

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—

“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.

Cases in which court may make order

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

(2) At any time when it has power to make a property adjustment order under Article 26 of the Matrimonial Causes (Northern Ireland) Order 1978 with respect to the marriage, the court may make a Part II order.

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

Status: This is the original version (as it was originally made).

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 live together as husband and wife, 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.

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; or

(b) in the case of cohabitees, a home in which they lived together as husband and wife.

(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.

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 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.

PART II

ORDERS THAT MAY BE MADE

References to entitlement to occupy

6. References in this Part to a spouse 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 or cohabitee.

Protected or secure tenancy

7.—(1) If a spouse 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 or cohabitee—

(a) the estate which the spouse 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 or cohabitee so entitled is an assignee of such lease or agreement, the liability of that spouse or cohabitee under any covenant of indemnity by the assignee expressed or implied in the assignment of the lease or agreement to that spouse or cohabitee.

(2) If an order is made under this paragraph, any liability or obligation to which the spouse 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 or cohabitee.

(3) If the spouse so entitled is a successor within the meaning of Chapter II of Part II of the Housing (Northern Ireland) Order 1983, his former spouse or former cohabitee (or, if a decree of judicial separation is in force, his spouse) shall be deemed also to be a successor within the meaning of that Chapter.

Statutory tenancy

8.—(1) This paragraph applies if the spouse 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 or cohabitee is to cease to be entitled to occupy the dwelling-house; and
- (b) the other spouse 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, or (as the case may be) paragraphs 6 to 9 of Schedule 1 to the Rent (Northern Ireland) Order 1978, as to the succession by the widow or widower 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.

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 or cohabitee to whom the tenancy is transferred (“the transferee”) to the other spouse 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,

Status: This is the original version (as it was originally made).

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.

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 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 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.

Date when order made between spouses is to take effect

11.—(1) In the case of a decree of nullity of marriage, the date specified in a Part II order as the date on which the order is to take effect must not be earlier than the date on which the decree is made absolute.

(2) In the case of divorce proceedings or separation proceedings, the date specified in a Part II order as the date on which the order is to take effect is to be determined as if the court were making a property adjustment order under Article 26 of the Matrimonial Causes (Northern Ireland) Order 1978.

Remarriage of either spouse

12.—(1) If after the grant of a decree dissolving or annulling a marriage either spouse remarries, that spouse is not entitled to apply, by reference to the grant of that decree, for a Part II order.

(2) For the avoidance of doubt it is hereby declared that the reference in sub-paragraph (1) to remarriage includes a reference to a marriage which 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 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 spouse's matrimonial home rights.

(2) If a spouse 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.