

Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005

*Made - - - - 2005
Coming into operation in accordance with Article 1(2)
to (4)*

At the Court at Buckingham Palace, the ** day of ** 2005
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005.

(2) Subject to the following provisions of this Article, this Order comes into operation on such day or days as the Department may by order appoint.

(3) This Part comes into operation on the expiration of 7 days from the day on which this Order is made.

(4) Part IV and Articles 22 and 23 come into operation on the expiration of one month from the day on which this Order is made.

(5) An order made under paragraph (2) may contain such transitional provisions and savings as appear to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department of Finance and Personnel;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

PART II

DEEDS AND OTHER INSTRUMENTS

Formalities for deeds executed by individuals

3.—(1) An instrument executed by an individual after the coming into operation of this Article is a deed, notwithstanding that it has not been sealed, if, and only if, it satisfies the requirements of paragraph (2).

(2) The requirements referred to in paragraph (1) are that the instrument is—

(a) expressed to be a deed, or to be a conveyance, assurance, mortgage, settlement, covenant, bond, specialty or other instrument, according to the nature of the transaction intended to be effected, which is required by law to be a deed;

(b) signed—

(i) by the individual executing it in the presence of a witness who attests the signature; or

(ii) at the direction of the individual executing it and in his presence and the presence of two witnesses who each attest the signature; and

(c) delivered as a deed by the individual executing it or by a person authorised to do so on his behalf.

(3) Where an instrument under seal that constitutes a deed is required for the purposes of any statutory provision passed or made before the coming into operation of this Article, this Article shall have effect as to signing, sealing and delivery of an instrument by an individual in place of any provision of that statutory provision as to signing, sealing and delivery.

(4) The statutory provisions mentioned in Schedule 1 (which in consequence of this Article require amendment) shall have effect with the amendments specified in that Schedule.

(5) In this Article “individual” does not include a corporation sole.

Execution of instruments by liquidator

4.—(1) In Schedule 2 to the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#)—

(a) in paragraph 8 (execution of documents in the name and on behalf of company being wound up), the words from “and for that purpose” to the end of that paragraph shall cease to have effect;

(b) after that paragraph there shall be inserted—

“8A. Power to use the company’s seal.”.

(2) In Article 46A of the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#)—

(a) in paragraph (4), after the words “directors of a company,” there shall be inserted “or a liquidator of a company,”;

(b) in paragraph (6), after the words “directors of the company,” there shall be inserted “or the liquidator of the company,”.

Execution of instrument by donee of power of attorney

5.—(1) Section 7 of the Powers of Attorney Act (Northern Ireland) 1971 (c. 33) (execution of instruments, etc. by donee of power of attorney) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) If the donee of a power of attorney is an individual, he may, if he thinks fit—

(a) execute any instrument with his own signature, and

(b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall, subject to subsection (1A), be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor.”.

(3) After subsection (1) there shall be inserted—

“(1A) Where an instrument is executed by the donee as a deed, it shall be as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it satisfies the requirements of paragraph (2) of Article 3 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005.”.

(4) In subsection (2), the words “and, in the case of a deed, by affixing his own seal” shall cease to have effect.

Delivery of deed by agent

6.—(1) Any rule of law which requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed is abolished.

(2) Where a solicitor, or an agent or employee of a solicitor, in the course of, or in connection with, a transaction involving the sale or other disposition of—

(a) an estate in land; or

(b) an interest in the proceeds of sale of land,

purports to deliver an instrument as a deed on behalf of a party to the instrument, it is to be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.

(3) In paragraph (2)—

“disposition” includes a conveyance and also a devise, bequest or appointment of property by will;

“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an estate in land or an interest in the proceeds of sale of land; and, in relation to a legal estate, includes a chargee by way of legal mortgage.

(4) Nothing in this Article applies in relation to instruments delivered as deeds before the coming into operation of this Article.

Escrows

7.—(1) An instrument operating as an escrow may be revoked by the person delivering it at any time before it has effect.

(2) An instrument executed by a corporation is, and always has been, capable of operating as an escrow in the same circumstances and with the same consequences as an instrument executed by an individual.

