

SCHEDULES

SCHEDULE 14

Section 195

WILLS, ADMINISTRATION OF ESTATES AND FAMILY PROVISION: NORTHERN IRELAND

PART 1

WILLS

- 1 Amend the Wills and Administration Proceedings (Northern Ireland) Order 1994 (S.I. 1994/1899 (N.I. 13)) as follows.
- 2 In Article 4(1) (will made by person under 18 invalid unless he is or has been married), for “married” substitute “a spouse or civil partner”.
- 3 In Article 8(1) and (3) (avoidance of gifts to attesting witnesses and their spouses), after “spouse” (in each place) insert “or civil partner”.
- 4 In Article 9 (witnessing by creditor), after “spouse” insert “or civil partner”.
- 5 After Article 13 insert—

“Effect of civil partnership

- 13A(1) Subject to paragraphs (2) to (6), a will is revoked by the formation of a civil partnership between the testator and another person.
- (2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator’s personal representatives.
 - (3) If it appears from a will—
 - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
 - (b) that he intended that the will should not be revoked by the formation of the civil partnership,the will is not revoked by its formation.
 - (4) Paragraphs (5) and (6) apply if it appears from a will—
 - (a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and
 - (b) that he intended that a gift in the will should not be revoked by the formation of the civil partnership.
 - (5) The gift takes effect despite the formation of the civil partnership.

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- (6) Any other gift in the will also takes effect, unless it appears from the will that the testator intended the gift to be revoked by the formation of the civil partnership.

Effect of dissolution or annulment of civil partnership

13B (1) This Article applies if, after a testator has made a will—

- (a) a court of civil jurisdiction in Northern Ireland dissolves his civil partnership or makes a nullity order in respect of it, or
 - (b) his civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in Northern Ireland under Chapter 3 of Part 5 of the Civil Partnership Act 2004.
- (2) Subject to any contrary intention appearing from the will—
- (a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former civil partner, take effect as if the former civil partner had died on the date on which the civil partnership is dissolved or annulled, and
 - (b) except as provided in paragraph (3), any property comprising or included in a gift to the former civil partner passes as if the former civil partner had died on that date.
- (3) Where property comprising or included in a gift to the former civil partner is a share of residue, the will takes effect as if the gift of the residue were to the other person or persons entitled to it (and, if more than one, in such shares as to preserve the ratio of their former shares), to the exclusion of the former civil partner.
- (4) Paragraph (2)(b) does not affect any right of the former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 (S.I. 1979/ 924 (N.I. 8)).”

6 In Article 14 (revocation), in paragraph (1)(a), after “Article 12 (marriage)” insert “or Article 13A (civil partnership)”.

7 (1) Amend Article 23 (presumption as to effect of gift to spouses) as follows.

(2) After “spouse” (in each place) insert “or civil partner”.

(3) In the heading to Article 23, after “spouses” insert “or civil partners”.

8 In Article 27(3) (construction and effect of references to failure of issue), after “married” insert “or formed a civil partnership”.

PART 2

ADMINISTRATION OF ESTATES AND FAMILY PROVISION

Administration of Estates Act (Northern Ireland) 1955 (c. 24 (N.I.))

9 (1) Amend section 6A (spouse dying within 28 days of intestate) as follows.

(2) After “spouse” (in each place) insert “or civil partner”.

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- (3) In the sidenote to section 6A, after “Spouse” insert “or civil partner”.
- 10 (1) Amend section 7 (rights of surviving spouse) as follows.
- (2) After “spouse” (in each place) insert “or civil partner”.
- (3) In subsection (7), after “husband” insert “, or of section 180 of the Civil Partnership Act 2004”.
- (4) In the sidenote to section 7, after “spouse” insert “or civil partner”.
- 11 In section 8 (rights of issue), after “spouse” insert “or civil partner”.
- 12 In section 9 (rights of parents), after “spouse” insert “or civil partner”.
- 13 In section 10 (rights of brothers and sisters and their issue), after “spouse” (in both places) insert “or civil partner”.
- 14 In section 11 (rights of next-of-kin), in subsection (1) after “neither spouse” insert “nor civil partner”.
- 15 In section 38 (power to appoint trustees of infant’s property), in subsection (5) after “marries” insert “, or forms a civil partnership,”.

Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 (S.I. 1979/924 (N.I. 8))

- 16 (1) Amend Article 2 (interpretation) as follows.
- (2) In paragraph (2), after the definition of “child” insert—
- ““civil partnership proceedings county court” has the same meaning as in the Civil Partnership Act 2004;”.
- (3) In that paragraph, in the definition of “former wife” and “former husband”, for ““former wife” or “former husband”” substitute ““former spouse””.
- (4) In that paragraph, before that definition insert—
- ““former civil partner” means a person whose civil partnership with the deceased was during the lifetime of the deceased either—
- (a) dissolved or annulled by an order made under the law of any part of the United Kingdom or the Channel Islands or the Isle of Man, or
- (b) dissolved or annulled in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man by a dissolution or annulment which is entitled to be recognised as valid by the law of Northern Ireland;”.
- (5) In that paragraph, in the definition of “reasonable financial provision”, after paragraph (a) insert—
- “(aa) in the case of an application made by virtue of Article 3(1)(a) by the civil partner of the deceased (except where, at the date of death, a separation order under Chapter 2 of Part 4 of the Civil Partnership Act 2004 was in force in relation to the civil partnership and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a civil

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partner to receive, whether or not that provision is required for his or her maintenance;”.

(6) In paragraph (5)—

- (a) before “wife” insert “spouse,” and
- (b) in sub-paragraph (b), for “entered into a later marriage” substitute “formed a subsequent marriage or civil partnership”.

(7) For paragraph (6) substitute—

“(5A) For the purposes of this Order any reference to a civil partner shall be treated as including a reference to a person who in good faith formed a void civil partnership with the deceased unless either—

- (a) the civil partnership between the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of Northern Ireland, or
- (b) that person has during the lifetime of the deceased formed a subsequent civil partnership or marriage.

(6) Any reference in this Order to the formation of, or to a person who has formed, a subsequent marriage or civil partnership includes (as the case may be) a reference to the formation of, or to a person who has formed, a marriage or civil partnership which is by law void or voidable.

(6A) The formation of a marriage or civil partnership shall be treated for the purposes of this Order as the formation of a subsequent marriage or civil partnership, in relation to either of the spouses or civil partners, notwithstanding that the previous marriage or civil partnership of that spouse or civil partner was void or voidable.”

17 (1) Amend Article 3 (application for financial provision from deceased person’s estate) as follows.

(2) For paragraph (1)(a) and (b) (application may be made by spouse or by former spouse who has not remarried) substitute—

- “(a) the spouse or civil partner of the deceased;
- (b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;”.

(3) In paragraph (1)(ba) (application may be made by person living as husband or wife of the deceased), after “paragraph (1A)” insert “or (1B)”.

(4) In paragraph (1)(d) (application may be made by child of the family), after “marriage” (in each place) insert “or civil partnership”.

(5) After paragraph (1A) insert—

“(1B) This paragraph applies to a person if for the whole of the period of two years ending immediately before the date when the deceased died the person was living—

- (a) in the same household as the deceased, and
- (b) as the civil partner of the deceased.”

18 In Article 4(1) (orders which may be made on an application), after sub-paragraph (f) insert—

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- “(g) an order varying any settlement made—
- (i) during the subsistence of a civil partnership formed by the deceased, or
 - (ii) in anticipation of the formation of a civil partnership by the deceased,
- on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.”
- 19 (1) Amend Article 5(2) (application by spouse or former spouse: matters to which court is to have regard) as follows.
- (2) For the words from the beginning to “or (b)” substitute—
- “This paragraph applies, without prejudice to the generality of sub-paragraph (g) of paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1)(a) or (b).”
- (3) The words from “the court shall, in addition” to the end of sub-paragraph (b) shall become a second sentence of the paragraph and, in sub-paragraph (a) of the sentence so formed, after “duration of the marriage” insert “or civil partnership”.
- (4) The words from “in the case of an application by the wife or husband” to the end shall become a third sentence of the paragraph, omitting the immediately preceding “and”.
- (5) At the end insert the following sentence—
- “In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 4 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order.”
- 20 In Article 5(2A) (application by person living as husband or wife of deceased: matters to which court is to have regard), in sub-paragraph (a), after “wife” insert “or civil partner”.
- 21 (1) In Article 8(3) and (10) (variation etc. of orders which cease on occurrence of specified event other than remarriage of former spouse), for “(other than the remarriage of a former wife or former husband)” substitute “(other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)”.
- (2) In Article 8(9), for “or (f)” substitute “(f) or (g)”.
- 22 After Article 16 insert—

“Provision as to cases where no financial relief was granted in proceedings for the dissolution etc. of a civil partnership

16A(1) Paragraph (2) applies where—

- (a) a dissolution order, nullity order, separation order or presumption of death order has been made under Chapter 2 of Part 4 of the Civil Partnership Act 2004 in relation to a civil partnership,

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- (b) one of the civil partners dies within twelve months from the date on which the order is made, and
- (c) either—
 - (i) an application for a financial provision order under Part 1 of Schedule 15 to that Act or a property adjustment order under Part 2 of that Schedule has not been made by the other civil partner, or
 - (ii) such an application has been made but the proceedings on the application have not been determined at the time of the death of the deceased.

(2) If an application for an order under Article 4 is made by the surviving civil partner, the court shall, notwithstanding anything in Article 3 or 5, have power, if it thinks it just to do so, to treat the surviving civil partner as if the order mentioned in paragraph (1)(a) had not been made.

