

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

S.I. 2005 1452

EXPLANATORY MEMORANDUM

BACKGROUND AND POLICY OBJECTIVES

3. Over the course of the last 2 years, the Office of Law Reform has undertaken the task of identifying a number of discrete areas of law that could be included in one piece of legislation. This draft Law Reform (Miscellaneous Provisions) Order is the culmination of that work, with a number of areas considered to be in need of reform included in this draft Order. They originate from a range of sources. Recommendations relating to deeds and escrows produced to Government by the Law Reform Advisory Committee, changes to domestic violence legislation flowing from a review of the Family Homes and Domestic Violence (Northern Ireland) Order 1998, changes in the law relating to the equal treatment of spouses that were originally part of the draft Divorce Bill, and some miscellaneous repeals and amendments are all included in this Order.
4. The Law Reform Advisory Committee for Northern Ireland (LRAC) issued a report entitled “Deeds and Escrows” in 2002. The law relating to this area is a fairly archaic subject yet one that remains in practice an important part of the law in the field of property and commercial transactions. Certain categories of document need to be in the form of deeds. Different rules apply to deeds as compared to transactions effected by documents which do not constitute deeds. Under the current common law it is a requirement that a deed must be sealed. The LRAC recommended in its report that the requirement for sealing a deed executed by an individual should be abolished, thus bringing the law in Northern Ireland into line with that which has existed in England and Wales since 1989.
5. The LRAC also recommended that new requirements should be brought forward dealing with the execution of instruments by a liquidator and by the donee of a power of attorney. It also noted that the rule of law known as the rule in *Pigot’s Case* be abolished and a statutory declaration made 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. It further recommended the law relating to escrows be clarified. These particular recommendations have been accepted and are included in the draft Order.
6. The LRAC also reported in the same year on contracts for the sale of land and the rule in *Bain –v- Fothergill*. Some further work is necessary on the former aspect of this report but the draft Order does abolish the rule in *Bain –v Fothergill* which restricts the damages recoverable for breach of contract occasioned by defects in title to land and brings the law in Northern Ireland in line with that in England and Wales.
7. Part III of the Order deals with reforms to the Family Homes and Domestic Violence (Northern Ireland) Order 1998. This follows a review of the Order led by the Office of Law Reform relating to the operation of that legislation and a further consultation exercise carried out by an Inter-Departmental group which issued a consultation paper

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entitled “Tackling Violence at Home – the Government’s proposals on domestic violence in Northern Ireland”. Over 2800 copies were distributed amongst a wide range of relevant parties, 12 workshops were carried out and a number of face to face meetings were arranged. 70 responses were received and this Order deals with some of the civil law issues that were raised in the consultation including human rights issues, anomalies in relation to in-law relationships, same-sex relationships, exclusion zone and molestation order issues, and the penalty for the breach of an order.

8. The Order also deals with what have been described as the “three anomalies” of matrimonial property law. In order to ratify Protocol 7 to Article 5 of the European Convention on Human Rights they must be addressed. Article 5 of the Protocol requires the law to treat husband and wife equally and the Order’s provisions rectifies a previous imbalance in this regard. The areas in question are the presumption of advancement, the husband’s common law duty of maintenance and the common law rule in relation to housekeeping money. The presumption of advancement operates in relation to transfers of property by a husband or father to his wife or child and creates an equitable presumption that the transfer is intended as a gift, whereas when a similar transfer is made by a wife or a mother the court will assume that she retains an interest in the property by way of a resulting trust. This rule is outdated and discriminatory and requires repeal in order to satisfy the Protocol 7. The common law duty of maintenance is similarly outdated and has since been superseded by reciprocal statutory duties of maintenance by both spouses, but change is still necessary in order to ratify Protocol 7. Thirdly, in Northern Ireland, savings from a housekeeping allowance paid by a husband to a wife, and any proceeds thereof, belong to the husband. This rule does not apply where an allowance is paid by a wife to her husband and is thus discriminatory and also outdated. All three of these “anomalies” were considered in the Assembly as part of the debates on the draft Divorce Bill, although the Assembly was suspended before this Bill had completed its progress.
9. Several repeals and amendments are also dealt with in this Order. The Colonial Solicitors Act 1900 is an archaic piece of legislation that originally regulated the admission of overseas solicitors into the UK. It has long since ceased to have effect in England and Wales but is still on the Northern Ireland statute book. The Act provides the requirements for the admission of solicitors from various parts of the then British colonies, subject to certain conditions, and has been amended by a series of piecemeal statutory instruments since then. It is considered to be an anomalous piece of legislation and hence this Order makes provision for its repeal.
10. The Order also deals with the repeal of Trading Stamps legislation. Existing legislation contains requirements in respect of the issue, use and redemption of trading stamps, and implies various warranties on their redemption for goods. Trading stamps were introduced following the abolition of retail price maintenance in the early 1960’s and operated as incentives to purchase goods at certain retail outlets operating a Trading Stamp scheme. Such incentives in the modern retail climate generally work through the medium of electronic loyalty cards and it is doubtful that such schemes fall within the definition of a trading stamp. The effect of the current legislation is placing unnecessary legal and administrative burdens on business without providing any real protection to consumers that would not otherwise be available under other consumer protection measures. The Department of Trade and Industry consulted on this issue and a Regulatory Reform Order is currently being considered to repeal the relevant legislation. Northern Ireland mirrored this consultation and this Order provides the same substantive set of repeals.
11. An amendment to the Census Act (Northern Ireland) 1969 concerns the Northern Ireland Statistics and Research Agency’s (NISRA) ability to conduct a longitudinal study in Northern Ireland. The drafting of the original Act raised some question marks relating to whether such a study could be undertaken and the Order provides for the transfer of power (which now becomes a duty) to the Registrar General for Northern Ireland. Similarly, following the passing of the Courts Act 2003 it was realised that there

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was uncertainty relating to the interpretation of a reference to the Damages Act 1996. The Order contains a technical amendment to the new section 2(8) of the Damages Act 1996 (as inserted by section 100(1) of the Courts Act 2003) in order that Northern Ireland Court Rules are included, as was intended, in the interpretation provision created by new section 2A(6) of the 1996 Act.