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STATUTORY INSTRUMENTS

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**1979 No. 924**

**Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979**

Miscellaneous and supplementary provisions

**Effect, duration and form of orders**

**21.**—(1) Where an order is made under Article 4 then, for all purposes, the will or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.

(2) Any order made under Article 4 or 7 in favour of—

- (a) an applicant who was the<sup>[F1]</sup> former spouse or former civil partner] of the deceased, or
- (b) an applicant who was the husband or wife of the deceased in a case where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing,<sup>[F1]</sup> or]

<sup>[F1]</sup>(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,]

shall, in so far as it provides for the making of periodical payments, cease to have effect<sup>[F1]</sup> 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.]

(3) A copy of every order made under this Order shall be sent to the Probate and Matrimonial Office of the<sup>[F2]</sup>Court of Judicature] for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

**F1** 2004 c. 33

**F2** Words in art. 21(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, [art. 2\(d\)](#)

**Provisions as to personal representatives, etc.**

**22.**—(1) The provisions of this Order shall not render the personal representative of a deceased person liable for having distributed any part of the estate of the deceased, 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, on the ground that he ought to have taken into account the possibility—

- (a) that the court might permit the making of an application for an order under Article 4 after the end of that period, or
- (b) that, where an order has been made under Article 4 the court might exercise in relation thereto the powers conferred on it by Article 8,

but this paragraph shall not prejudice any power to recover, by reason of the making of an order under this Order, any part of the estate so distributed.

(2) Where the personal representative of a deceased person pays any sum directed by an order under Article 7 to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Order, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under Article 4, until the determination of the proceedings on that application.

(4) For the purposes of this Order, where—

(a) an assent or transfer by a personal representative relating to a registered land, or

(b) an application by a surviving joint tenant for his registration as owner of registered land, is presented to the Registrar of Titles for registration, the Registrar shall, notwithstanding any provision of this Order, be entitled to assume that, as the case may be,—

(i) the personal representative is acting correctly and within his powers, or

(ii) the surviving joint tenant is entitled to be registered as owner of the land.

*Art. 23 rep. by 1997 NI 21*

### **Jurisdiction of county courts**

**24.—**(1) A county court shall have jurisdiction to hear and determine any application for an order under Article 4 (including any application for permission to apply for such an order and any application made, in the proceedings on an application for an order under Article 4, for an order under any other provision of this Order) where it is shown to the satisfaction of the court that, at the date of the death of the deceased, the property included in his net estate for the purposes of this Order by virtue of paragraph (a) of the definition thereof in Article 2(2) did not exceed<sup>F3</sup> £30,000 in value.

(2) Where a county court makes an order under Article 4, the court shall have all the jurisdiction of the High Court for the purpose of any further proceedings in relation thereto under Article 8.

(3) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred by paragraph (1) or (2) or with the dismissal of any application instituted by him under the provisions of this Order shall be entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts<sup>F4</sup> (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly].

**F3** SR 1992/372

**F4** 1980 NI 3

### **Determination of date on which representation was first taken out**

25. In considering for the purposes of this Order when representation with respect to the estate of a deceased person was first taken out, a grant limited to part of the estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

### **Effect of this Order on rights of Crown**

26. Section 16(1) of the Administration of Estates Act (Northern Ireland) 1955 (passing of intestate's estate, in certain circumstances, to Crown as bona vacantia) shall have effect subject to the provisions of this Order.

*Art. 27 amends art. 38 of 1978 NI 15*

### **Repeals, savings and transitional provisions**

*Para. (1), with Schedule, effects repeals*

(2) The repeal of those statutory provisions shall not affect their operation in relation to any application made thereunder (whether before or after the commencement of this Order) with reference to the death of any person who died before the commencement of this Order.

(3) Nothing in any repeal made by this Order shall affect any order made or direction given under any statutory provision repealed by this Order, and, subject to the provisions of this Order every such order or direction (other than an order made under section 3A of the Inheritance (Family Provision) Act (Northern Ireland) 1960 ) shall, if it is in force at the commencement of this Order or is made by virtue of paragraph (2), continue in force as if it had been made under Article 4(1)( a), and for the purposes of Article 8(7) the court in exercising its powers under that Article in relation to an order continued in force by this paragraph shall be required to have regard to any change in any of the circumstances to which the court would have been required to have regard when making that order if the order had been made with reference to the death of any person who died after the commencement of this Order.

(4) In the application of this Order to a former wife or former husband whose marriage with the deceased was dissolved or annulled, or to a wife or husband who was subject to a decree of judicial separation, under the Matrimonial Causes Act (Northern Ireland) 1939 before the commencement of Part III of the Matrimonial Causes (Northern Ireland) Order 1978

- (a) the references in Article 16(1)( a) to a financial provision order under Article 25 and a property adjustment order under Article 26 of that Order shall include references to an order under section 19(1) or (2) (or under either of those subsections as applied by section 19(7)), or under section 19(4), 20 or 21, of that Act of 1939;
- (b) the references in Article 18 to a secured periodical payments order under that Order shall include references to an order entitling the former wife or former husband to an annual sum of money from the deceased secured under an order made under subsection (1), or subsections (1) and (7), of section 19 of that Act of 1939 and an order in favour of a child under section 22(3) of that Act, and the reference in Article 18(1) to Article 33 of that Order shall include a reference to subsection (6) of the said section 19 as extended by section 5 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 ;
- (c) the references in Article 20 to a secured periodical payments order under that Order shall include references to an order made under subsection (1), or subsections (1) and (7), of section 19 or under section 22(3) of that Act of 1939.

**Changes to legislation:**

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Miscellaneous and supplementary provisions.