

Registration etc. of matrimonial charges

4. In the principal Rules, after Rule 95, there shall be inserted the following Rules—

“Registration of matrimonial charges and renewal of registration

95A.—(1) An application for the registration of a matrimonial charge as a burden pursuant to Article 6(1)(a) of the 1984 Order shall be in Form 53A and shall be accompanied by—

- (a) a certificate of the marriage in question;
- (b) a copy of any release of part of the dwelling house from the rights of occupation;
- (c) a copy of any document postponing the priority of the charge; and
- (d) a certified copy of any order of the court under Article 4 of the 1984 Order in relation to the rights of occupation.

(2) Where an application under paragraph (1) is also made in pursuance of Article 9(3)(b) of the 1984 Order (application for registration of a charge after an order of the court has been made by virtue of Article 5(4)) the application shall also be accompanied by a certified copy of the order made by virtue of Article 5(4) of the 1984 Order.

(3) The entry to be made on a folio in respect of a matrimonial charge shall be in Form 53B and shall, if appropriate, show that the priority of the charge has been postponed by virtue of a statutory provision other than the 1984 Order.

(4) An application for the renewal of the registration of a matrimonial charge registered under paragraph (1) pursuant to Article 9(3)(a) of the 1984 Order (renewal of registration in consequence of an order made by virtue of Article 5(4)) shall be in Form 53C and shall be accompanied by a certified copy of the order made by virtue of Article 5(4) of the 1984 Order.

Cancellation and variation of entries relating to the registration of matrimonial charges and postponement of priority

95B.—(1) The registration of a matrimonial charge as a burden may be cancelled or varied or the postponement of its priority (except in the case of a postponement to which Rule 67 applies) registered by the lodgement in the Registry of an affidavit setting out the relevant facts and accompanied by such of the following evidence, if any, as is in the opinion of the Registrar sufficient to justify such cancellation, variation or postponement—

- (a) a document releasing or varying the rights of occupation constituting the charge or a document postponing the priority of the charge, as the case may be;
- (b) the evidence mentioned in paragraphs (2) and (3);
- (c) such other or additional evidence as the Registrar may require in support of the application.

(2) Subject to paragraph (3) the evidence required by virtue of paragraph (1)(b) is—

- (a) a certificate of the death of either spouse;

- (b) a certified copy of a decree of divorce or nullity of marriage granted by a court, or entitled to recognition, in Northern Ireland and which is effective to dissolve or annul the marriage in question;
- (c) a certified copy of any relevant order of the court under Article 4 of the 1984 Order in relation to the rights of occupation constituting the charge;
- (d) such other or additional evidence as the Registrar may require as to the death of either spouse or to the nullity of or termination otherwise than by death of the marriage in question.

(3) Where the charge was registered, or its registration was renewed, pursuant to Article 9(3) of the 1984 Order (registration or renewal thereof following an order under Article 5(4) of that Order) the evidence required by virtue of paragraph (1)(b) is—

- (a) a certificate of the death of the spouse by whom the application for the registration of the charge was made;
- (b) a certified copy of any relevant order of the court under Article 4 of the 1984 Order in relation to the rights of occupation constituting the charge;
- (c) such other or additional evidence as the Registrar may require to show that the order under Article 5(4) of the 1984 Order has ceased to have effect.’’.

Minor and consequential amendments of the principal Rules

5.—(1) For Rule 40 of the principal Rules, there shall be substituted the following Rule—

“Notice of proposed registration to be given

40.—(1) A registration consequent on an examination of title shall not, save in special circumstances, be completed until—

- (a) where the registration proposed to be made is not the registration applied for, the applicant, and
- (b) any other person whom the Registrar considers it proper to notify, have been notified of the registration proposed to be made.

(2) Without prejudice to any order of a court or to any caution or inhibition, where it is proposed to register a matrimonial charge as a burden pursuant to Article 6(1)(a) of the 1984 Order and Rule 95A, nothing in paragraph (1) shall require the Registrar to give notice of the proposed registration to the applicant’s spouse or to any other person against whose estate the registration is proposed to be made.’’.

(2) In Rule 124 of the principal Rules (production of land certificates and certificates of charge), for paragraph (1)(h), there shall be substituted the following—

- “(h) one which adversely affects the title of the registered owner, but not in the case of an entry relating to—
 - (i) a matrimonial charge,
 - (ii) a pending action,

- (iii) a caution.
- (iv) an inhibition, or
- (v) a notice under section 59(1) of the Act.”.

(3) Rule 169 of the principal Rules (official search) shall be amended as follows—

(a) in paragraph (2), for the words “under this rule” substitute the words “under paragraph (1)”;

(b) after paragraph (2), add the following paragraphs—

“(3) Any person may apply to the Registrar to make an official search and to certify what entries (if any) subsist on the folio in respect of registered matrimonial charges.

(4) The requisition for a search under paragraph (3) shall be in Form 84A and the certificate of the result of the search shall be in Form 84B.”.

(4) The forms contained in the Schedule shall be inserted in the principal Rules as follows—

(a) Forms 53A, 53B and 53C after Form 53;

(b) Forms 84A and 84B after Form 84.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 11th July 1989.

(L.S.)

