
STATUTORY INSTRUMENTS

1994 No. 1899

**The Wills and Administration Proceedings
(Northern Ireland) Order 1994**

**PART I
INTRODUCTORY**

Title and commencement

1.—(1) This Order may be cited as the Wills and Administration Proceedings (Northern Ireland) Order 1994.

(2) This Order comes into operation on such day or days as the Head of the Department of Finance and Personnel may by order appoint.

(3) If different days are appointed for the coming into operation of different provisions of this Order, any reference in a provision to the commencement of the Order is a reference to the commencement of that provision.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽¹⁾ applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“gift” means a devise or bequest or the exercise of a general power of appointment;

“personal representatives” means the executors or executor, original or by representation, or the administrators or administrator for the time being of a deceased person;

“property” includes any estate in land, any chattels, any thing in action, and any rights which are treated commercially as property and also includes any interest in property;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“witness”, in relation to a will, means a witness who attests the testator’s signature or acknowledgment of his signature and signs the will in the presence of the testator, or a witness who, having signed the will before the testator, acknowledges his signature in the presence of the testator.

(3) In this Order, any reference to a person’s “estate” is a reference to all property to which he is beneficially entitled for an estate or interest not ceasing on his death.

PART II

WILLS

Scope of, and power to make, will

Power to dispose of estate by will

3. Subject to this Part, a person may dispose of all his estate by a will.

Minority

4.—(1) No will made by a person under the age of 18 years is valid, unless he is or has been married.

(2) No will made before 1st January 1970 by a person under the age of 21 years is valid.

(3) No will made before the commencement of this Order by a person who, at the date of the will, had not attained the age of 18 years is valid, even though he then was or had been married.

Execution of will

Formalities for execution

5.—(1) No will is valid unless it is in writing and is executed in accordance with the following requirements, that is to say,—

- (a) it is signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears from the will or is shown that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness, in the presence of the testator (but not necessarily in the presence of any other witness), either—
 - (i) attests the testator's signature or the testator's acknowledgment of his signature and signs the will; or
 - (ii) acknowledges his signature.

(2) No form of attestation or acknowledgment is necessary.

Testamentary execution of power

6.—(1) No appointment made by will, in exercise of any power, is valid unless the will is executed in accordance with Article 5.

(2) Paragraph (1) applies notwithstanding anything to the contrary in the instrument creating the power.

(3) A will executed in accordance with Article 5 is, so far as respects the execution thereof, a valid execution of a power of appointment by will, notwithstanding that the instrument creating the power expressly requires that a will made in exercise of such power should be executed with some additional or other form of execution or formality.

Incompetency of witness

7. If a witness to a will is at the time of its execution or becomes at any time afterwards incompetent as a witness to prove its execution, the will is not invalid on that account.

Gift to witness

8.—(1) Subject to paragraph (3), if a witness to a will is a person to whom, or to whose spouse, any property is given by the will (whether by way of gift or by way of exercise of a special power of appointment, but other than by way of a charge or direction for the payment of debts), the gift or appointment is void so far as concerns that witness or his spouse or any person claiming under the witness or spouse.

(2) Notwithstanding that property is given by will as mentioned in paragraph (1), the witness is competent as a witness to prove—

- (a) the execution of the will;
- (b) the validity or invalidity of the will.

(3) Witnessing by a person to whom, or to whose spouse, property is given as mentioned in paragraph (1) is to be disregarded if the will is duly executed without his signature and without that of any other such person.

Witnessing by creditor

9. Where a will charges any property with a debt, any creditor whose debt is so charged, or the spouse of any such creditor, is not incompetent, on account only of the charge,—

- (a) to act as a witness to the will; or
- (b) as a witness to prove—
 - (i) the execution of the will; or
 - (ii) the validity or invalidity of the will.

Witnessing by executor

10. An executor of a will is not incompetent, on account only of his being an executor,—

- (a) to act as a witness to the will; or
- (b) as a witness to prove—
 - (i) the execution of the will; or
 - (ii) the validity or invalidity of the will.

Alteration of will after execution

11. No obliteration, interlineation or other alteration made in a will, after its execution, is valid or has any effect except so far as the words or effect of the will before the alteration are not apparent, unless the alteration, or a memorandum referring to the alteration and written on the will, is executed in the manner in which a will is required to be executed.

Effect of marriage, divorce, etc.