Abolition of rule in Pigot’s Case

8.—(1) The rule of law known as the rule in Pigot’s Case (which deals with the consequences of alterations in certain documents) is abolished.

(2) A material alteration to any document to which this paragraph applies does not, by itself, invalidate the document or render it voidable, or otherwise affect any obligation under the document.

(3) Paragraph (2) applies to the following documents—

- (a) a deed;
- (b) a contract in writing;
- (c) any other document evidencing a contractual intention.

(4) This Article applies to alterations made before or after the coming into operation of this Article, but does not apply to proceedings instituted before this Article comes into operation.

Abolition of rule in Bain v. Fothergill

9. The rule of law known as the rule in Bain v. Fothergill (which restricts the damages recoverable for breaches of contract occasioned by defects in title to land) is abolished in relation to contracts made after the coming into operation of this Article.

PART III

FAMILY HOMES AND DOMESTIC VIOLENCE

Interpretation of Part III

10. In this Part, “the 1998 Order” means the [Family Homes and Domestic Violence \(Northern Ireland\) Order 1998 \(NI 6\)](#).

Amendment of definition of “relative”

11. In Article 2(2) of the 1998 Order (interpretation), in the definition of “relative”—

- (a) in paragraph (b), for “or nephew” there shall be substituted “, nephew or first cousin”;
- (b) at the end of paragraph (b) there shall be inserted—
 - “or
 - (c) the father-in-law, mother-in-law, brother-in-law or sister-in-law of that person,”;
- (c) for “paragraph (a) or (b)” there shall be substituted “paragraph (a), (b) or (c)”.

“Cohabitees” to include same-sex couples

12.—(1) In Article 2(2) of the 1998 Order (interpretation)—

- (a) at the beginning of the definition of “cohabitee” and “former cohabitee” there shall be inserted ““cohabit,””;
- (b) in the definition of “relative” (as amended by Article 11), for “is living or has lived with another person as husband and wife” there shall be substituted “is cohabiting or has cohabited with another person”.

(2) In Article 3(1) of the 1998 Order (meaning of “cohabitees”, “relevant child” and “associated persons”)—

- (a) in sub-paragraph (a), for the words after ““cohabitees” are” to the end of that sub-paragraph there shall be substituted “two persons who, although not married to each other, are living together as husband and wife or (if of the same sex) in an equivalent relationship,”;
- (b) in sub-paragraph (b), for ““former cohabitees” is to be read accordingly, but” there shall be substituted ““cohabit” and “former cohabitees” are to be read accordingly, but the latter expression”.

(3) In Article 14 of the 1998 Order (one cohabitee or former cohabitee with no existing right to occupy)—

- (a) in paragraph (1)(c), for the words from “live together as” to the end there shall be substituted “cohabit or a home in which they at any time cohabited or intended to cohabit.”;
- (b) in paragraph (6)(e), after “relationship” there shall be inserted “and in particular the level of commitment involved in it”;
- (c) in paragraph (6)(f) for the words “lived together as husband and wife” there shall be substituted “cohabited”.

(4) In Article 16 of the 1998 Order (neither cohabitee nor former cohabitee entitled to occupy), in paragraph (1)(a), for the words “live or lived together as husband and wife” there shall be substituted “cohabit or cohabited”.

(5) Article 19 of the 1998 Order (additional considerations if parties are cohabitees or former cohabitees) shall cease to have effect.

(6) In Schedule 2 to the 1998 Order (transfer of certain tenancies on divorce etc. or on separation of cohabitees)—

- (a) in paragraph 3(2), for the words “live together as husband and wife” there shall be substituted “cohabit”;
- (b) in paragraph 4(1)(b), for the words “lived together as husband and wife” there shall be substituted “cohabited”.

Non-molestation orders

13. In Article 20 of the 1998 Order (non-molestation orders), after paragraph (6) there shall be inserted—

“(6A) A non-molestation order may exclude the respondent from a defined area in which a dwelling-house is included, any other defined area and any premises specified in the order.”.

