

SCHEDULES

SCHEDULE 2

TRANSFER OF CERTAIN TENANCIES ON DIVORCE ETC. OR ON SEPARATION OF COHABITEES

PART III

SUPPLEMENTARY PROVISIONS

Compensation

9.—(1) If the court makes a Part II order, it may by the order direct the making of a payment by the spouse^[F1], civil partner] or cohabitee to whom the tenancy is transferred (“the transferee”) to the other spouse^[F1], civil partner] or cohabitee (“the transferor”).

(2) Without prejudice to that, the court may, on making an order by virtue of sub-paragraph (1) for the payment of a sum—

- (a) direct that payment of that sum or any part of it is to be deferred until a specified date or until the occurrence of a specified event, or
- (b) direct that that sum or any part of it is to be paid by instalments.

(3) Where an order has been made by virtue of sub-paragraph (1), the court may, on the application of the transferee or the transferor—

- (a) exercise its powers under sub-paragraph (2), or
- (b) vary any direction previously given under that sub-paragraph,

at anytime before the sum whose payment is required by the order is paid in full.

(4) In deciding whether to exercise its powers under this paragraph and, if so, in what manner, the court shall have regard to all the circumstances including—

- (a) the financial loss that would otherwise be suffered by the transferor as a result of the order,
- (b) the financial needs and financial resources of the parties, and
- (c) the financial obligations which the parties have, or are likely to have in the foreseeable future, including financial obligations to each other and to any relevant child.

(5) The court shall not give any direction under sub-paragraph (2) unless it appears to it that immediate payment of the sum required by the order would cause the transferee financial hardship which is greater than any financial hardship that would be caused to the transferor if the direction were given.

F1 2004 c.33

Status: Point in time view as at 01/01/2006.

Changes to legislation: Family Homes and Domestic Violence (Northern Ireland) Order 1998, PART III is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Liabilities and obligations in respect of the dwelling-house

10.—(1) If the court makes a Part II order, it may by order direct that both spouses^[F2], civil partners] or cohabitants are to 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—

- (a) have at the date of the order fallen due to be discharged or performed by one only of them; or
- (b) 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) If the court gives such a direction, it may further direct that either spouse^[F2], civil partner] or cohabitee is to 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.

F2 2004 c.33

[F3] Date when order made between spouses or civil partners takes effect

F3 2004 c.33

11 The date specified in a Part II order as the date on which the order is to take effect must not be earlier than—

- (a) in the case of a marriage in respect of which a decree of divorce or nullity has been granted, the date on which the decree is made absolute;
- (b) in the case of a civil partnership in respect of which a dissolution or nullity order has been made, the date on which the order is made final.]

[F4] Effect of remarriage or subsequent civil partnership

F4 2004 c.33

12.—(1) If after the grant of a decree dissolving or annulling a marriage either spouse remarries or forms a civil partnership, that spouse is not entitled to apply, by reference to the grant of that decree, for a Part II order.

(2) If after the making of a dissolution or nullity order either civil partner forms a subsequent civil partnership or marries, that civil partner is not entitled to apply, by reference to the making of that order, for a Part II order.

- (3) In sub-paragraphs (1) and (2)—
 - (a) the references to remarrying and marrying, include references to cases where the marriage is by law void or voidable, and
 - (b) the references to forming a civil partnership, include references to cases where the civil partnership is by law void or voidable.]

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Rules of court

13.—(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 a Part II order by reference to a decree shall not, without the leave of the court by which that decree was granted, be made after the expiration of such period from the grant of the decree as may be prescribed by the rules.

Saving for other provisions of this Order

14.—(1) If a spouse^[F5] or civil partner] is entitled to occupy a dwelling-house by virtue of a tenancy, this Schedule does not affect the operation of Articles 4 and 5 in relation to the other^[F5] spouse's or civil partner's home rights].

(2) If a spouse^[F5], civil partner] or cohabitant is entitled to occupy a dwelling-house by virtue of a tenancy, the court's powers to make orders under this Schedule are additional to those conferred by Articles 11, 13 and 14.

F5 [2004 c.33](#)

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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