

Changes to legislation: Family Homes and Domestic Violence (Northern Ireland) Order 1998, SCHEDULE 2 is up to date with all changes known to be in force on or before 10 April 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) View outstanding changes

SCHEDULES

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;
- (e) statutory tenancy.

(2) In this Schedule—

[^{F1}“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.

F1 2004 c.33

Cases in which court may make order

2.—(1) This paragraph applies if one spouse^[F2 or civil partner] is entitled, either in his own right or jointly with the other spouse^[F2 or civil partner], to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy.

[^{F2}(2) The court may make a Part II order—

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- (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^{F2} or civil partner] within three months after an occupation order is made, the court may make a Part II order.

F2 [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^{F3} 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.

F3 [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;^{F4} . . .
- ^{F4}(aa) in the case of civil partners, a civil partnership home; or]
- (b) in the case of cohabitees, a home in which they^{F5} cohabited].

(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.

F4 [2004 c.33](#)

F5 [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^{F6}, civil partners] or cohabitees 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 cohabitees 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.

F6 [2004 c.33](#)

PART II

ORDERS THAT MAY BE MADE

References to entitlement to occupy

6. References in this Part to a spouse^[F7], 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^[F7], civil partner] or cohabitee.

F7 2004 c.33

Protected or secure tenancy

7.—(1) If a spouse^[F8], 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^[F8], civil partner] or cohabitee—

- (a) the estate which the spouse^[F8], 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
- (b) where the spouse^[F8], civil partner] or cohabitee so entitled is an assignee of such lease or agreement, the liability of that spouse^[F8], 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^[F8], civil partner] or cohabitee.

(2) If an order is made under this paragraph, any liability or obligation to which the spouse^[F8], 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^[F8], civil partner] or cohabitee.

^[F8](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.]

F8 2004 c.33

Statutory tenancy

8.—(1) This paragraph applies if the spouse^[F9], civil partner] or cohabitee is entitled to occupy the dwelling-house by virtue of a statutory tenancy.

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

- (a) that spouse^{F9}, civil partner] or cohabitee is to cease to be entitled to occupy the dwelling-house; and
- (b) the other spouse^{F9}, 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, ^{F10} . . . of Schedule 1 to the Rent (Northern Ireland) Order 1978, as to the succession by the widow or widower^{F9} 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.

F9 2004 c.33

F10 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)

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^{F11}, civil partner] or cohabitee to whom the tenancy is transferred (“the transferee”) to the other spouse^{F11}, 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

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which is greater than any financial hardship that would be caused to the transferor if the direction were given.

F11 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^[F12], civil partners] or cohabitants 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^[F12], 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.

F12 2004 c.33

[F13]Date when order made between spouses or civil partners takes effect

F13 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.]

[F14]Effect of remarriage or subsequent civil partnership

F14 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

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- (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^{F15} or civil partner] 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^{F15} spouse's or civil partner's home rights].

(2) If a spouse^{F15}, 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.

F15 2004 c.33

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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\(c\)](#)