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 companyís 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 Pigotís 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.".