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STATUTORY INSTRUMENTS

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**1998 No. 1071**

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

*Dwelling-house subject to mortgage*

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**31.**—(1) In determining for the purposes of this Order whether a person is entitled to occupy a dwelling-house by virtue of an estate, any right to possession of the dwelling-house conferred on a mortgagee of the dwelling-house under or by virtue of his mortgage is to be disregarded.

(2) Paragraph (1) applies whether or not the mortgagee is in possession.

(3) Where a person (“A”) is entitled to occupy a dwelling-house by virtue of an estate, a connected person does not by virtue of—

- (a) any matrimonial home rights conferred by Article 4, or
- (b) any rights conferred by an order under Article 13 or 14,

have any larger right against the mortgagee to occupy the dwelling-house than A has by virtue of his estate and of any contract with the mortgagee.

(4) Paragraph (3) does not apply, in the case of matrimonial home rights, if under Article 5 those rights are a charge, affecting the mortgagee, on the estate mortgaged.

(5) In this Article “connected person”, in relation to any person, means that person’s spouse, former spouse, cohabitee or former cohabitee.

**Actions by mortgagees: joining connected persons as parties**

**32.**—(1) This Article applies if a mortgagee of land which consists of or includes a dwelling-house brings an action in any court for the enforcement of his security.

(2) A connected person who is not already a party to the action is entitled to be made a party in the circumstances mentioned in paragraph (3).

(3) The circumstances are that—

- (a) the connected person is enabled by Article 4(3) or (6) (or by Article 4(3) or (6) as applied by Article 13(13) or 14(13)), to meet the mortgagor’s liabilities under the mortgage;
- (b) he has applied to the court before the action is finally disposed of in that court; and
- (c) the court sees no special reason against his being made a party to the action and is satisfied—
  - (i) that he may be expected to make such payments or do such other things in or towards satisfaction of the mortgagor’s liabilities or obligations as might affect the outcome of the proceedings; or
  - (ii) that the expectation of it should be considered under section 36 of the Administration of Justice Act 1970.

(4) In this Article “connected person” has the same meaning as in Article 31.

**Actions by mortgagees: service of notice on certain persons**

**33.**—(1) This Article applies if a mortgagee of land which consists, or substantially consists, of a dwelling-house brings an action for the enforcement of his security, and at the relevant time there is a registered matrimonial charge.

(2) If the person on whose behalf the matrimonial charge is registered is not a party to the action, the mortgagee must serve notice of the action on him.

(3) If—

(a) 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

(b) the action is commenced within a period of 14 days after the date of the issue of the certificate,

the relevant time is the date of the certificate.

(4) In any other case the relevant time is the time when the action is commenced.