

**LAW REFORM (MISCELLANEOUS PROVISIONS)
(NORTHERN IRELAND) ORDER 2005**

S.I. 2005 1452

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

16. [Articles 1 and 2](#) provide for the title, commencement and interpretation of the Order. Certain aspects of the Order will be commenced soon after the passing of the Order, others will be brought into operation on such day or days as the Department of Finance and Personnel may by order appoint.
17. [Articles 3-9](#) relate to the changes to the law relating to deeds and other instruments.
18. [Article 3](#) sets out the law relating to the formalities that must be undertaken for deeds which are executed by individuals. This Article abolishes the requirement for a deed to be sealed by an individual and sets out the new requirements dealing with the designation of a document and the requirements for signing and witnessing the execution of a document.
19. [Article 4](#) deals with the execution of instruments by a liquidator. This Article amends the relevant provision of the Insolvency (Northern Ireland) Order 1989 and provides that the powers of a liquidator should include a power to execute deeds on behalf of a company and gives a power for the liquidator to use the company's seal.
20. [Article 5](#) amends section 7 of the Powers of Attorney (Northern Ireland) Act 1971 making it clear that a deed properly executed by a donee is as effective as if executed in a manner which would constitute due execution of the deed by the donor.
21. [Article 6](#) clarifies the legal position in relation to the delivery of deeds by abolishing the requirement that the authority given by one party to deliver an instrument must itself be evidenced in a deed. Where a solicitor, or an agent or employee of a solicitor, purports to deliver an instrument on behalf of a party to the instrument, this Article states that it should be conclusively presumed in favour of a purchaser that he is authorised to deliver the document.
22. [Article 7](#) deals with escrows and makes it clear that a party delivering a deed in escrow should be entitled to revoke that escrow at any time prior to the fulfilling of any conditions on which the escrow depends. It also clarifies the law to the effect that a corporation is and always has been capable of delivering a deed in escrow in the same way as an individual.
23. [Article 8](#) abolishes the rule of law known as the rule in *Pigot's Case*. A statutory declaration is also provided to the effect that a material alteration to a deed or other written document evidencing a contractual intention does not by itself invalidate the document or render it void or otherwise affect any obligation under the deed.
24. [Article 9](#) abolishes the rule of law known as the rule in *Bain –v- Fothergill*.

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25. [Articles 10-15](#) relate to changes to the Family Homes and Domestic Violence (Northern Ireland) Order 1998. That Order contains, amongst other provisions, civil protections for those people who are suffering from domestic violence and Articles 10-15 contain amendments to these civil protections.
26. [Article 11](#) amends the definition of “relative” in the 1998 Order to allow relief to be obtained by a victim of domestic violence if the perpetrator of that violence is a first cousin. The previous definition allowed protections to be obtained against uncles and aunts and the inclusion of cousins will add greater protection. This Article also amends a difficulty with in-law relationships. The 1998 Order as it stands creates an ambiguity as, for example, it appears to allow a daughter-in-law to apply for a protection order against her mother-in-law, but not vice versa. This anomaly was never intended and Article 11 ensures that any ambiguity is removed.
27. [Article 12](#) amends the meaning of “cohabitee” within Article 2(2) of the 1998 Order to allow people who are living together in same sex relationships to avail of the protections provided by occupation orders and orders for transfer of tenancies.
28. [Article 13](#) amends Article 20 of the 1998 Order to allow exclusion zones to be attached to non-molestation orders.
29. [Article 14](#) amends Article 23 of the 1998 Order to make it clear that protective orders made on an ex-parte basis can only be made for a short period of time, to allow the respondent to have access to a full hearing of the case as soon as practicable.
30. [Article 15](#) amends Article 25 of the 1998 Order increasing the penalties for breach of a non-molestation order or a non-molestation order combined with an occupation order to up to six months imprisonment and/or a maximum of a level 5 fine.
31. [Articles 16-18](#) deal with the abolition of the three rules of law relating to matrimonial property.
32. [Article 16](#) abolishes the presumption of advancement in relation to transfers of property by a husband to his wife, therefore allowing the equitable presumption of a resulting trust to operate. Abolishing this rule will bring Northern Ireland into line with Protocol 7 of the European Convention on Human Rights, Article 5 of which requires the law to treat spouses equally. The effect will not be retrospective. For the sake of clarity, Article 16 also abolishes the presumption of advancement in relation to engaged couples.
33. [Article 17](#) abolishes any rule of common law which states that a husband must maintain his wife. The rule has been superseded by reciprocal statutory duties of maintenance by both spouses but abolition is necessary in relation to the above Protocol.
34. [Article 18](#) abolishes a rule of great antiquity in Northern Ireland whereby savings from a housekeeping allowance paid by a husband to a wife, and any proceeds therefrom, belong to the husband. This rule of law dates from a time when women could not own property and is long outdated.
35. [Articles 19-23](#) deal with various miscellaneous amendments and repeals.
36. [Article 19](#) repeals the Colonial Solicitors Act 1900. It also sets out the requirements which must be followed relating to the admission of overseas solicitors formerly admitted using the 1900 Act. The admission of such solicitors will now be governed by the relevant provisions in the Solicitors (Northern Ireland) Order 1976.
37. [Article 20](#) repeals the Trading Stamps Act (Northern Ireland) 1965. Article 21 amends certain provisions that are connected with the exchange of goods on the redemption of trading stamps.
38. [Article 22](#) amends the Census Act (Northern Ireland) 1969 by placing a duty on the Registrar General for Northern Ireland to collect and publish any available statistical

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information concerning the population of Northern Ireland in the interval between one census and another.

39. [Article 23](#) amends the Damages Act 1996 and is a technical amendment designed to ensure that Northern Ireland Court Rules are covered in the interpretation of the Courts Act 2003 as it applies to the Damages Act 1996.
40. [Schedule 1](#) of the Order sets out the various amendments consequential on the policy of removing the need for an individual to seal a deed.
41. [Schedule 2](#) of the Order sets out the various repeals that are required in relation to the various aspect of the Order.