

THE LAW REFORM (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 2006

S.I. 2006/1945 (N.I. 14)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (“the Order”) was made on 19th July 2006.
2. The 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 Order.

BACKGROUND AND POLICY OBJECTIVES

3. The Order deals with three issues: the defence of reasonable chastisement; the law relating to marriage; and a minor technical correction to the Civil Partnership Act 2004 (c.33).

THE DEFENCE OF REASONABLE CHASTISEMENT

4. In *A v UK* [1998] the European Court of Human Rights held that the UK had breached Article 3 of the European Convention on Human Rights (“the Convention”) by failing to provide a young boy with adequate protection from inhuman and degrading treatment in the form of beatings from his step-father. When the matter was before the domestic courts the step-father had relied on the defence of reasonable chastisement. Following the judgment the UK undertook to review the operation of the defence and introduce measures which would prevent a repeat of the violation found by the Court.

THE LAW RELATING TO MARRIAGE

5. The judgment of the European Court of Human Rights in *B and L v UK* [2005] was critical of the current law which prohibits a man from marrying his former daughter-in-law while his son and his son’s mother are still alive. The law was held to be in breach of the man’s right to marry under Article 12 of the Convention. The Government is committed to remedying this breach.

CONSULTATION

THE DEFENCE OF REASONABLE CHASTISEMENT

6. The restriction of the defence of reasonable chastisement was one of the options which were consulted on widely, following the judgment in *A v UK*. Whilst there was strong support for a complete ban and retaining the status quo, the Department has concluded that the restriction of the defence will offer additional protection to children and ensure the necessary compliance with the Convention.

THE LAW RELATING TO MARRIAGE

7. The judgment in *B and L v UK* has created an inescapable obligation to change the law so that it becomes Convention compliant. Therefore, the Department concluded that there was no need for formal public consultation on these provisions.

MAIN ELEMENTS OF THE ORDER

8. The Order has four main Articles. Article 2 largely follows section 58 of the Children Act 2004 (c.31) by restricting the defence of reasonable chastisement to a charge of common assault and precluding its use on more serious charges, such as wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons under sixteen. It also precludes the use of the defence in a claim for civil damages where the harm caused amounted to actual bodily harm.
9. Articles 3 to 5 consist mainly of a series of repeals of impugned provisions in existing legislation which prevent certain persons from marrying. They also repeal as yet uncommenced provisions of the Civil Partnership Act 2004 which are indirectly impugned by the European Court's judgment.

COMMENTARY ON ARTICLES

10. A commentary on the provisions follows.

Article 1: Title, interpretation and commencement

This Article sets out the title to the Order. It also specifies when the provisions come into effect.

Article 2: Physical punishment of children

Article 2 lists those offences which will no longer give rise to a defence of reasonable chastisement. The defence will, however, still be available on a charge of common assault under section 42 of the Offences Against The Person Act 1861 (c.100). It also precludes the use of the defence in a claim for civil damages where the harm caused amounted to actual bodily harm.

Article 3: Marriage between certain persons related by affinity not to be void

Article 3 repeals the provisions of Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (S.I. 1984/1984 (N.I. 14)) which offend against the judgment of the European Court of Human Rights in *B and L v UK*. It also removes other references to those provisions in Article 18 and makes consequential repeals of provisions of the Civil Partnership Act 2004 (c.33) which amend Article 18. A savings provision is included in Article 3(4) to ensure that the validity or otherwise of a marriage solemnised before the Order comes into force is not affected by the repeal of provisions of Article 18.

Article 4: Corresponding provision for civil partnership

Article 4 repeals paragraph 3 of Schedule 12 to the Civil Partnership Act 2004 (c.33). This provision contains prohibitions relating to the formation of civil partnerships, but was not commenced as the judgment in *B and L v UK* predated the commencement of that Act on 5th December 2005.

Article 5: Repeal of superseded provisions

Article 5 repeals other provisions amending Article 18 of the 1984 Order which have been superseded by subsequent legislation.

*This Explanatory Memorandum refers to the Law Reform
(Miscellaneous Provisions) (Northern Ireland) Order 2006 (N.I. 14)*

Article 6: Minor correction

Article 6 makes a minor correction to Schedule 16 to the Civil Partnership Act 2004 (c.33) to ensure that courts of summary jurisdiction have a full range of powers to vary orders for financial relief.

COMMENCEMENT

11. The Order will come into operation two months from the day on which it was made.

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