

SCHEDULES

SCHEDULE 1

Article 41.

TRANSFER OF CERTAIN TENANCIES ON DIVORCE, ETC.

PART I

General

1. Where one spouse is entitled to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy, then, on granting a decree of divorce, a decree or nullity of marriage or a decree of judicial separation, or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute), the court by which the decree is granted may make an order under Part II.

2.—(1) Where—

- (a) one spouse is entitled to occupy a dwelling-house by virtue of a protected tenancy, a statutory tenancy or a secure tenancy; and
- (b) an order under Article 18(2)(i) of the Domestic Proceedings (Northern Ireland) Order 1980(1) (other than such an order made as an interim exclusion order by virtue of Article 21 of that Order) excluding that spouse from the dwelling-house is made upon the application of the other spouse,

the High Court or a divorce county court may, on the application of the other spouse within 3 months after the order is made, make an order under Part II.

(2) Where while an order referred to in sub-paragraph (1)(b) is in force an application is made for an order under Part II, the court may make the order applied for notwithstanding that, at the time when it does so, the first mentioned order has ceased to have effect otherwise than by reason of its revocation; and where an order is made under Part II it shall not be affected by an order referred to in sub-paragraph (1)(b) subsequently ceasing to have effect.

PART II

Protected or secure tenancy

3.—(1) Where a spouse 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—

- (a) the estate which the spouse 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

(1) 1980 NI 5

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

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

(3) Where the spouse so entitled is a successor within the meaning of Chapter II of Part II of the Housing (Northern Ireland) Order 1983⁽²⁾, his or her spouse (or, as the case may be, former spouse) shall be deemed also to be a successor within the meaning of that Chapter.

Statutory tenancy

4.—(1) Where a spouse is entitled to occupy the dwelling-house by virtue of a statutory tenancy, the court may by order direct that, as from such date as may be specified in the order, that spouse shall cease to be entitled to occupy the dwelling-house and that the other spouse shall be deemed to be the tenant or, as the case may be, the sole tenant under that statutory tenancy.

(2) The question whether the provisions of paragraphs 1 to 4, or, as the case may be, paragraphs 6 to 9 of Schedule 1 to the Rent (Northern Ireland) Order 1978⁽³⁾ 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 statutory tenancy 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 shall 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

Ancillary jurisdiction

5.—(1) Where the court makes an order under Part II, it may by order direct that both spouses shall 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 have at the date of the order fallen due to be discharged or performed by one only of the spouses or which, 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) Where the court gives a direction under sub-paragraph (1) it may further direct that either spouse shall 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 is to take effect

6. In the case of a decree or divorce or nullity of marriage, the date specified in an order under Part II as the date on which the order is to take effect shall not be earlier than the date on which the decree is made absolute.

(2) 1983 NI 15

(3) 1978 NI 20

Remarriage of either spouse

7. If after the grant of a decree dissolving or annulling a marriage either spouse remarries, that spouse shall not be entitled to apply, by reference to the grant of that decree, for an order under Part II.

Rules of court

8.—(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 an order under this Schedule in the circumstances mentioned in paragraph 1 shall not, without the leave of the court by which the decree of divorce, nullity of marriage or judicial separation was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.

Savings for Articles 3 and 4 of Family Law (Miscellaneous Provisions)(Northern Ireland) Order 1984

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

Appeals from divorce county courts

10. Without prejudice to Article 61 of the County Courts (Northern Ireland) Order 1980(5) (cases stated), rules of court shall make provision for an appeal to the Court of Appeal from any order made by a divorce county court in the exercise of the jurisdiction conferred by this Schedule, or from the dismissal of any application for such an order, upon a point of law, a question of fact or the admission or rejection of any evidence.

Interpretation

11.—(1) In this Schedule the following words and expressions have the same meaning as in the Rent (Northern Ireland) Order 1978(6), namely—

- (a) dwelling-house;
- (b) the landlord;
- (c) protected tenancy;
- (d) Rent Restriction Acts;
- (e) statutory tenancy.

(2) In this Schedule—

“divorce county court” has the meaning assigned to it by the principal Order;

“secure tenancy” has the meaning assigned to it by Article 25 of the Housing (Northern Ireland) Order 1983(7).

(4) 1984 NI 14

(5) 1980 NI 3

(6) 1978 NI 20

(7) 1983 NI 15

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(3) In this Schedule “spouse” includes a party to a void or voidable marriage and the reference in paragraph 7 to remarriage includes a reference to a marriage which is by law void or voidable.

(4) References in this Schedule to a spouse being entitled to occupy a dwelling-house by virtue of a protected, statutory or secure tenancy apply whether that entitlement is in his or her own right, or jointly with the other spouse.