

---

STATUTORY INSTRUMENTS

---

**1998 No. 1071**

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

*Occupation orders*

**Occupation orders where applicant has estate, etc. or has matrimonial 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 matrimonial 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.

(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 matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, 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 matrimonial home rights.
- (5) If the applicant has matrimonial home rights and the respondent is the other spouse, an order under this Article made during the marriage may provide that those rights are not brought to an end by—
  - (a) the death of the other spouse; or
  - (b) the termination (otherwise than by death) of the marriage.
- (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.

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

- 12.—**(1) If a spouse’s matrimonial home rights are a charge on the estate of the other spouse or of trustees for the other spouse—
- (a) any order under Article 11 against the other spouse has, except so far as a contrary intention appears, the same effect against persons deriving title under the other spouse 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 the other spouse or under the trustees and affected by the charge as they apply in relation to the other spouse.

(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.

**One former spouse with no existing right to occupy**

13.—(1) This Article applies if—

- (a) one former spouse 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 is not so entitled; and
- (c) the dwelling-house was at any time their matrimonial home or was at any time intended by them to be their matrimonial home.

(2) The former spouse not so entitled may apply to the court for an order under this Article against the other former spouse (“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;
- (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 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.);
  - (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; 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 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 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—

- (a) as if the applicant were the spouse entitled to occupy the dwelling-house by virtue of that Article, and
- (b) as if the respondent were the other spouse.

#### **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 live together as husband and wife or a home in which they at any time so lived together or intended so to live together.

(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;
- (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;
- (f) the length of time during which they have lived together as husband and wife;
- (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—

- (a) as if the applicant were a spouse entitled to occupy the dwelling-house by virtue of that Article, and
- (b) as if the respondent were the other spouse.

### **Neither spouse 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.

(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 spouses;
- (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
  - (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.

**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 live or lived together as husband and wife; 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
- (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.

### **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;
  - (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.

**Additional considerations if parties are cohabittees or former cohabittees**

- 19.**—(1) This Article applies if the parties are cohabittees or former cohabittees.
- (2) Where the court is required to consider the nature of the parties' relationship, it is to have regard to the fact that the parties have not given each other the commitment involved in marriage.