
STATUTORY INSTRUMENTS

1998 No. 1071 (N.I. 6)

Family Homes and Domestic Violence
(Northern Ireland) Order 1998

- - - - - 22nd April 1998

Modifications etc. (not altering text)

- C1** Order: transfer of functions from Lord Chancellor to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), [Sch. 17 para. 47](#) (with arts. 15(6), 28-31); S.I. 2010/977, [art. 1\(2\)](#)

Introductory

Title and commencement

1.—(1) This Order may be cited as the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the^{F1} Minister of Finance and Personnel] may by order appoint^{F2}.

- F1** SI 1999/663
F2 partly exercised by SR 1999/56,92

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“adoption order” has the meaning given by Article 2(2) of the Adoption (Northern Ireland) Order 1987;

“associated”, in relation to a person, is to be read with Article 3(3) to (6);

“child” means a person under the age of 18;

[^{F3}“cohabit,”] “cohabitee” and “former cohabitee” have the meaning given by Article 3(1);

“the court” is to be read with Article 34;

“development” means physical, intellectual, emotional, social or behavioural development;

“dwelling-house” includes (subject to paragraph (5))—

- (a) any building or part of a building which is occupied as a dwelling;
- (b) any caravan, houseboat or structure which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to it and occupied with it;

“family proceedings” means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children; or
- (b) under the provisions mentioned in paragraph (3);

“family proceedings court” has the meaning given in Article 38(4);

“harm”

- (a) in relation to a person who has reached the age of 18 years, means ill-treatment or the impairment of health, and
- (b) in relation to a child, means ill-treatment or the impairment of health or development;

“health” includes physical or mental health;

[^{F4}“home rights” has the meaning given by Article 4;]

“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical;

“legal estate” includes an equity of redemption arising on the conveyance or assignment of a legal estate by way of mortgage;

“matrimonial [^{F4}or civil partnership] charge” means a charge created by Article 5;

Definition rep. by 2004 c. 33

“molest” includes incite, procure or assist any person to molest;

“mortgage” includes a charge;

“mortgagor” and “mortgagee” include any person deriving title under the original mortgagor or mortgagee;

“mortgage payments” includes any payments which, under the terms of the mortgage, the mortgagor is required to make to any person;

“non-molestation order” has the meaning given by Article 20(1);

“occupation order” means an order under Article 11, 13, 14, 15 or 16;

“parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995;

“purchaser” means any person (including a lessee or mortgagee) who, for valuable consideration, takes an estate in land;

“relative”, in relation to a person, means—

- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's [^{F4} spouse, former spouse, civil partner or former civil partner], or
- (b) the brother, sister, uncle, aunt, niece [^{F3}, nephew or first cousin] (whether of the full blood or of the half blood or by affinity) of that person or of that person's [^{F4} spouse, former spouse, civil partner or former civil partner] [^{F3} or],
- (c) [^{F3}the father-in-law, mother-in-law, brother-in-law or sister-in-law of that person,]

and includes, in relation to a person who [^{F3} is cohabiting or has cohabited with another person], any person who would fall within [^{F3} paragraph (a), (b) or (c)] if the parties were married to each other [^{F4} or were civil partners of each other];

“relevant child”, in relation to any proceedings under this Order, has the meaning given by Article 3(2);

“the relevant judicial authority”, in relation to any order under this Order, means—

- (a) where the order was made by the High Court, a judge of that court;
- (b) where the order was made by a county court, a judge or district judge of that or any other county court; or
- (c) where the order was made by a court of summary jurisdiction, a resident magistrate;

“rules of court” includes family proceedings rules, county court rules and magistrates' courts rules (as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) The provisions referred to in the definition of “family proceedings” are—

- (a) this Order;
- (b) the Matrimonial Causes (Northern Ireland) Order 1978;
- (c) the Domestic Proceedings (Northern Ireland) Order 1980;
- (d) the Adoption (Northern Ireland) Order 1987;
- (e) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989;
- ^{F5}(f) [^{F6}sections 54 and 54A] of the Human Fertilisation and Embryology Act 2008;]
- (g) Parts II, III, V and XV of the Children (Northern Ireland) Order 1995.
- ^{F4}(h) the Civil Partnership Act 2004.]
- ^{F7}(i) Schedule 1 to the Forced Marriage (Civil Protection) Act 2007.]

(4) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(5) For the purposes of Articles 5 to 10, 30 and 31 and such other provisions of this Order (if any) as may be specified by order made by the Department of Finance and Personnel, this Order shall have effect as if paragraph (b) of the definition of “dwelling-house” in paragraph (2) were omitted.

