
STATUTORY INSTRUMENTS

1984 No. 1984 (N.I. 14)

NORTHERN IRELAND

**The Family Law (Miscellaneous Provisions)
(Northern Ireland) Order 1984**

To be laid before Parliament in draft

Made

19th December 1984

Coming into operation in accordance with Article 1

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At the Court at Buckingham Palace, the 19th day of December 1984

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

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PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.

(2) Parts I and III and Part IV (except Article 21(1) insofar as it gives effect to Part I of Schedule 2) shall come into operation on the expiration of the period of two months from the day on which the Order is made.

(3) Part II and Article 21(1) insofar as it gives effect to Part I of Schedule 2 shall come into operation on such day as the Head of the Department of Finance and Personnel may by order appoint.

General interpretation

2. 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. 1954 c. 33 (N.I.)

PART II
MATRIMONIAL HOMES

Interpretation of Part II

3.—(1) In this Part—

“dwelling house” includes any building or part thereof which is occupied in whole or in part as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling house and occupied therewith;

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

“matrimonial charge” has the meaning assigned to it by Article 5(1);

“mortgage” includes a charge;

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

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

“registered”, in relation to a matrimonial charge, means registered in accordance with Article 6;

“rights of occupation” has the meaning assigned to it in Article 4(1);

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

(2) In this Part references to cancelling the registration of a matrimonial charge shall, where that charge is registered in the Registry of Deeds, be construed as references to vacating the registration of that charge.

(3) It is hereby declared that this Order applies as between a

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PART II

husband and wife notwithstanding that their marriage was entered into under a law which permits polygamy (whether or not either party to the marriage has for the time being any spouse additional to the other party).

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

4.—(1) Where one 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 or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to this Part, the spouse not so entitled shall have the following rights (in this Part referred to as “rights of occupation”)—

(a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this Article;

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.

(2) So long as one spouse has rights of occupation, either of the spouses may apply to the court for an order—

(a) declaring, enforcing, restricting or terminating those rights; or

(b) prohibiting, suspending or restricting the exercise by either spouse of the right to occupy the dwelling house; or

(c) requiring either spouse to permit the exercise by the other of that right.

(3) On an application for an order under this Article, the court may make such order as it thinks just and reasonable having regard to the conduct of the spouses in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision—

(a) may except part of the dwelling house from a spouse’s rights of occupation (and in particular a part used wholly or mainly for or in connection with the trade, business or profession of the other spouse);

(b) may order a spouse occupying the dwelling house or any part thereof by virtue of this Article to make periodical payments to the other in respect of the occupation;

(c) may impose on either or each spouse obligations as to the repair and maintenance of the dwelling house or the discharge of any liabilities in respect of the dwelling house.

(4) An order under this Article may, in so far as it has a continuing

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effect, be limited so as to have effect for a period specified therein or until further order. PART II

(5) Where a spouse is entitled under this Article to occupy a dwelling house or any part thereof, 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, rates, mortgage payments or other outgoings affecting the dwelling house shall, whether or not it is made or done in pursuance of an order under this Article, be as good as if made or done by the other spouse.

(6) A spouse's occupation by virtue of this Article shall, for the purposes of the Rent (Northern Ireland) Order 1978 be treated as possession by the other spouse and for the purposes of Chapter II of Part II of the Housing (Northern Ireland) Order 1983 shall be treated as occupation by the other spouse. 1978 NI 20
1983 NI 15

(7) Where a spouse, entitled under this Article to occupy a dwelling house or any part thereof, makes any payment in or towards satisfaction of any liability of the other 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 that other spouse; but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned spouse against the other to an estate in the dwelling house by virtue of the payment.

(8) Where a spouse is entitled under this Article to occupy a dwelling house or part thereof by reason of an interest of the other spouse under a trust, the provisions of paragraphs (5) and (7) shall apply in relation to the trustees as they apply in relation to the other spouse.

(9) Where, by reason only of an order under this Article, a spouse is not residing in the matrimonial home during any period, he is not thereby prevented from being in possession of it during that period for the purposes of the Statute of Limitations (Northern Ireland) 1958. 1958 c. 10 (N.I.)

(10) This Part shall not apply to a dwelling house which has at no time been a matrimonial home of the spouses in question.

