
STATUTORY INSTRUMENTS

1998 No. 1071

**The Family Homes and Domestic
Violence (Northern Ireland) Order 1998**

Rights to occupy matrimonial home

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

- 4.—(1) This Article applies if—
- (a) one spouse is entitled to occupy a dwelling-house by virtue of—
 - (i) a beneficial estate or a contract; or
 - (ii) any statutory provision giving that spouse the right to remain in occupation; and
 - (b) the other spouse is not so entitled.
- (2) Subject to the provisions of this Order, the spouse not so entitled has the following rights (“matrimonial home rights”)—
- (a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse 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 a spouse 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 that spouse in or towards satisfaction of any liability of the other spouse 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 the other spouse.
- (4) A spouse’s occupation by virtue of this Article—
- (a) is to be treated, for the purposes of the Rent (Northern Ireland) Order 1978, as occupation by the other spouse as the other spouse’s residence, and
 - (b) if the spouse occupies the dwelling-house as that spouse’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 by the other spouse as the other spouse’s only or principal home.
- (5) If a spouse (“the first spouse”)—
- (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 the other spouse (“the second 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 the second spouse, but the fact that that person has treated any such payment as having been so made does not affect any claim of the first spouse against the second spouse to an estate in the dwelling-house by virtue of the payment.

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

(7) This Article does not apply to a dwelling-house which has at no time been, and which was at no time intended by the spouses to be, a matrimonial home of theirs.

(8) A spouse's matrimonial home rights continue—

(a) only so long as the marriage subsists, except to the extent that an order under Article 11(5) otherwise provides, and

(b) only so long as 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 charge on an estate in the dwelling-house.

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