Ex parte orders

14. In Article 23 of the 1998 Order (ex parte orders), in paragraph (3), for the words from “afford” to the end of that paragraph, there shall be substituted “specify a date for a full hearing.”.

Offences

15.—(1) In Article 25 of the 1998 Order (offences) after the words “any person who” there shall be inserted “without reasonable excuse”.

(2) In that Article—

(a) for “level 4” there shall be substituted “level 5”;

(b) for “three months” there shall be substituted “six months”.

(3) Nothing in paragraph (2) affects the punishment for an offence committed before the coming into operation of that paragraph.

PART IV

EQUAL TREATMENT OF SPOUSES, ETC.

Abolition of presumption of advancement

16.—(1) The presumption of advancement is abolished in relation to married or engaged couples.

(2) Paragraph (1) shall not have effect in relation to anything done before the coming into operation of this Article or anything done pursuant to any obligation incurred before the coming into operation of this Article.

Abolition of common law duty to maintain

17. Any rule of common law that a husband must maintain his wife is abolished.

Housekeeping allowance

18. If any question arises (whether during or after a marriage) as to the right of a party to a marriage to money derived from any allowance made by either party for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to each party in equal shares.

PART V

MISCELLANEOUS AMENDMENTS AND REPEALS

Repeal of the Colonial Solicitors Act 1900

19.—(1) The Colonial Solicitors Act 1900 (c. 14) shall cease to have effect.

(2) Any admission or thing done under or for the purposes of the Colonial Solicitors Act 1900 shall be treated as an admission or thing done under or for the purposes of Article 5 of the [Solicitors \(Northern Ireland\) Order 1976 \(NI 12\)](#).

(3) In Article 5 of the Solicitors (Northern Ireland) Order 1976, paragraph (5) shall cease to have effect.

Repeal of the Trading Stamps Act (Northern Ireland) 1965

20.—(1) Subject to paragraph (2), the Trading Stamps Act (Northern Ireland) 1965 (c. 6) shall cease to have effect.

(2) Section 9 of that Act continues to have effect for the purposes of the Consumer Transactions (Restrictions on Statements) Order 1976 (S.I.1976/1813).

Amendment of legislation to make provision for trading stamps

21.—(1) In the Consumer Transactions (Restrictions on Statements) Order 1976 (S.I. 1976/1813)

- (a) in Article 2(1), in the definition of “statutory rights”, for the words from “section 4(1)(c) of the Trading Stamps Act 1964” to the end of that definition, there shall be substituted “sections 4, 9, 11D, or 11J of the Supply of Goods and Services Act 1982.”;
 - (b) in Article 3(a)(ii), for the words from “a warranty” to “1973” there shall be substituted “a term implied by sections 4, 9, 11D, or 11J of the Supply of Goods and Services Act 1982”.
- (2) In the Supply of Goods and Services Act 1982 (c. 29)—
- (a) section 1(2)(c) shall cease to have effect;
 - (b) in section 6—
 - (i) in subsection (1), for the words “an excepted contract” there shall be substituted “a hire-purchase agreement”;
 - (ii) subsection (2) shall cease to have effect; and
 - (iii) in subsection (3), the words “(subject to subsection (2) above)” shall cease to have effect; and
 - (c) in section 18(1), the definitions of “redemption” and “trading stamps” shall cease to have effect.

Amendment of the Census Act (Northern Ireland) 1969

22. For section 5 of the Census Act (Northern Ireland) 1969 (c. 8) (statistics between one census and another) there shall be substituted—

- “5. The Registrar General shall—
- (a) collect and publish from time to time any available statistical information concerning the population of Northern Ireland in the interval between one census and another, and otherwise further the supply of, and provide for the better co-ordination of, such information; and
 - (b) make arrangements with public authorities (within the meaning of the Northern Ireland Act 1998) for the purpose of acquiring any materials or information for the purposes of paragraph (a).”.

Amendment of the Damages Act 1996

23. In section 2A of the Damages Act 1996 (c. 48), in subsection (6), after “section” there shall be inserted “and section 2”.