(11) A spouse's rights of occupation shall continue only so long as the marriage subsists and 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 matrimonial charge.

(12) Without prejudice to any rights which arise by virtue of an equitable estate, a spouse who has only such an estate shall be treated for the purpose of determining whether he or she has rights of occupation as not being entitled to occupy by virtue of that estate; and this Article shall apply accordingly where each of two spouses is so entitled.

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Rights of occupation to be a matrimonial charge

5.—(1) Subject to the provisions of this Article, where at any time during the subsistence of a marriage, one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate, then the other spouse's rights of occupation shall be a charge (in this Part referred to as a "matrimonial charge") on that estate, having the like priority as if it were an equitable interest created at whichever is the latest of the following dates, that is to say—

- (a) the date when the spouse so entitled acquires the estate;
- (b) the date of the marriage; and
- (c) the date of the coming into operation of this Part.

(2) If, at any time when a spouse's rights of occupation are a charge on an interest of the other spouse under a trust, those rights of occupation shall be a charge also against the estate of the trustees for the other spouse, if (but not otherwise) there are, apart from the spouses, no persons living or unborn who are or could become beneficiaries under the trust.

(3) In determining for the purposes of paragraph (2) whether there are any persons who are not, but could become, beneficiaries under the trust, there shall 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).

(4) Notwithstanding that a spouse's rights of occupation are a matrimonial charge, those rights shall be brought to an end by—

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

unless in the event of a matrimonial dispute or estrangement the court sees fit to direct otherwise by an order made under Article 4 during the subsistence of the marriage.

(5) Where a spouse's rights of occupation are a matrimonial charge on the estate of the other spouse or of trustees for the other spouse—

- (a) any order under Article 4 against the other spouse shall, except in so far as the contrary intention appears, have the like effect against persons deriving title under the other spouse or under the trustees and affected by the charge; and
- (b) paragraphs (2) to (8) of Article 4 shall 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.

(6) Where—

- (a) a spouse's rights of occupation are a matrimonial charge on an estate in the dwelling house, and

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- (b) that estate is surrendered so as to merge in some other estate expectant thereon in such circumstances that, but for the merger, the person taking the estate would be bound by the matrimonial charge, PART II

the surrender shall have effect subject to the matrimonial charge and the persons thereafter entitled to the other estate shall, for so long as the estate surrendered would have endured if not so surrendered, be treated for all purposes of this Part 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.

(7) Where a spouse's rights of occupation are a matrimonial charge on the estate of the other spouse or of trustees of the other spouse, and the other spouse—

- (a) is adjudged bankrupt or his or her property (including the estate which is subject to the matrimonial charge) is vested in the Official Assignee under section 349 of the Irish Bankrupt and Insolvent Act, 1857;
- (b) makes a conveyance or assignment of such property to a trustee or trustees for the benefit of his or her creditors generally; or
- (c) dies and his or her estate is insolvent;

1857 c. 60

then, notwithstanding that it is registered, the matrimonial charge shall be void as against the Official Assignee, the assignees, the trustee in bankruptcy, the trustee or trustees under the conveyance or assignment, or the personal representatives of the deceased spouse, as the case may be.

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 appropriate 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

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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.

(8) Regulations made under paragraph (7) shall be subject to negative resolution.

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 rights of occupation 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

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a matrimonial charge which has ceased to have effect by virtue of paragraph (2) shall be cancelled. PART II

(5) Regulations made under paragraph (4) shall be subject to negative resolution.

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 rights of occupation 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 5(4),

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

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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 rights of occupation and postponement of priority of matrimonial charge

10.—(1) A spouse entitled to rights of occupation 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 rights of occupation 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.

Transfer of certain tenancies on divorce, etc.

1978 NI 20
1983 NI 15

11. The amendments to the Rent (Northern Ireland) Order 1978 and the Housing (Northern Ireland) Order 1983 set out in Schedule 1 (which relate to the transfer of certain tenancies on divorce, etc.) shall have effect.