(6) This Order applies as between the parties to a marriage even though either of them is, or has at any time during the marriage been, married to more than one person.

(7) In this Order references to cancelling the registration of a matrimonial^{F4} or civil partnership] charge shall, where that charge is registered in the Registry of Deeds, be construed as references to vacating the registration of that charge.

F3 2005 NI 7

F4 2004 c.33

F5 Art. 2(3)(f) substituted (6.4.2010) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68(2), [Sch. 6 para. 79](#); S.I. 2010/987, [art. 2](#)

F6 Words in art. 2(3)(f) substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), [art. 1\(1\)](#), [Sch. 1 para. 14](#)

F7 Art. 2(3)(i) inserted (25.11.2008) by [Forced Marriage \(Civil Protection\) Act 2007 \(c. 20\)](#), ss. 3(1), 4(4), [Sch. 2 para. 4](#); S.R. 2008/446, [art. 2\(c\)](#)

Meaning of “cohabitees”, “relevant child” and “associated persons”

3.—(1) For the purposes of this Order—

[^{F8}(a) “cohabitees” are [^{F9} two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship;]]

(b) [^{F9}“cohabit” and “former cohabitees” are to be read accordingly, but the latter expression] does not include cohabitees who have subsequently married each other [^{F8} or become civil partners of each other].

(2) In this Order “relevant child”, in relation to any proceedings under this Order, means—

(a) any child who is living with or might reasonably be expected to live with either party to the proceedings;

(b) any child in relation to whom an order under the Adoption (Northern Ireland) Order 1987 or the Children (Northern Ireland) Order 1995 is in question in the proceedings; and

(c) any other child whose interests the court considers relevant.

(3) For the purposes of this Order a person is associated with another person if—

(a) they are or have been married to each other;

[^{F8}(aa) they are or have been civil partners of each other;]

(b) they are cohabitees or former cohabitees;

(c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement has been terminated);

[^{F8}(eza) they have entered into a civil partnership agreement (as defined by section 197 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);]

(f) in relation to any child, they are both persons falling within paragraph (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Order).

(4) A person falls within this paragraph in relation to a child if—

(a) he is a parent of the child; or

(b) he has or has had parental responsibility for the child.

(5) If a child has been adopted or has been freed for adoption by virtue of any of the provisions mentioned in Article 16(1) of the Adoption (Northern Ireland) Order 1987, two persons are also associated with each other for the purposes of this Order if—

(a) one is a natural parent of the child or a parent of such a natural parent; and

(b) the other is the child or any person—

(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or

(ii) with whom the child has at any time been placed for adoption.

(6) A body corporate and another person are not, by virtue of paragraph (3)(f) or (g), to be regarded for the purposes of this Order as associated with each other.

F8 2004 c.33

F9 2005 NI 7

Rights to occupy matrimonial [F10 or civil partnership] home

F10 2004 c.33

Rights concerning [F11 home where one spouse or civil partner] has no estate, etc.

4.—(1) This Article applies if—

- (a) one spouse [F11 or civil partner (“A”)] is entitled to occupy a dwelling-house by virtue of—
 - (i) a beneficial estate or a contract; or
 - (ii) any statutory provision giving [F11 A] the right to remain in occupation; and
- (b) the other spouse [F11 or civil partner (“B”)] is not so entitled.

(2) Subject to the provisions of this Order, [F11 B] has the following rights [F11 (“home rights”)]

- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by [F11 A] 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 [F11 B] 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 [F11 B] in or towards satisfaction of any liability of [F11 A] 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 [F11 A].

(4) [F11 B's] occupation by virtue of this Article—

- (a) is to be treated, for the purposes of the Rent (Northern Ireland) Order 1978, as occupation [F11 by A as A's] residence, and
- (b) if [F11 B] occupies the dwelling-house as B'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 [F11 by A as A's] only or principal home.

(5) If [F11 B]

- (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 [F11 A] 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 [F11 A], but the fact that that person has treated any such payment as having been so made does not affect any claim of [F11 B] against [F11 A] to an estate in the dwelling-house by virtue of the payment.

(6) If [F11 B] is entitled under this Article to occupy a dwelling-house or part of a dwelling-house by reason of an interest of [F11 A] under a trust, the provisions of paragraphs (3) and (5) apply in relation to the trustees as they apply in relation to [F11 A].

(7) This Article does not apply to a dwelling-house [F11 which—

- (a) in the case of spouses, has at no time been, and was at no time intended by them to be, a matrimonial home of theirs; and