of matrimonial charge before completion of disposal of dwelling-house**

8.—(1) Where a matrimonial 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 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.

### **Cancellation of registration after termination of marriage, etc.**

9.—(1) Subject to paragraph (2), registration of a matrimonial charge may be cancelled where—

- (a) either spouse is dead,
- (b) the marriage in question has been annulled or terminated otherwise than by death, or
- (c) the spouse's matrimonial home rights have been terminated by an order of the court.

(2) Where—

- (a) the marriage in question has been terminated by the death of the spouse entitled to an estate in the dwelling-house or otherwise than by death, and
- (b) an order affecting the matrimonial charge of the spouse not so entitled had been made by virtue of Article 11(5),

then if, after the making of the order, registration of the matrimonial 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 entitled to the matrimonial 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 charge shall not affect the priority of that charge during the subsistence of the marriage 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.

### **Release of matrimonial home rights and postponement of priority of matrimonial charge**

**10.—**(1) A spouse entitled to matrimonial 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 matrimonial charge then, without prejudice to paragraph (1), the matrimonial 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 matrimonial 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 entitled by virtue of Article 5 to a matrimonial charge may agree in writing that any mortgage of, or other interest in, that estate shall rank in priority to the matrimonial charge.