Dwelling house subject to mortgage

12.—(1) In determining for the purposes of the foregoing provisions of this Part whether a spouse or former spouse is entitled to occupy a dwelling house by virtue of a beneficial estate, there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling house under or by virtue of his

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mortgage, whether the mortgagee is in possession or not; but the other spouse shall not by virtue of the rights of occupation conferred by this Part have any larger right against the mortgagee to occupy the dwelling house than the one first mentioned has by virtue of his or her estate and of any contract with the mortgagee, unless under Article 5 those rights of occupation are a matrimonial charge, affecting the mortgagee, on the estate mortgaged.

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(2) Where a mortgagee of land which consists of or includes a dwelling house brings an action in any court for the enforcement of his security, a spouse who is not a party to the action and who is enabled by Article 4(5) or (7) to meet liabilities under the mortgage, on applying to the court at any time before the action is finally disposed of in that court, shall be entitled to be made a party to the action if the court—

- (a) does not see special reason against it, and
- (b) is satisfied that the applicant may be expected to make such payments or do such things in or towards satisfaction of the mortgagor's liabilities or obligations as might affect the outcome of the proceedings or that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.

1970 c. 31

(3) Where—

- (a) a mortgagee of land, which consists or substantially consists of a dwelling house, brings an action for the enforcement of his security; and
- (b) at the relevant date there is a registered matrimonial charge; notice of the action shall be served by the mortgagee on the person on whose behalf the matrimonial charge is registered, if that person is not a party to the action.

(4) In paragraph (3)(b) "relevant date" means—

- (a) if—
 - (i) a certificate of the result of an official search, made on behalf of the mortgagee, in the Land Registry or, as the case may be, of a negative search so made in the Registry of Deeds has been issued, and
 - (ii) the action is commenced within a period of fourteen days after the date of issue of the certificate, the date of that certificate;
- (b) in any other case, the date on which the action is commenced.

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*Rights concerning matrimonial home where both spouses have estate,
etc.*

13—(1) Where each of two spouses is entitled, by virtue of a legal estate vested in them jointly or as tenants in common, to occupy a dwelling house in which they have or at any time have had a matrimonial home, either of them may apply to the court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling house, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.

(2) In relation to orders under this Article, paragraphs (3), (4) and (9) of Article 4 shall apply as they apply in relation to orders under that Article.

(3) Where each of two spouses is entitled to occupy a dwelling house by virtue of a contract, or by virtue of any statutory provision giving them the right to remain in occupation, this Article shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.

(4) In determining for the purposes of this Article whether two spouses are entitled to occupy a dwelling house, there shall be disregarded any right to possession of the dwelling house conferred on a mortgagee of the dwelling house by virtue of his mortgage, whether the mortgagee is in possession or not.

Exercise of court's jurisdiction

14—(1) The jurisdiction conferred on the court under Articles 4, 5 and 13 shall be exercisable by the High Court or by a county court, and shall be exercisable by a county court notwithstanding that by reason of the amount of the net annual value for rating of the dwelling house or otherwise the jurisdiction would not but for this paragraph be exercisable by a county court.

(2) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred under Articles 4, 5 and 13 or with the dismissal of any application instituted by him under any of those Articles shall be entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly.

1980 NI 3

PART III

MARRIAGE

Consequences of termination of engagement to marry

Engagements to marry not enforceable at law

15.—(1) An agreement between two persons to marry one another shall not have effect as a contract giving rise to legal rights and no action shall lie for breach of such an agreement whatever the law applicable to the agreement.

(2) This Article shall have effect in relation to agreements entered into before the commencement of this Article, except that it shall not affect any action begun before that commencement.

Property of engaged couples

16.—(1) Where an agreement to marry is terminated, any rule of law relating to the rights of husbands and wives in relation to property in which either or both has or have a beneficial interest shall apply, in relation to any property in which either or both of the parties to the agreement had a beneficial interest while the agreement was in force, as it applies in relation to property in which a husband and wife has a beneficial interest.

(2) Where an agreement to marry is terminated, section 17 of the Married Women's Property Act 1882 and section 3 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964 (power of judge of the High Court or a county court to settle disputes between husband and wife about property) shall apply, as if the parties were married, to any dispute between them, or to any claim by one of them in relation to property in which either or both had a beneficial interest while the agreement was in force; but an application made by virtue of this Article to the judge under the said section 17, as originally enacted or as extended by the said section 3, shall be made within three years of the termination of the agreement.

