

**CONSULTATION ON
DRAFT PRIMARY LEGISLATION**

**PROPOSAL FOR AN ORDER
IN COUNCIL**

**THE LAW REFORM
(MISCELLANEOUS PROVISIONS)
(NORTHERN IRELAND) ORDER 2004**

September 2004

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Consultation Document on Proposed Order in Council
The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2004

Introduction

This document is a consultation document setting out details of a proposal by the Office of Law Reform, Department of Finance and Personnel, for an Order in Council entitled “The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2004”. The proposed Order relates to Northern Ireland only.

The document is also available on the Department’s website at:

www.dfpni.gov.uk

and on the Office of Law Reform’s website at:

www.olrni.gov.uk

The Order deals with a range of different miscellaneous law reform matters ranging from a proposed change to the law regarding deeds and escrows, to amendments to existing domestic violence legislation, and various amendments and repeals of existing law.

Purpose

The purpose of this document is to outline the background to the proposed changes in order that interested parties can comment accordingly.

Responses

A 12 week period for submission of comments on the draft Order will extend from 30th September 2004 until Thursday 23rd December 2004. Respondents are asked to submit their views as early as possible during the period to allow as much time as possible for consideration.

Respondents should submit their comments by reference to the relevant Article in the draft Order. For example:

“Article 3(2) – I / We consider that.....”

Unless you indicate clearly in your response that you do not wish your views to be disclosed, copies of all responses to this consultation will be made available upon request.

Responses should be sent before the closing date to:

Mr Michael Foster
Assistant Director of Law Reform
Office of Law Reform
Lancashire House
5 Linenhall Street
BELFAST BT2 8AA

Responses can also be E-mailed to michael.foster@dfpni.gov.uk or faxed to 028 9054 2909.

Enquiries

The contact point for alternative formats of this document and any enquiries or comments generally about this consultation process is:

028 9054 2900

DRAFT LAW REFORM (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 2004

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The above Order is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution.
2. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the draft Order.

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 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 rectify 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 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 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.

CONSULTATION PROCESSES UNDERTAKEN

12. The LRAC consulted on the law relating to Deeds and Escrows by way of a discussion paper and then by the issue of its report. Similarly, its recommendation in relation to the rule in *Bain –v Fothergill* has been consulted on with positive responses received. The domestic violence provisions, as noted above, have been the subject of a review by the

Office of Law Reform with 1700 questionnaires sent out to relevant parties, and by the Inter-Departmental consultation that received 70 responses in 2003. A number of workshops and face to face meetings were also effected during the consultation process. The “three anomalies” have been consulted on as part of the Divorce Bill and had been debated and agreed in the Assembly prior to suspension. The Law Society for Northern Ireland has been consulted in relation to the repeal of the Colonial Solicitors Act 1900, NISRA has had input to the changes to the Census Act and there has been liaison with the Department for Constitutional Affairs and the Northern Ireland Court Service in relation to the amendment to the Damages Act 1996.

FINANCIAL EFFECTS OF THE ORDER

13. No exchequer, staffing implications or costs to the public have been identified.

HUMAN RIGHTS ISSUES

The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY IMPACT

14. The three anomalies have already been the subject of an equality impact assessment that accompanied the former draft Divorce Bill. In relation to the domestic violence provisions, the main section 75 group affected are same-sex cohabitants. Currently this group faces a disadvantage as they cannot apply for all the protections available under the 1998 Order. The proposed amendments will remedy this inequality. The other provisions in the Order have been screened as regards section 75 of the Northern Ireland Act 1998 and no differential impacts have been identified.

REGULATORY IMPACT

15. A regulatory impact assessment has been carried out in relation to the repeal of the Trading Stamps legislation. None of the other aspects of the Order are considered to have any significant effect on businesses.

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*.
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 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.

COMMENCEMENT

42. Parts II and III of the Order, together with the provisions relating to the Census Act (NI) 1969 and Trading Stamps Act (NI) 1965 will come into force on an appointed day laid down by order of the Department of Finance and Personnel. The other substantive parts of the Order will come into force one month after the Order is made at Privy Council.

**PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH
1(1) OF THE SCHEDULE TO THE NORTHERN IRELAND ACT 2000**

DRAFT STATUTORY INSTRUMENTS

2004 No. (N.I.)

NORTHERN IRELAND

The Law Reform (Miscellaneous Provisions)
(Northern Ireland) Order 2004

Made - - - - 2004

Coming into operation in accordance with Article 1(2) to (4)

ARRANGEMENT OF ORDER

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2. Interpretation

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FAMILY HOMES AND DOMESTIC VIOLENCE

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20. Repeal of the Trading Stamps Act (Northern Ireland) 1965
21. Amendment of legislation to make provision for trading stamps
22. Amendment of the Census Act (Northern Ireland) 1969
23. Amendment of the Damages Act 1996
24. Repeals

SCHEDULES:

- | | |
|------------|------------------------------------|
| Schedule 1 | Minor and consequential amendments |
| Schedule 2 | Repeals |

At the Court at Buckingham Palace, the ** day of ** 2004

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 2004.

