
STATUTORY INSTRUMENTS

1979 No. 1575

Administration of Estates (Northern Ireland) Order 1979

PART IV

EXECUTORS AND ADMINISTRATORS

Executors

Cesser of right of executor to prove

29.—(1) Subject to Article 30 where a person appointed executor by a will—

- (a) survives the testator but dies without having taken out probate, or
- (b) is cited to take out probate and does not appear to the citation, or
- (c) renounces probate,

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.

(2) Where a person is appointed by the will of a person dying after the commencement of this Article to be both executor and trustee and his rights in respect of the executorship wholly cease under paragraph (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee, but nothing in this Article shall prevent his subsequent appointment as trustee.

Withdrawal of renunciation

30.—(1) Notwithstanding anything to the contrary in Article 29, an executor who has renounced probate (whether before or after the commencement of this Article) may be permitted by the court to withdraw the renunciation and prove the will.

(2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will,—

- (a) the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person who has previously proved the will or to whom administration has been granted;
- (b) a memorandum of the subsequent probate shall be endorsed on the original grant; and
- (c) his rights as a trustee which ceased by virtue of Article 29, shall notwithstanding anything to the contrary in that Article, revive, except so far as the court otherwise orders.

Right of proving executors to exercise powers

31.—(1) When probate is granted to one or some of two or more persons appointed executors by a will, whether or not power is reserved to the other or others to prove, all the powers which

are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons appointed executors had concurred therein.

(2) This Article applies whether the testator died before or after the commencement of this Article.

Executor of executor represents original testator

32.—(1) An executor of a sole or last surviving executor of a testator shall be the executor of that testator, but—

- (a) this paragraph shall not apply to a person who does not prove the will of his testator, and
- (b) in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, this paragraph shall cease to apply when probate is granted to that surviving executor.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of representation is broken by—

- (a) an intestacy; or
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will; or
- (d) a grant of administration in pursuance of Article 5;

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

Administrators

Effect of grant of administration

33. Every person to whom administration is granted in respect of the estate of a person dying after the end of the year 1955 shall, subject to any limitations contained in the grant, have the same rights and liabilities and be accountable in the same manner as if he were the executor of the deceased; and, where the High Court grants administration with a will annexed, that will shall be performed and observed by the administrator in the same manner as if probate of it had been granted to him as executor.

Executor not to act while administration is in force

34. Where administration has been granted to any person, no other person shall be entitled to institute any legal proceedings or otherwise act as executor of the deceased in relation to any estate comprised in or affected by the grant, unless the grant has been revoked or has expired.

Provisions applying to both executors and administrators, and to persons dealing with them

Duty of personal representative

- 35.**—(1) The personal representative of a deceased person shall be under a duty—
- (a) to collect and get in the estate of the deceased and administer it according to law;
 - (b) when required to do so by the High Court, to exhibit on oath in that court a full inventory of the estate and when so required render an account of the administration of the estate to that court;
 - (c) when required to do so by the High Court, to deliver up the grant of representation to that court.
- (2) In paragraph (1) “personal representative”, as regards the duty to exhibit an inventory of the estate of a deceased person or to render an account of its administration, includes an executor in his own wrong.

Debtor who becomes creditor's personal representative to account for debt to estate

- 36.**—(1) Subject to paragraph (2), where a debtor becomes either the executor, by virtue of the chain of representation, or the administrator of his deceased creditor—
- (a) his debt shall thereupon be extinguished; but
 - (b) he shall be accountable for the amount of the debt as part of the creditor's estate in any case where he would be so accountable if he had been appointed as an executor by the creditor's will.
- (2) Paragraph (1) does not apply where the debtor's authority to act as executor or administrator is limited to part only of the creditor's estate which does not include the debt; and a debtor whose debt is extinguished by virtue of sub-paragraph (a) shall not be accountable for its amount by virtue of sub-paragraph (b) of that paragraph in any case where the period of limitation under^[F1] the Limitation (Northern Ireland) Order 1989] in respect of the debt had expired before the debtor became the creditor's executor or administrator.
- (3) In this Article “debt” includes any liability, and “debtor” and “creditor” shall be construed accordingly.

F1 1989 NI 11

Payment of debts by personal representative

- 37.**—(1) A personal representative shall not pay the debt of a creditor (including himself) of the estate of any degree in preference to the debt of any other creditor of the same degree.
- (2) Nevertheless a personal representative—
- (a) other than one mentioned in sub-paragraph (b) who, in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate; or
 - (b) to whom administration had been granted solely by reason of his being a creditor and who in good faith and at such a time pays the debt of another person who is a creditor of the estate;
- shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

(3) This Article has effect only in relation to the estates of persons dying after the end of the year 1971.

Protection of persons acting on invalid or revoked probate or administration

38.—(1) Every person making or permitting to be made any payment or disposition in good faith under any grant shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the grant.

(2) When any grant is revoked, all payments and dispositions made in good faith to a personal representative under it before the revocation are a valid discharge to the person making them; and the personal representative who acted under the revoked grant may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom a grant is afterwards made might have properly made.

(3) This Article has effect only in relation to the estates of persons dying after the end of the year 1971.

Misapplication of assets

Liability of person wrongfully obtaining or retaining estate of deceased

39.—(1) If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives, administers or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased person, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting—

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death, or, where Article 37 would have applied to him had he been a personal representative, so much of that debt as he might properly have paid to himself in accordance with that Article; and
- (b) any payment made by him which might properly be made by a personal representative.

(2) In this Article, “full valuable consideration” means such valuable consideration as amounts or approximates to the value of that for which it is given.

(3) This Article does not prejudice section 33 of the Administration of Estates Act (Northern Ireland) 1955 (protection of bona fide purchaser for value)^{F2} or the Limitation (Northern Ireland) Order 1989].

F2 1994 NI 13

Liability of estate of personal representative

40.—(1) Where a person (“the defaulter”) as personal representative of a deceased person wastes or converts to his own use any part of the estate of the deceased person, and dies, the defaulter's personal representative shall to the extent of the available assets of the defaulter to be liable and chargeable in respect of that waste or conversion in the same manner as the defaulter would have been if living.

(2) In paragraph (1) “personal representative” where it first occurs includes an executor in his own wrong.

Changes to legislation:

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