1882 c. 75
1964 c. 23 (N.I.)

Gifts between engaged couples

17.—(1) A party to an agreement to marry who makes a gift of property to the other party to the agreement on the condition (express or implied) that it shall be returned if the agreement is terminated shall not be prevented from recovering the property by reason only of his having terminated the agreement.

(2) The gift of an engagement ring shall be presumed to be an absolute gift; this presumption may be rebutted by proving that the ring was given on the condition, express or implied, that it should be returned if the marriage did not take place for any reason.

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PART III

Restrictions on marriage

Prohibited degrees of relationship

18.—(1) A marriage solemnized between a man and any of the persons mentioned in the first column of the following Table, or between a woman and any of the persons mentioned in the second column of that Table, is void:

TABLE

Mother	Father
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father
Daughter	Son
Adoptive daughter or former adoptive daughter	Adoptive son or former adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Wife's mother	Husband's father
Wife's daughter	Husband's son
Father's wife	Mother's husband
Son's wife	Daughter's husband
Father's father's wife	Father's mother's husband
Mother's father's wife	Mother's mother's husband
Wife's father's mother	Husband's father's father
Wife's mother's mother	Husband's mother's father
Wife's son's daughter	Husband's son's son
Wife's daughter's daughter	Husband's daughter's son
Son's son's wife	Son's daughter's husband
Daughter's son's wife	Daughter's daughter's husband
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son

(2) In that Table—

- (a) any reference to an adoptive relationship or a former adoptive relationship is to a relationship which arises or arose in consequence of—
- (i) an order authorising an adoption made (whether before or after the commencement of this Article) in any part of the United Kingdom, in the Isle of Man or in any of the Channel Islands, or
 - (ii) a foreign adoption as defined in section 4(3) of the Adoption (Hague Convention) Act (Northern Ireland) 1969;

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- PART III
- (b) any reference to a brother or sister includes one of the half blood as well as of the whole blood;
 - (c) any reference to a relationship which is one of affinity is to a relationship deduced through a marriage which has been terminated by dissolution or by death;
 - (d) any reference to a person of a particular relationship includes a person who would rank as being of that relationship if he, or some other person through whom the relationship is deduced, had been born legitimate.

(3) A marriage between persons not within the degrees of relationship to which paragraph (1) applies is void, if either of those persons is at the time of the marriage domiciled in a country other than Northern Ireland and under the law of that country there cannot be a valid marriage between them because of their relationship to each other.

Precontract

Repeal of Marriage Act (Ireland) 1725, section iv

19. Section iv of the Marriage Act (Ireland) 1725 (which, for the removal of doubts, provided that a consummated marriage is not void because of an unconsummated precontract, and which is obsolete) shall cease to have effect. 12 Geo. 1
c. 3 (Ir.)

PART IV

MISCELLANEOUS AND SUPPLEMENTARY

Cohabiting couples

20. At the end of Article 18 of the Domestic Proceedings (Northern Ireland) Order 1980 the following paragraphs shall be added— 1980 NI 5

“(10) This Article applies to a cohabiting couple, that is to say a man and a woman who are or have been living with each other in the same household as if they were husband and wife, in the same manner as it applies to the parties to a marriage.

(11) In determining whether for the purpose of paragraph (10) a man and woman are a cohabiting couple the court shall have regard to all the circumstances of the case, including—

- (a) the time for which it appears they have been living together; and
- (b) whether there are any children of the relationship.

(12) For the purposes of paragraph (10), in this Article and in Articles 19 and 21—

- (a) references to a child of the family shall be construed as

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references to any child who would be a child of the family of the cohabiting couple, if they were married to each other; and

- (b) references to the matrimonial home shall be construed as references to the home which the cohabiting couple share or shared with each other.”.

Amendments, repeals and savings

21.—(1) The amendments set out in Parts I and II of Schedule 2 (which are of a minor or consequential nature) shall have effect.

(2) Subject to paragraphs (3) to (5), the statutory provisions specified in Schedule 3 are hereby repealed to the extent shown in the third column of that Schedule.

