
STATUTORY INSTRUMENTS

1979 No. 1575

Administration of Estates (Northern Ireland) Order 1979

PART III

POWERS AND PROCEDURE OF COURTS

Powers of High Court preliminary or incidental to grants of probate or administration

Citation to prove will or renounce probate

13. The High Court may cite any person appointed executor by a will to prove or renounce probate of the will.

Caveat against grant

14.—(1) Subject to rules of court under section 55(1)(e) of the Judicature (Northern Ireland) Act 1978 (rules as to practice and procedure in non-contentious probate business)—

- (a) a caveat against a grant may be entered in the Probate and Matrimonial Office; and
- (b) no grant shall be made while a caveat so entered has effect.

(2) Such rules shall make provision about the warning of caveators and the circumstances in which caveats cease to have effect.

Production of instruments purporting to be testamentary

15. The High Court may, whether or not any legal proceeding is pending with respect to the administration of the estate of a deceased person, require (by order or otherwise) any person to lodge in the Probate and Matrimonial Office any paper or writing, being or purporting to be testamentary, which may be shown to be in his possession or under his control.

Examination of witnesses and production of documents

16. In any proceedings for purposes of this Order the High Court may—

- (a) cause any person it thinks fit to be examined upon interrogatories;
- (b) require the personal attendance of any such person to enable him to be examined on oath;
- (c) require the production by any such person of any document in his possession or under his control which the High Court considers is or may be relevant to the proceedings.

Power to require administrators to produce sureties

17.—(1) Where the High Court grants to a person (“the administrator”) administration of the estate of a deceased person, the High Court may—

- (a) as a condition of making the grant, and

- (b) subject to the following provisions of this Article, and subject to and in accordance with rules of court,

require one or more than one surety to guarantee that he will make good, within any limit imposed by the High Court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate may suffer in consequence of a breach by the administrator of his duties as such.

(2) A guarantee given in pursuance of a requirement under paragraph (1) shall enure for the benefit of every person interested in the administration of the deceased person's estate—

- (a) as if the guarantee were contained in a contract^[F1] executed as a deed] made by the surety or sureties with every such person, and
- (b) where there are two or more sureties, as if the sureties had bound themselves jointly and severally.
- (3) No action shall be brought on any such guarantee without the leave of the High Court.
- (4) Stamp duty shall not be chargeable on any such guarantee.
- (5) This Article does not apply—
- (a) where administration is granted—
- (i) to the Treasury Solicitor;
 - (ii) to the Crown Solicitor for Northern Ireland;
 - (iii) to a consular officer of a foreign state to which section 1 of the Consular Conventions Act 1949 applies; or
- (b) in such other cases as may be prescribed by rules of court.

F1 2005 NI 7

Procedure in relation to representation

Applications for grants and revocations

18.—(1) An application for a grant, or for the revocation of a grant, shall be made to the Probate and Matrimonial Office and, where the matter is branch office business, may be made to the appropriate branch office of that Office.

- (2) The application may be made either in person or through a solicitor.

Procedure in branch office

19.—(1) Where it appears to the circuit registrar who has supervision of a branch office of the Probate and Matrimonial Office that the making of a grant for which an application has been made to that office is branch office business, he may make the grant in the name of the High Court and under the seal of the branch office.

(2) The validity of a grant shall not be questioned on the ground that the making of it was not branch office business.

- (3) A circuit registrar shall not make a grant—
- (a) in a contentious matter, until the contention is disposed of; or
 - (b) in any case in which a doubt or question such as is mentioned in paragraph (4) arises, except in accordance with a direction under that paragraph.
- (4) Where—

(a) it appears doubtful to a circuit registrar whether a grant should be made, or
(b) any question arises in relation to a grant, or an application for a grant,
the circuit registrar shall submit the matter for the directions of the High Court, and the High Court may either—

- (i) direct the circuit registrar to proceed with the matter in accordance with any instructions of the Court, or
- (ii) forbid any further proceedings by the circuit registrar in relation to the matter, leaving the party applying for the grant to apply either to the High Court otherwise than through the branch office or, if the case is within the jurisdiction of the county court, to that court.

(5) The foregoing provisions of this Article shall have effect with the necessary modifications in relation to the revocation of a grant as they have effect in relation to the making of a grant.

Capital transfer tax accounts

20.—^[F2](1) The High Court shall not make any grant, or reseal any grant made outside the United Kingdom, except—

- (a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
- (b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either—
 - (i) that the inheritance tax payable on the delivery of the account has been paid; or
 - (ii) that no such tax is so payable.]

(2) Arrangements may be made between the^[F3]Lord Chief Justice] and the Commissioners of Inland Revenue providing for the purposes of^[F2] paragraph (1)(b)] that, in such cases as may be specified in the arrangements, the receipt or certification of an account may be dispensed with or that some other document may be substituted for the account required by Part III of the Finance Act 1975 .

^[F4](2A) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (2)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (3) This Article has effect only in relation to the estates of persons dying after 12th March 1975.