Repeals

24. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 3(4)

CONSEQUENTIAL AMENDMENTS

Companies Clauses Consolidation Act 1845 (c. 16)

1. In section 97 for “under seal” substitute “executed as a deed”.
2. In Schedule (B) for “As witness our hands and seals” substitute “Executed as a deed by us”.
3. In Schedule (E) for “hereunto set my hand and seal” substitute “executed this instrument as a deed”.

Lands Clauses Consolidation Act 1845 (c. 18)

4. In section 75 and section 77, in each case, for the words from “it shall be lawful” to “any two of them” substitute “then, if the promoters of the undertaking think fit, it shall be lawful for the promoters to execute a deed poll under their common seal if they are a corporation, or, if they are not a corporation, for the promoters or any two of them to execute a deed poll”.
5. In section 85 for “under the hands and seals of” substitute “executed by”.
6. In Schedule (A) and Schedule (B), in each case, for “hereunto set my hand and seal” substitute “executed this instrument as a deed”.

Commissioners Clauses Act 1847 (c. 16)

7. In section 56 for “under seal” substitute “executed as a deed” and for “under the hands and seals” substitute “executed as a deed by them”.
8. In Schedule (B) for “hereunto set our hands and seals” substitute “executed this instrument as a deed”.
9. In Schedule (C) for “hereunto set my hand and seal” substitute “executed this instrument as a deed”.

Cemeteries Clauses Act 1847 (c. 65)

10. In the Schedules, in the Form of Assignment of Right of Burial, for “Witness my hand and seal” substitute “Executed as a deed”.

Literary and Scientific Institutions Act 1854 (c. 112)

11. In section 13—
 - (a) for “hereunto set their hands and seals [*or seals only, as the case may be,*]” substitute “executed this instrument as a deed”; and
 - (b) for “Signed, sealed and delivered” substitute “Signed and delivered as a deed”.

Open Spaces Act 1906 (c. 25)

12. In section 2(3) for “under the hands and seals of” substitute “executed as a deed by”.

Pig Production Development Act (Northern Ireland) 1964 (c. 25)

13. In paragraph 5 of Part II of the Schedule, for “under seal” substitute “executed as a deed”.

Fisheries Act (Northern Ireland) 1966 (c. 17)

14. In paragraph 14 of Schedule 2 for “under seal” substitute “executed as a deed”.

Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24)

15. In section 13(1) for “subscribed his name and affixed his seal thereto” substitute “executed them as a deed”.

16. In section 28(1) in paragraph (a) for “in writing under seal” substitute “executed as a deed”, and in paragraph (d) for “under seal”, in the first two places where those words occur, substitute “executed as a deed”.

17. In Schedule 4, in form A for “Sealed with our seals” substitute “Executed by us as a deed” and for “Sealed and delivered” substitute “Signed and delivered as a deed”; and in form B for “sealed with my seal” substitute “executed by me as a deed”, for “sealed with our seals” substitute “executed by us as a deed” and for “Sealed and delivered” substitute “Signed and delivered as a deed”.

Powers of Attorney Act (Northern Ireland) 1971 (c. 33)

18. In section 1—
- (a) in subsection (1), for the words “signed and sealed by, or by direction and in the presence of,” substitute “executed as a deed by”;
 - (b) omit subsection (2).

Local Government Act (Northern Ireland) 1972 (c. 9)

19. In section 100(1) for “under seal” substitute “by deed”.

Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)

20. In paragraph 13 of Schedule 3 for “under seal” substitute “executed as a deed”.

Enterprise Ulster (Northern Ireland) Order 1973 (NI 16)

21. In paragraph 11 of Schedule 1 for “under seal” substitute “executed as a deed”.

Health and Safety at Work (Northern Ireland) Order 1978 (NI 9)

22. In paragraph 14 of Schedule 2 for “under seal” substitute “executed as a deed”.

Administration of Estates (Northern Ireland) Order 1979 (NI 14)

23. In Article 17(2)(a) for “under seal” substitute “executed as a deed”.

Housing (Northern Ireland) Order 1981 (NI 3)

