
STATUTORY INSTRUMENTS

1979 No. 924

Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979

Powers of court to order financial provision from deceased's estate

Application for financial provision from deceased's estate

3.—(1) Where after the commencement of this Order a person dies domiciled in Northern Ireland and is survived by any of the following persons:—

- [^{F1}(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;]
- [^{F2}(ba) any person (not being a person included in sub-paragraph (a) or (b)) to whom paragraph (1A)[^{F1} or (1B)] applies;]
- (c) a child of the deceased;
- (d) any person (not being a child of the deceased) who, in the case of any marriage[^{F1} or civil partnership] to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage[^{F1} or civil partnership];
- (e) any person (not being a person included in sub-paragraphs (a) to (d)) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

that person may apply to the court for an order under Article 4 on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.

[^{F2}(1A) This paragraph applies to a person if the deceased died after the coming into operation of the Succession (Northern Ireland) Order 1996 and, during 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 husband or wife of the deceased.]

[^{F1}(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.]

(2) For the purposes of paragraph (1)(e), a person shall be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

F2 1996 NI 26

Powers of court to make orders

4.—(1) Subject to the provisions of this Order, where an application is made for an order under this Article, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

- (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
- (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;
- (c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;
- (d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;
- (e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;
- (f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.
- [^{F3}(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.]

(2) An order under paragraph (1)(a) providing for the making out of the net estate of the deceased of periodical payments may provide for—

- (a) payments of such amount as may be specified in the order,
- (b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified,
- (c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside or appropriated for the making out of the income thereof of payments under this Article,

or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3) Where an order under paragraph (1)(a) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this Article may contain such consequential and supplementary provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this paragraph—

- (a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;
- (b) vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;
- (c) confer on the trustees of any property which is the subject of an order under this Article such powers as appear to the court to be necessary or expedient.

(5) Where—

- (a) the deceased is survived by a wife or husband (“the surviving spouse”) and is also survived by children who are ^{F4}—

- (i) issue of the deceased and the surviving spouse,
- (ii) children adopted by the deceased and the surviving spouse jointly,
- (iii) issue of the deceased and adopted by the surviving spouse, or
- (iv) adopted by the deceased and the issue of the surviving spouse]

; and

- (b) the surviving spouse becomes entitled under the deceased's will or the law relating to intestacy, or a combination of his will and that law, to the net estate of the deceased or to an interest in the estate which amounts to reasonable financial provision for both the surviving spouse and the children,

the court shall not make an order under this Article on the application of any of the children who is a minor.

^{F5}(6) Where—

- (a) the deceased is survived by a civil partner (“the surviving civil partner”) and is also survived by children who are—

- (i) issue of the deceased and the surviving civil partner,
- (ii) children adopted by the deceased and the surviving civil partner jointly,
- (iii) issue of the deceased and adopted by the surviving civil partner, or
- (iv) adopted by the deceased and the issue of the surviving civil partner; and

- (b) the surviving civil partner becomes entitled under the deceased's will or the law relating to intestacy, or a combination of the deceased's will and that law, to the net estate of the deceased or to an interest in the estate which amounts to a reasonable financial provision for both the surviving civil partner and the children,

the court shall not make an order under this Article on the application of any of the children who is a minor.]

F3 2004 c. 33

F4 Words in art. 4(5)(a) substituted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [137\(2\)](#) (with regs. 6-9, 137(4))

Changes to legislation: There are currently no known outstanding effects for the *Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Powers of court to order financial provision from deceased's estate.* (See end of Document for details)

F5 Art. 4(6) inserted (13.1.2020) by *The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019* (S.I. 2019/1514), regs. 1(2), **137(3)** (with regs. 6-9, 137(4))

Matters to which court is to have regard in exercising powers under Article 4

5.—(1) Where an application is made for an order under Article 4, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that Article, have regard to the following matters:—

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under Article 4 has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under Article 4 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased and the likely effect on any business undertaking included in the estate of an order resulting in the division of property;
- (f) any physical or mental disability of any applicant for an order under Article 4 or any beneficiary or the estate of the deceased;
- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

[^{F6}(2) 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).]

[^{F6}The court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to—

- (a) the age of the applicant and the duration of the marriage or civil partnership];
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

^{F6} . . .

[^{F6} In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a decree of judicial separation 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 marriage, instead of being terminated by death, had been terminated by a decree of divorce.]

[^{F6}>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.]