F2 2004 c. 12

F3 Words in art. 20(2) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 44(2); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 12(a)

F4 [Art. 20\(2A\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 44(3); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 12(a)

Other powers of courts

Continuance of legal proceedings after revocation of temporary administration

21. If, while any legal proceedings are pending in any court by or against an administrator to whom temporary administration has been granted, that administration is revoked, that court may

order that the proceedings be continued by or against the new personal representative in like manner as if the proceedings had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

Power of High Court to order sale of land where there is a Crown interest

22.—(1) Where in any proceeding in the High Court it appears to the Court that Her Majesty is entitled in right of the Crown to any estate in land derived from the estate of a deceased person, the Court may, on the application or with the consent of the Treasury Solicitor or a person nominated by the Treasury Solicitor, order that estate in land or the land itself to be sold.

(2) On a sale in pursuance of an order under paragraph (1)—

- (a) section 47 of the Trustee Act (Northern Ireland) 1958 (power of court to make vesting order consequential on order for sale) shall apply; and
- (b) such portion of the net proceeds of sale (that is to say, the price received for the land less the expenses of sale) as represents Her Majesty's estate—
 - (i) shall be paid to the Treasury Solicitor and dealt with in accordance with section 4 of the Treasury Solicitor Act 1876, or
 - (ii) where the order was made on the application or with the consent of a person nominated by the Treasury Solicitor, shall be paid to that person and dealt with by him in accordance with any directions in writing given to him by the Treasury Solicitor.

Documents and records

Keeping and inspection of wills and other documents

23.—(1) Subject to paragraph (2), all original wills of which representation has been granted in the Probate and Matrimonial Office and such other documents as the Lord Chancellor may direct shall be kept in that Office or at such other place as the^[F5]Lord Chief Justice] may direct.

(2) Where representation of a will has been granted in a branch office of the Probate and Matrimonial Office, the original will shall be kept in that branch office or at such other place as the^[F6]Lord Chief Justice] may direct.

(3) The wills and documents mentioned in paragraph (1) and the wills mentioned in paragraph (2) may be inspected in accordance with rules of court.

(4) Paragraphs (1) and (2) shall have effect subject to the provisions of the Public Records Act (Northern Ireland) 1923 (which provides for the establishment of a Public Record Office of Northern Ireland and for the removal to that Office of certain public records, including court records, appertaining to Northern Ireland).

^[F7](5) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

F5 Words in art. 23(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 45(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F6 Words in art. 23(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 45(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F7 Art. 23(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 45(4); S.I. 2006/1014, art. 2(a), Sch. 1 para 12(a)

Records of grants

24.—(1) Records shall be kept of all grants issued or resealed by the Probate and Matrimonial Office.

(2) The records shall be in such form and contain such particulars as the^[F8]Lord Chief Justice may direct.

^[F9](3) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

F8 Words in art. 24(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 46(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F9 Art. 24(3) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 46(3); S.I. 2006/1014, art. 2(a), Sch. 1

Official copies of wills and certificates of grants

25.—(1) An official copy of a will, or a certificate of a grant, may be obtained from the Probate and Matrimonial Office.

(2) Without prejudice to the provisions of section 4(2)(b) of the Administration of Estates Act 1971 (evidence of Northern Ireland grants in England and Wales and in Scotland), an official copy of a will shall be sufficient evidence of the will, and a certificate of a grant shall be sufficient evidence of the grant.

Copies of wills, etc., to be delivered to Inland Revenue Commissioners

26.—(1) Subject to any arrangements which may from time to time be made between the^[F10]Lord Chief Justice] and the Commissioners of Inland Revenue, the Probate and Matrimonial Office shall, within such period after a grant as the^[F10]Lord Chief Justice] may direct, deliver to the Commissioners or their proper officer the following documents—

- (a) in the case of a probate or of administration with a will annexed, a copy of the will (if required) and, where the deceased died before 13th March 1975, the Inland Revenue affidavit;
- (b) in the case of administration without a will annexed of the estate of a person dying before 13th March 1975, the Inland Revenue affidavit;
- (c) in every case of administration where the Commissioners so require, a copy or extract of the letters of administration;
- (d) in every case, such certificate or note of the grant as the Commissioners may require.

^[F11](1A) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(2) In this Article “Inland Revenue affidavit” has the same meaning as in Part I of the Finance Act 1894 .

F10 Words in art. 26(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 47(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F11 Art. 26(1A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 47(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

Depositories of wills of living persons

27.—^[F12(1)] Safe and convenient depositories for the custody of wills of living persons shall be provided and managed in accordance with ^[F13]directions given by the Lord Chief Justice with the concurrence of the Lord Chancellor].

^[F14(2)] The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

F12 Art. 27 renumbered as art. 27(1) (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(2)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F13 Words in art. 27(1) substituted (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(3)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

F14 Art. 27(2) inserted (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(4)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

General provisions as to practice and procedure

Practice and procedure

28. The practice of the High Court regarding grants shall, except where otherwise provided by this Order or by rules of court, be regulated, so far as the circumstances of the case admit, by the practice heretofore in force.

Changes to legislation:

There are currently no known outstanding effects for the Administration of Estates (Northern Ireland) Order 1979, PART III.