(3) The repeals in Schedule 3 do not—

- (a) apply in any case where an action for breach of promise of marriage was begun before the commencement of Part III; or
(b) affect any marriage contracted before 18th April 1979 which by virtue of Article 61(1) of the Matrimonial Causes (Northern Ireland) Order 1978 continued to be void.

1978 NI 15

(4) Nothing in this Article or in Part III affects the validity of any marriage.

(5) Nothing in this Article or in Part III affects any right, title, estate, interest, will, claim, payment, commutation, composition, discharge, settlement or other thing, or the devolution or distribution of any property which, by virtue of section 2 of the Deceased's Wife's Sister's Marriage Act 1907, was not affected by the Marriage (Prohibited Degrees of Relationship) Acts (Northern Ireland) 1907 to 1949.

1907 c. 47

G. I. de Deney,
Clerk of the Privy Council.

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SCHEDULES

SCHEDULE 1

Article 11.

TRANSFER OF CERTAIN TENANCIES ON DIVORCE, ETC.

The Rent (Northern Ireland) Order 1978 (NI 20)

1.—(1) In sub-paragraph (1) of paragraph 1 of Schedule 2, after head (b) insert the words “then, on granting a decree, or at any time thereafter (whether before or after the decree is made absolute),”.

(2) In sub-paragraph (2) of paragraph 1 of Schedule 2, for the words from “the date” to “made absolute”—

(a) where those words occur for the first time substitute the words “as from such date as may be specified in the order (not being a date earlier than the date on which the order has been made absolute)”;

and

(b) where those words occur for the second time substitute the words “on or after the date so specified”.

(3) In sub-paragraph (3) of paragraph 1 of Schedule 2, for the words from “the date” to “made absolute” substitute the words “as from such date as may be specified in the order (not being a date earlier than the date on which the order has been made absolute)”.

(4) For sub-paragraph (7) of paragraph 1 of Schedule 2, substitute the following sub-paragraph—

“(7) If after the grant of a decree or divorce or nullity of marriage either spouse remarries, that spouse shall not be entitled to apply by virtue of that decree for an order under this paragraph.”.

(5) After sub-paragraph (8) of paragraph 1 of Schedule 2, add the following sub-paragraphs—

“(9) Rules of court may provide that an application for an order under this paragraph shall not, without the leave of the court by which the decree was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.”.

(10) In sub-paragraph (7), the reference to re-marriage shall be construed to include a reference to such a marriage which is by law void or voidable.”.

2.—(1) In sub-paragraph (1) of paragraph 2 of Schedule 2—

(a) in head (b) omit the words from “or an order” to the end, and

(b) for the words from “the High Court” to “is made” substitute the words “then, on granting a decree, or at any time thereafter, the court by which the decree is granted may”.

(2) After sub-paragraph (1) of paragraph 2 of Schedule 2, insert the following sub-paragraph—

“(1A) Where—

(a) one spouse is entitled to occupy a dwelling house in the circumstances described in sub-paragraph (1)(a); and

(b) an order under Article 18(2)(i) of the Domestic Proceedings (Northern Ireland) Order 1980 (other than such an order made as an interim exclusion order by virtue of Article 21 of that Order)

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excluding that spouse from the dwelling house is made upon the application of the other spouse,

the High Court or a divorce county court, within the meaning of the Matrimonial Causes (Northern Ireland) Order 1978, may, on the application of the other spouse within 3 months after the order is made, make an order under sub-paragraph (2) or (3) according to the circumstances.”.

(3) In sub-paragraph (7) of paragraph 2 of Schedule 2, for the words “County court rules” substitute the words “Rules of court”.

(4) After sub-paragraph (7) of paragraph 1 of Schedule 2, insert the following sub-paragraph—

“(7A) Rules of court may provide that in relation to cases where a decree of judicial separation has been granted, an application for an order under this paragraph shall not, without leave of the court by which the decree was granted, be made after the expiry of such period from the grant of the decree as may be prescribed by the rules.”.

3. After paragraph 2 of Schedule 2 insert the following paragraph—

“2A. Where a spouse is entitled to occupy a dwelling-house by virtue of a protected or statutory tenancy this Schedule shall not affect the operation of the other spouse’s rights of occupation under Articles 3 and 4 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, and the court’s powers to make orders under this Schedule shall be in addition to the powers conferred by those Articles.”.