[^{F7}(2A) 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)(ba), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to—

- (a) the age of the applicant and the length of the period during which the applicant lived as the husband or wife[^{F6} or civil partner] of the deceased and in the same household as the deceased; and
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.]

(3) Without prejudice to the generality of sub-paragraph (g) or paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1)(c) or (d), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of Article 3(1)(d) the court shall also have regard—

- (a) to whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child;
- (c) to the liability of any other person to maintain the applicant.

(4) 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)(e), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant and to the length of time for which the deceased discharged that responsibility.

(5) In considering the matters to which the court is required to have regard under this Article, the court shall take into account the facts as known to the court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this Article the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this Article the court shall take into account his financial obligations and responsibilities.

F6	2004 c. 33
F7	1996 NI 26

Time-limit for applications

6. An application for an order under Article 4 shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.

Interim orders

7.—(1) Where on an application for an order under Article 4 it appears to the court—

- (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made under that Article; and

- (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;

the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the court thinks reasonable; and the court may order that, subject to the provisions of this Order, such payments are to be made until such date as the court may specify, not being later than the date on which the court either makes an order under Article 4 or decides not to exercise its powers under that Article.

(2) Paragraphs (2), (3) and (4) of Article 4 shall apply in relation to an order under this Article as they apply in relation to an order under that Article.

(3) In determining what order, if any, should be made under this Article the court shall, so far as the urgency of the case admits, have regard to the same matters as those to which the court is required to have regard under Article 5.

(4) An order under Article 4 may provide that any sum paid to the applicant by virtue of this Article shall be treated to such an extent and in such manner as may be provided by that order as having been paid on account of any payment provided for by that order.

Variation, discharge, etc., of orders for periodical payments

8.—(1) Subject to the provisions of this Order, where the court has made an order under Article 4(1)(a) (in this Article referred to as “the original order”) for the making of periodical payments to any person (in this Article referred to as “the original recipient”), the court, on an application under this Article, shall have power by order to vary or discharge the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) Without prejudice to the generality of paragraph (1), an order made on an application for the variation of the original order may—

- (a) provide for the making out of any relevant property of such periodical payments and for such term as may be specified in the order to any person who has applied, or would but for Article 6 be entitled to apply, for an order under Article 4 (whether or not, in the case of any application, an order was made in favour of the applicant);
- (b) provide for the payment out of any relevant property of a lump sum of such amount as may be so specified to the original recipient or to any such person as is mentioned in subparagraph (a);
- (c) provide for the transfer of the relevant property, or such part thereof as may be so specified, to the original recipient or to any such person as is so mentioned.

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order^{F8} (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, then, if, before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period, an application is made for an order under this Article, the court shall have power to make any order which it would have had power to make if the application had been made before that date (whether in favour of the original recipient or any such person as is mentioned in paragraph (2)(a) and whether having effect from that date or from such later date as the court may specify).

(4) Any reference in this Article to the original order shall include a reference to an order made under this Article and any reference in this Article to the original recipient shall include a reference to any person to whom periodical payments are required to be made by virtue of an order under this Article.

(5) An application under this Article may be made by any of the following persons, that is to say—

- (a) any person who by virtue of Article 3(1) has applied, or would but for Article 6 be entitled to apply, for an order under Article 4,
 - (b) the personal representative of the deceased,
 - (c) the trustees of any relevant property, and
 - (d) any beneficiary of the estate of the deceased.
- (6) An order under this Article may only affect—
- (a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for an order under this Order, or
 - (b) in the case of an application under paragraph (3) in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be,

and any such property as is mentioned in sub-paragraph (a) or (b) is in paragraphs (2) and (5) referred to as “relevant property”.

(7) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

(8) Where the court makes an order under this Article, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order.

(9) No such order as is mentioned in Article 4(1)(d), (e)^{F8} (f) or (g)], 11, 12 or 13 shall be made on an application under this Article.

(10) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order^{F8} (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the expiration of that period or the occurrence of that event.

F8 [2004 c. 33](#)

Payment of lump sums by instalments

9.—(1) An order under Article 4(1)(b) or 8(2)(b) for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(2) Where an order is made by virtue of paragraph (1), the court shall have power, on an application made by the person to whom the lump sum is payable, by the personal representative of the deceased or by the trustees of the property out of which the lump sum is payable, to vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

Changes to legislation:

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Powers of court to order financial provision from deceased's estate.