24. In paragraph 8(2) of Schedule 1 for “under seal” substitute “executed as a deed”.

Probation Board (Northern Ireland) Order 1982 (NI 10)

25. In paragraph 11 of Schedule 1 for “under seal” substitute “executed as a deed”.

The General Consumer Council (Northern Ireland) Order 1984 (NI 12)

26. In paragraph 13(2) of Schedule 1 for “under seal” substitute “executed as a deed”.

Mental Health (Northern Ireland) Order 1986 (NI 4)

27. In paragraph 10 of Schedule 4 for “under seal” substitute “executed as a deed”.

Laganside Development (Northern Ireland) Order 1989 (NI 2)

28. In paragraph 12 of Schedule 1 for “under seal” substitute “executed as a deed”.

Limitation (Northern Ireland) Order 1989 (NI 11)

29. In Article 15—

- (a) in paragraph (a), after “an action upon” (where those words occur twice) insert “a deed or”; and
- (b) in paragraph (b) for “under seal” substitute “a deed or under seal”.

Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (NI 3)

30. In paragraph 8 of the Schedule for “under seal” substitute “executed as a deed”.

Tourism (Northern Ireland) Order 1992 (NI 3)

31. In paragraph 13 of Schedule 1 for “under seal” substitute “executed as a deed”.

Industrial Relations (Northern Ireland) Order 1992 (NI 5)

32. In paragraph 11 of Schedule 4 for “under seal” substitute “executed as a deed”.

Industrial Development Act (Northern Ireland) 2002 (c. 1)

33. In paragraph 15 of Schedule 1 for “under seal” substitute “executed as a deed”.

SCHEDULE 2

Article 24.

REPEALS

Short Title	Extent of repeal
Colonial Solicitors Act 1900 (c. 14).	The whole Act.

Short Title	Extent of repeal
Trading Stamps Act (Northern Ireland) 1965 (c. 6).	The whole Act.
Decimal Currency Act 1969 (c. 19).	In Schedule 2, paragraph 24.
Powers of Attorney Act (Northern Ireland) 1971 (c. 33).	In section 1, subsection (2). In section 7, in subsection (2), the words “and, in the case of a deed, by affixing his own seal”.
Supply of Goods (Implied Terms) Act 1973 (c. 13).	Section 16.
Consumer Credit Act 1974 (c. 39).	In Part II of Schedule 4, paragraphs 43 to 45.
Solicitors (Northern Ireland) Order 1976 (NI 12).	In Article 5, paragraph 5(5).
Unfair Contract Terms Act 1977 (c. 50).	Section 7(5).
Supply of Goods and Services Act 1982 (c. 29).	In section 1, subsection (2)(c). In section 6, subsection (2). In section 6, in subsection (3), the words “(subject to subsection (2) above)”. In section 18(1), the definitions of “redemption” and “trading stamps”.
Companies (Northern Ireland) Order 1986 (NI 6).	Article 262(3)(c) and the preceding “or”.
Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (NI 9).	In Part I of Schedule 1, the amendment to the Trading Stamps Act (Northern Ireland) 1965.
Consumer Protection Act 1987 (c. 43).	In section 46, in subsection (1), in paragraph (d), the words “(including trading stamps)”.
Insolvency (Northern Ireland) Order 1989 (NI 19).	In Schedule 2, in paragraph 8, the words from “and for that purpose” to the end.
Sale and Supply of Goods Act 1994 (c. 35).	In Schedule 2, paragraph 2.
Family Homes and Domestic Violence (Northern Ireland) Order 1998 (NI 6).	Article 19.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order deals with miscellaneous matters of law reform.

Part II makes provision with respect to deeds and their execution. It clarifies the law in relation to escrows and abolishes the rule in *Pigot's Case* and the rule in *Bain v. Fothergill*.

Part III amends the law relating to family homes and domestic violence.

Part IV abolishes a number of rules of common law relating to the property of married or engaged couples.

Part V makes provision for the repeal of the Colonial Solicitors Act 1900 and the Trading Stamps Act (Northern Ireland) 1965. It also amends the Census Act (Northern Ireland) 1969 and the Damages Act 1996.