The Housing (Northern Ireland) Order 1983 (NI 15)

4. In Article 43(2)(c), after the word “spouse”, where it occurs for the second time, insert the words—

“or former spouse (or, in the case of judicial separation, his or her spouse)”.

Article 21(1).

SCHEDULE 2

AMENDMENTS

PART I

**MINOR AND CONSEQUENTIAL AMENDMENTS RELATING
TO PART II OF THIS ORDER**

The Land Registration Act (Northern Ireland) 1970 c. 18

1. In Schedule 6 (registration of certain burdens)—

(a) in Part I—

(i) after entry 14 insert the following entry—

14A Any matrimonial charge (within the meaning of Article 5(1) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984) on the land, whether created before or after the first registration of the land.”;

(ii) in entry 15 for the reference to “14” substitute a reference to “14A”; and

(b) in Part II, in paragraph 4(a) for the words “or 10” substitute “10 or 14A”.

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The Registration of Deeds Act (Northern Ireland) 1970 c. 25

SCH. 2

2.—(1) In Section 2—

- (a) after the words “subsection (3)” insert “, (3A)”; and
- (b) after subsection (3) add the following subsection—

“(3A) Subsection (1) shall not apply to the registration in the registry of deeds of any document relating to a matrimonial charge within the meaning of Article 5(1) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.”.

(2) At the end of section 4 add the following subsection—

“(4A) Subsections (3) and (4) shall not apply to any document relating to a matrimonial charge within the meaning of Article 5(1) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984.”.

The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)

3. In Article 6(4)—

- (a) for the words “either or both” substitute the word “any”; and
- (b) after sub-paragraph (a) insert the following sub-paragraph—

“(aa) any period during which there is in force an order, made by the High Court or a county court, under Article 4 or 13 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, which prohibits the exercise by the respondent of the right to occupy a dwelling house in which the applicant and the respondent have, or at any time had, a matrimonial home;”.

The Rent (Northern Ireland) Order 1978 (NI 20)

4.—(1) In Article 14—

- (a) after paragraph (4) insert the following paragraphs—

“(4A) Paragraph (4B) applies in any case where—

- (a) proceedings are brought for possession of a dwelling house which is let on a protected tenancy or subject to a statutory tenancy;
- (b) the tenant’s spouse or former spouse, having rights of occupation under Part II of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, is then in occupation of the dwelling house; and
- (c) the tenancy is, or may be, terminated as a result of those proceedings.

“(4B) In any case to which this paragraph applies, the spouse or former spouse shall, so long as he or she remains in occupation, have the same rights in relation to, or in connection with, any such adjournment as is referred to in paragraph (1) or any such stay, suspension or postponement as is referred to in paragraph (2), as he or she would have if those rights of occupation were not affected by the termination of the tenancy.”;

- (b) in paragraph (5) for the words “Paragraphs (1) to (4)” substitute the words “Paragraphs (1) to (4B)”.

The Domestic Proceedings (Northern Ireland) Order 1980 (NI 5)

5.—(1) In Article 18, at the end of paragraph (7) add the words “and as if

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SCH. 2 the reference to paragraph (2)(i) included a reference to paragraph (2)(ii)(bb)".

(2) In Article 30, after paragraph (1) insert the following paragraph—
“(1A) Where after the making by a court of summary jurisdiction of an order under Article 18(2)(i) in relation to a matrimonial home, one of the parties to the marriage in question applies for an order to be made in relation to that matrimonial home under—

(a) Article 4(2) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (which enables an application to be made for an order relating to rights of occupation under that Order or relating to the exercise by either spouse of a right to occupy a dwelling-house), or

(b) Article 13 of that Order (which enables an application to be made for an order relating to the exercise of the right to occupy a dwelling-house where both spouses have joint rights),

the High Court or the county court by which that application is heard may, if it thinks fit, direct that the order made under Article 18(2)(i) shall cease to have effect on such date as may be specified in the direction.”.

(3) In Article 30(2) for the words “a divorce county court” substitute the words “a county court (whether or not it is a divorce county court)”.

