

SCHEDULES

SCHEDULE 2

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Status: This is the original version (as it was originally made).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