J. Kirk

Assistant Secretary

Application for the registration of a matrimonial charge as a burden (rule 95A)*(Heading as in Form 9)*

I, A.B. of *(state address in the United Kingdom for service of notices)* make oath and say—

1. I believe that I am entitled by virtue of Articles 5 and 6 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (hereinafter called the “1984 Order”) to the registration of a matrimonial charge in my favour affecting the lands comprised in the above-mentioned folio to the extent of my rights of occupation under the 1984 Order in the dwelling house *(identify the dwelling house which is subject to the rights of occupation, if necessary referring to a map on which the dwelling house is identified; and refer to any release of part of the dwelling house from the rights of occupation, to the priority conferred on the matrimonial charge by Part II of the 1984 Order, to any document postponing its priority and to any order of the court under Article 4 of the 1984 Order in relation to the rights of occupation constituting the charge, and state that a copy of any such release or postponement or a certified copy of any such order accompanies the application)*.
2. I am the (wife) (husband) of C.D. of *(state address and add, if appropriate)* “(the above-named Registered Owner)” and I refer to the marriage certificate accompanying this application.
3. The said dwelling house is the matrimonial home *(or, was the matrimonial home during the period from* _____ *until* _____ *)*.
4. My (husband) (wife) is entitled to occupy the said dwelling house by virtue of a beneficial legal estate therein. The title to (his) (her) legal estate is registered in the said Folio. *(Add, where the estate is a leasehold one: “It is a leasehold estate for a term exceeding 21 years, not being a term for securing money.”)*

or

My (husband) (wife) is entitled to occupy the said dwelling house by virtue of a beneficial estate therein existing under a trust. Apart from my (husband) (wife) (and me) there is no person living or unborn who is or could become a beneficiary under the said trust *(add, if appropriate: “apart from any potential beneficiaries under a general power of appointment exercisable by either or both of us alone.”)* The Trustees of the said trust are E.F. of *(state address)* and G.H. of *(state address)* *(add, if appropriate: “the above-named Registered Owners”)* who have a legal estate, the title to which is registered in the said Folio. *(Add, where the estate is a leasehold one: “It is a leasehold estate for a term exceeding 21 years not being a term for securing money.”)*

5. *Where an order has been made by virtue of Article 5(4) of the 1984 Order, insert the following paragraph:* By an order of the (Family Division of the High Court of Justice in Northern Ireland) (_____ Recorder’s Court) (County Court for the Division of _____) dated the _____ day of _____ 19 _____ and made by virtue of Article 5(4) of the 1984 Order it was directed that *(give particulars of any direction that the applicant’s rights of occupation should not be brought to an end by the death of the applicant’s spouse or on the termination of the marriage otherwise than by death and refer to the accompanying certified copy of the order)*.

FORM 53C

Application for the renewal of the registration of a matrimonial charge pursuant to Article 9(3)(a) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (rule 95A).

(Heading as in Form 9)

In consequence of an order of (*name of court*) (*date of order*) and made by virtue of Article 5(4) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984, I, A.B. of (*state address*), [We, C.D. of (*state address*) solicitors acting for A.B. of (*state address*)] hereby apply pursuant to Article 9(3)(a) of the said Order of 1984 for the renewal of the registration of the matrimonial charge registered (in my favour) (in favour of the said A.B.) against the above mentioned folio on (*date*).

A certified copy of the court order accompanies this application.

Dated

(To be signed by the applicant or his solicitor and, when signed by the applicant, his signature shall be attested).

FORM 84A

Requisition for official search for registration of matrimonial charge (rule 169)

(Heading as in Form 9)

I, A.B. (as Solicitor for C.D.), require that an official search be made in the above mentioned folio and that I be furnished with short particulars of all subsisting entries on the said folio in respect of registered matrimonial charges.

Dated

(Signed)

(Add address to which the certificate of the result of the search is to be sent).

Certificate of the result of an official search for registration of matrimonial charge (rule 169)

(Heading as in Form 9)

It is hereby certified that an official search has been made in the above-mentioned folio and short particulars of all existing entries on the said folio in respect of registered matrimonial charges and of any application for the registration of such a charge received in the Land Registry up to one working day* prior to the date hereof but not yet completed by entry on the folio are set out in the Schedule hereto.

Dated

SCHEDULE

(NOTE:— Where no entries appear, the word 'none' shall be inserted in the Schedule)

*"Working days" means the days on which the Land Registry is open for the transaction of public business.

EXPLANATORY NOTE

(This note is not part of the Rules.)

Part II of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 ("the 1984 Order") confers on spouses certain rights of occupation concerning the matrimonial home. It also provides that these rights may be registrable as a matrimonial charge in the Land Registry if they affect registered land.

These Rules amend the Land Registration Rules (Northern Ireland) 1977 ("the principal rules") to provide for the procedure, documents and evidence required for the registration, cancellation, variation, release or renewal of, or the postponement of priority of such matrimonial charges in the Land Registry. They also make minor and consequential amendments to the principal rules so that—

- (a) the Registrar of Titles is not normally required to give notice to any person of the registration of a matrimonial charge;
- (b) a matrimonial charge may be registered without production of the land certificate; and
- (c) official searches may be made in relation to matrimonial charges registered in the Land Registry.