# 2007 No. 438

# MARRIAGE, ENGLAND AND WALES

# The Marriage Act 1949 (Remedial) Order 2007

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| *Made* - - - - | *15th February 2007* |
| *Coming into force* - - | *1st March 2007* |

It appears to the Lord Chancellor, following a finding of the European Court of Human Rights(**a**) after the coming into force of section 10 of the Human Rights Act 1998(**b**) in proceedings against the United Kingdom, that certain provisions of the Marriage Act 1949(**c**) are incompatible with an obligation of the United Kingdom arising from the Convention(**d**).

The Lord Chancellor considers that there are compelling reasons for proceeding by way of a remedial Order to make such amendments to the Marriage Act 1949 as he considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by a resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of Schedule 2 to that Act.

Accordingly the Lord Chancellor makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a) of Schedule 2 to, the Human Rights Act 1998:

**Citation, commencement, and application**

**1.**—(1) This Order may be cited as the Marriage Act 1949 (Remedial) Order 2007 and shall come into force on 1st March 2007.

(2) Nothing in this Order affects any marriage solemnized before the date on which it comes into force.

**Repeal of restriction on marriage between certain persons related by affinity**

**2.** In the Marriage Act 1949—

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(**a**) In the case of *B and L v UK* (Application No. 36536/02), judgment of 13th September 2005.
(**b**) 1998 c.42.
(**c**) 1949 c.76.
(**d**) See section 21(1) of the Human Rights Act 1998 for the meaning of "the Convention".

(a) in section 1, omit subsections (4) to (8)(**a**) (which restrict marriage between a person and parent of former spouse or person and former spouse of child); and

(b) in section 5A(**b**) (which exempts clergyman from obligation to solemnize marriage between certain people related by affinity), after "the Marriage (Prohibited Degrees of Relationship) Act 1986" insert "or the Marriage Act 1949 (Remedial) Order 2007".

**Consequential provision**

**3.** The following provisions are repealed—

(a) in the Marriage Act 1949—

   (i) section 16(1B)(**c**);

  (ii) section 27C(**d**); and

 (iii) Part 3 of Schedule 1(**e**);

(b) section 1(3) and (4) of the Marriage (Prohibited Degrees of Relationship) Act 1986(**f**); and

(c) paragraph 13(4) to (6) of Schedule 27 to the Civil Partnership Act 2004(**g**).

Signed by authority of the Lord Chancellor

*Harriet Harman*
Minister of State,
Department for Constitutional Affairs

Date 15th February 2007

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(**a**) Section 1(4) and (5) inserted by Marriage (Prohibited Degrees of Relationship) Act 1986, section 1(4), (8), Schedule 1, paragraph 2; amended by Civil Partnership Act 2004 section 261(1), Schedule 27, paragraph 13(1), (4), (5) from a date to be appointed. Section 1 (6) to (8) inserted by Gender Recognition Act 2004 (c.6) section 11, Schedule 4, Part 1, paragraphs 1 and 2 and repealed by Civil Partnership Act 2004 section 261(1),(4), Schedule 27 paragraph 13(1) and (6), Schedule 30. Repeals to subsection (6) and (7) commenced in part by S.I. 2005/3175 from 5th December 2005, otherwise from a date to be appointed.

(**b**) Section 5A inserted by Marriage (Prohibited Degrees of Relationship) Act 1986, section 3.

(**c**) Section 16(1B) inserted by Marriage (Prohibited Degrees of Relationship) Act 1986, section 1(6), Schedule 1, paragraph 4.

(**d**) Section 27C inserted by Marriage (Prohibited Degrees of Relationship) Act 1986, section 1(6), Schedule 1, paragraph 5.

(**e**) Part III of Schedule 1 inserted by Marriage (Prohibited Degrees of Relationship) Act 1986, section 1(6), Schedule 1, paragraph 8(b); substituted by Civil Partnership Act 2004 section 261(1), Schedule 27, paragraph 17 from a date to be appointed.

(**f**) 1986 c.16.

(**g**) 2004 c.33.

This Order amends section 1 of and Schedule 1 to the Marriage Act 1949 ("the 1949 Act") to remedy their incompatibility with a Convention Right.

In the case of *B and L v United Kingdom* (Application No.36536/02) the European Court of Human Rights found that there had been a violation of article 12 of the Convention in that the prohibition on marriages between a person and the parent of their former spouse and between a person and the former spouse of their child could not be supported as rational and logical.

In order to remedy this incompatibility the provisions of the 1949 Act forbidding the marriage of a person to the parent of his former spouse and the marriage of a person to the former spouse of his child are repealed by article 2(a) of this Order. Article 2(b) exempts a Church of England or Church in Wales clergyman from what would otherwise be his obligation to solemnize a marriage between those permitted to marry by article 2(a). Article 3 repeals certain provisions in consequence of article 2.

# STATUTORY INSTRUMENTS

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