(3) This Article shall not apply in relation to a separation order unless at the date of the death of the deceased the separation order was in force and the separation was continuing.”

23 After Article 17 insert—

“Restriction imposed in proceedings for the dissolution etc. of a civil partnership on application under this Order

17ZA(1) On making a dissolution order, nullity order, separation order or presumption of death order under Chapter 2 of Part 4 of the Civil Partnership Act 2004, or at any time after making such an order, the High Court or a civil partnership proceedings county court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) In the case of a dissolution order, nullity order or presumption of death order (“the main order”) an order may be made under paragraph (1) before (as well as after) the main order is made final, but if made before the main order is made final it shall not take effect unless the main order is made final.

(3) Where an order under paragraph (1) made in connection with a dissolution order, nullity order or presumption of death order has come into force with respect to a civil partner, then, on the death of the other civil partner, the court shall not entertain any application for an order under Article 4 made by the surviving civil partner.

(4) Where an order under paragraph (1) made in connection with a separation order has come into force with respect to a civil partner, then, if the other civil partner dies while the separation order is in force and the separation is continuing, the court shall not entertain any application for an order under Article 4 made by the surviving civil partner.”

24 After Article 17A insert—

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“Restriction imposed in proceedings under Schedule 17 to the Civil Partnership Act 2004 on application under this Order

17B(1) On making an order under paragraph 9 of Schedule 17 to the Civil Partnership Act 2004 (orders for financial provision, property adjustment and pension-sharing following overseas dissolution etc. of civil partnership) the High Court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) Where an order under paragraph (1) has been made with respect to one of the civil partners in a case where a civil partnership has been dissolved or annulled, then, on the death of the other civil partner, the court shall not entertain an application under Article 4 made by the surviving civil partner.

(3) Where an order under paragraph (1) has been made with respect to one of the civil partners in a case where civil partners have been legally separated, then, if the other civil partner dies while the legal separation is in force, the court shall not entertain an application under Article 4 made by the surviving civil partner.”

25 In Article 18(1) (power to vary secured periodical payments orders)—

(a) after “Matrimonial Causes (Northern Ireland) Order 1978” insert “or Schedule 15 to the Civil Partnership Act 2004”, and

(b) after “that Order” insert “or Part 10 of that Schedule”.

26 In Article 19(4) (meaning of “maintenance agreement”)—

(a) for “entered into a marriage” substitute “formed a marriage or civil partnership”,

(b) after “of the parties to that marriage” insert “or of the civil partners”, and

(c) after “marriage” (in the third and fourth places) insert “or civil partnership”.

27 After Article 20 insert—

“Availability of court’s powers under this Order in applications under paragraphs 53 and 66 of Schedule 15 to the Civil Partnership Act 2004

20A(1) Where—

(a) a person against whom a secured periodical payments order was made under Schedule 15 to the Civil Partnership Act 2004 has died and an application is made under paragraph 53 of that Schedule for the variation or discharge of that order or for the revival of the operation of any suspended provision of the order, or

(b) a party to a maintenance agreement within the meaning of Part 12 of that Schedule has died, the agreement being one which provides for the continuation of payments under the agreement after the death of one of the parties, and an application is made under paragraph 66 of that Schedule for the alteration of the agreement under paragraph 62 of that Schedule,

the court to which the application is made under paragraph 53 or 66 shall have power to direct that the application shall be deemed to have been accompanied by an application for an order under Article 4.

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- (2) Where the court to which an application is made under paragraph 53 or 66 gives a direction under paragraph (1), that court shall have power—
- (a) to make any order which the court would have had power to make under the provisions of this Order if the application under paragraph 53 or 66 had been made jointly with an application for an order under Article 4; and
 - (b) to give such consequential directions as may be necessary for enabling it to exercise any of the powers available to it under this Order in the case of an application for an order under Article 4.
- (3) Where an order made under Article 17ZA(1) is in force with respect to a civil partner, a direction shall not be given under paragraph (1) with respect to any application made under paragraph 53 or 66 by that civil partner on the death of the other civil partner.”
- 28 (1) Amend Article 21 (effect, duration and form of orders) as follows.
- (2) In paragraph (2)(a), for “former husband or former wife” substitute “former spouse or former civil partner”.
 - (3) In paragraph (2), after sub-paragraph (b) insert “or
 - (c) an applicant who was the civil partner of the deceased in a case where, at the date of death, a separation order under Chapter 2 of Part 4 of the Civil Partnership Act 2004 was in force in relation to their civil partnership and the separation was continuing.”.
 - (4) In that paragraph, in the words after sub-paragraph (b), for “on the remarriage of the applicant” onwards substitute “on the formation by the applicant of a subsequent marriage or civil partnership, except in relation to any arrears due under the order on the date of the formation of the subsequent marriage or civil partnership.”