The Housing (Northern Ireland) Order 1983 (NI 15)

6. In Article 47, after paragraph (4) add the following paragraphs—

“(5) Paragraph (6) applies in any case where—

(a) proceedings are brought for possession of a dwelling house which is let under a secure tenancy;

(b) the tenant’s spouse or former spouse, having rights of occupation under Part II of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, is then in occupation of the dwelling house; and

(c) the tenancy is, or may be, terminated as a result of those proceedings.

(6) In any case to which this paragraph applies, the spouse or former spouse shall, so long as he or she remains in occupation, have the same rights in relation to, or in connection with, any such adjournment as is referred to in paragraph (1) or any such stay, suspension or postponement as is referred to in paragraph 2, as he or she would have if those rights of occupation were not affected by the termination of the tenancy.”.

PART II

AMENDMENTS CONSEQUENTIAL ON ARTICLE 18

The Marriage (Declaration of Law) Act
(Northern Ireland) 1944 c. 7

1. In section 2 for “a marriage to which the Marriage (Prohibited Degrees of Relationship) Acts (Northern Ireland) 1907 to 1949 apply” substitute “a marriage between a man and a woman who is the sister, aunt or niece of a former wife of that man’s (whether living or not) or was formerly the wife of that man’s brother, uncle or nephew (whether living or not)”.

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2. In Part II of the Schedule for all the entries following that relating to the SCH. 2
Marriages (Ireland) Act 1844 substitute—

“Part III of the Family Law (Miscellaneous Provisions) (Northern
Ireland) Order 1984”.

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Article 21 (2)
to (5).

SCHEDULE 3

REPEALS

Chapter or Number	Short Title	Extent of Repeal
<i>Breach of promise of marriage</i>		
32 & 33 Vict. c. 68.	Evidence Further Amendment Act 1869.	The whole Act.
1 Edw. 8 & 1 Geo. 6 c. 9.	Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937.	Section 14(2)(b).
S.I. 1981/228 (N.I. 8)	Legal Aid, Advice and Assistance Order (Northern Ireland) 1981.	In Part II of Schedule 1, paragraph 2(a).
<i>Restrictions on marriage</i>		
28 Hen. 8 c. 2 (Ir.).	Marriage Act (Ireland) 1537.	The whole Act.
33 Hen. 8 c. 6 (Ir.).	Marriage Act (Ireland) 1542.	The whole Act.
2 Eliz. 1 c. 1.	Act of Supremacy (Ireland) 1560.	Section 2.
5 & 6 W. 4 c. 54.	Marriage Act 1835.	The whole Act.
7 Edw. 7 c. 47.	Deceased Wife's Sister's Marriage Act 1907.	The whole Act.
11 & 12 Geo. 5 c. 24.	Deceased Brother's Widow's Marriage Act 1921.	The whole Act.
14 & 15 Geo. 5 c. 22.	Deceased Brother's Widow's Marriage Act (Northern Ireland) 1924.	The whole Act.
1949 c. 17.	Marriage (Prohibited Degrees of Relationship) Act (Northern Ireland) 1949.	The whole Act.
1967 c. 35.	Adoption Act (Northern Ireland) 1967.	Section 16(3) and (4).
S.I. 1978/1045 (N.I. 15).	Matrimonial Causes (Northern Ireland) Order 1978.	Article 61.
<i>Precontract</i>		
12 Geo. 1 c. 3 (Ir.)	Marriage Act (Ireland) 1725.	Section iv.

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EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order relates to family law in Northern Ireland. Part II (Articles 3 to 14) confers on spouses certain rights of occupation concerning the matrimonial home. Such rights may be registrable as a matrimonial charge.

Part III of the Order—

- (a) abolishes actions for breach of promise of marriage and makes provision with respect to the property of, and gifts between, persons who have been engaged to marry (Articles 15 to 17);
- (b) re-states the restrictions on marriages within prohibited degrees of relationships (Article 18); and
- (c) repeals an obsolete enactment relating to precontract (Article 19).

In Part IV, Article 20 extends to cohabiting couples those provisions of the Domestic Proceedings (Northern Ireland) Order 1980 (NI 5) which empower the court to make personal protection orders and exclusion orders with respect to parties to marriages.

STATUTORY INSTRUMENTS

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