(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) The following provisions come into operation on the expiration of one month from the day on which this Order is made—

- (a) Part IV;
- (b) Articles 19 and 23;
- (c) in Schedule 2 the entries relating to the Colonial Solicitors Act 1900 (c. 14) and the Solicitors (Northern Ireland) Order 1976 (NI 12).

(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.

PART I

(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) Subject to paragraph (3), 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 person executing it or by a person authorised to do so on his behalf.

(3) Nothing in paragraphs (1) and (2) affects—

(a) the execution of a deed by—

(i) a corporation aggregate;

(ii) a corporation sole; or

(iii) a company within the meaning of the Companies (Northern Ireland) Order 1986 (N.I. 6); or

(b) the validity or operation of a deed, whether executed before or after the coming into operation of this Article, in respects other than the manner of its execution; or

(c) a deed executed after the coming into operation of this Article, signed in accordance with paragraph (2)(b), and otherwise executed in accordance with the law governing the form or execution of deeds before the coming into operation of this Article.

(4) 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.

(5) The statutory provisions mentioned in Schedule 1 (which in consequence of this Article require amendments other than those made by paragraph (4), shall have effect with the amendments specified in that Schedule.

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

Execution of instruments by liquidator

4.—(1) Schedule 2 to the Insolvency (Northern Ireland) Order 1989 (NI 19) shall be amended as follows.

(2) 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.

(3) After that paragraph there shall be inserted—

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

Execution of instrument by donee of power of attorney

5.—(1) Section 7 of the Powers of Attorney Act (Northern Ireland) Act 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 2004.”.

(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 an estate in land or an interest in the proceeds of sale of land, purports to deliver an instrument as a deed

PART II on behalf of a party to the deed, 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, “purchaser” includes a chargee by way of legal mortgage.

(4) For the purposes of paragraph (2), an interest in the proceeds of sale of land held on trust for sale is, so long as the land remains unsold, an interest in land.

(5) 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) In paragraph (1), “person” includes a corporation sole.

(3) 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”.

PART III

(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. In Article 25 of the 1998 Order (offences)—

(a) after the words “any person who” there shall be inserted “without reasonable excuse”;

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

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

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

PART IV

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 Colonial Solicitors Act 1900

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

(2) Any admission, appointment, approval, notice, certificate, instrument, rule, regulation, direction, appeal or proceeding under or for the purposes of the Colonial Solicitors Act 1900 shall be treated as an admission, appointment, approval, notice, certificate, instrument, rule, regulation, direction, appeal or proceeding under or for the purposes of Article 5 of the Solicitors (Northern Ireland) Order 1976 (NI 12).

(3) Any register, roll or list kept under the Colonial Solicitors Act 1900 (c. 14) shall be deemed part of the roll kept under Article 8 of the Solicitors (Northern Ireland) Order 1976.

(4) Regulations made under Article 6 of the Solicitors (Northern Ireland) Order 1976 may, without prejudice to the generality of that Article, make provision in relation to the education and training of solicitors within the meaning of section 1 of the Colonial Solicitors Act 1900.

(5) 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”.

PART V

- (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, 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 any public authority (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

MINOR AND 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”.

SCH. 1

Open Spaces Act 1906 (c. 25)

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

Malone and Whiteabbey Training Schools Act (Northern Ireland) 1956 (c. 4)

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

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

14. In paragraph 5 of Part 2 of the Schedule, for “under seal” substitute “executed as a deed”.

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

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

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

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

17. In section 28(1) in paragraph (a) for “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”.

18. 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)

19. 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)

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

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

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

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

22. 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)

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

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

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

Housing (Northern Ireland) Order 1981 (NI 3)

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

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

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

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

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

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

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

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

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

Limitation (Northern Ireland) Order 1989 (NI 11)

30. In Article 15—

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

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

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

Tourism (Northern Ireland) Order 1992 (NI 3)

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

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

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

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

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

SCHEDULE 2

REPEALS

Short Title	Extent of repeal
Colonial Solicitors Act 1900 (c. 14).	The whole Act.
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 2 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, 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 1 of Schedule 1, the amendment to the Trading Stamps Act (Northern Ireland) 1965.

Short Title	Extent of repeal
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.

SCH. 2

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.