Effect of marriage

12.—(1) Subject to paragraphs (2) to (4), a will is revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment takes effect notwithstanding the testator's subsequent marriage unless the property so appointed would in default of appointment pass to his personal representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will is not revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a gift in the will should not be revoked by his marriage to that person—

- (a) that gift takes effect notwithstanding the marriage; and
- (b) any other gift in the will takes effect also, unless it appears from the will that the testator intended the gift to be revoked by the marriage.

Effect of dissolution or annulment of marriage

13.—(1) Where, after a testator has made a will, his marriage is dissolved or annulled—

- (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 spouse, take effect as if the former spouse had died on the date on which the marriage is dissolved or annulled, and
- (b) except as provided in paragraph (2), any property comprising or included in a gift to the former spouse passes as if the former spouse had died on that date.

(2) Where property comprising or included in a gift to the former spouse is a share of residue, the will takes effect as if the gift of the residue were to the other person or persons entitled thereto (and, if more than one, in such shares as to preserve the ratio of their former shares), to the exclusion of the former spouse.

(3) Paragraphs (1) and (2) are subject to any contrary intention appearing from the will.

(4) Paragraph (1)(b) is without prejudice to any rights of the former spouse to apply for financial provision under the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979(2).

(5) In this Article, “dissolved or annulled” means—

- (a) dissolved by a decree of divorce or annulled by a decree of nullity of marriage granted under the law of any part of the United Kingdom or the Channel Islands or under the law of 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 divorce or annulment which is entitled to be recognised as valid by the law of Northern Ireland;

and “the former spouse” means the person whose marriage with the testator was so dissolved or annulled.

Revocation, revival and confirmation

Revocation

14.—(1) No will, or any part thereof, is revocable otherwise than—

- (a) in accordance with Article 12 (marriage); or
- (b) by another will; or

(c) by some writing, declaring an intention to revoke the will, executed in the manner in which a will is required to be executed; or

(d) by the testator, or some person in his presence and by his direction, burning, tearing or otherwise destroying the will, with the intention of revoking it.

(2) No will is revoked by any presumption of an intention on the ground of an alteration in circumstances.

Revival of revoked will

15.—(1) No will, or any part thereof, which has been revoked is revived otherwise than by—

(a) re-execution of the revoked will; or

(b) a codicil showing an intention to revive the revoked will.

(2) Where any will which has been, first, partly revoked, and later wholly revoked, is revived, the revival does not extend to the part revoked before the revocation of the whole will unless an intention to revive that part is shown.

Effect of re-execution or codicil

16. Subject to any statutory provision—

(a) every will which is re-executed is made at the time of the re-execution;

(b) every will which is confirmed or revived by a codicil is made at the time of the execution of the codicil.

Gifts

Will speaks from death

17.—(1) Every will is to be construed, with reference to the property referred to in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the will.

(2) No conveyance or other act, made or done subsequently to the execution of a will, of or relating to any property referred to in the will, prevents the operation of the will with respect to that property to the extent that the testator has power to dispose of that property.

(3) The reference in paragraph (2) to an act does not include an act which revokes the will.

Words of limitation unnecessary

18.—(1) A devise of land passes the fee simple absolute in possession or other the whole estate that the testator had power to dispose of by will.

(2) A devise creating an estate of any kind in land passes the largest estate of that kind which the testator had power to create in the land.

(3) This Article applies whether the devisee takes beneficially or on trust and is subject to any contrary intention which appears from the will.

Residuary dispositions to carry property comprised in lapsed and void gifts

19. Unless a contrary intention appears from the will, if a gift (other than a residuary gift) in a will fails or is void by reason of the death of the intended beneficiary in the lifetime of the testator, by

reason of being contrary to law, or otherwise, any property comprised or intended to be comprised in that gift is included in the residuary gift (if any) contained in the will.

Implied execution of general power of appointment

20. A general or residuary gift of property of any description (however expressed) is to be construed to include any property, to which the description extends, which the testator has power to appoint in any manner he thinks proper and operates as an execution of the power, unless a contrary intention appears from the will.

Contingent and future gifts carry the intermediate income

21. A contingent or future specific gift of property, a contingent residuary devise of land and a specific or residuary devise of land to trustees upon trust for persons whose interests are contingent or executory all carry the intermediate income of that property or land from the death of the testator, except so far as that income, or any part of it, is otherwise expressly disposed of.

Gifts to children etc. who predecease testator

22.—(1) Where—

- (a) a will contains a gift to a child or remoter descendant of the testator; and
- (b) the intended beneficiary dies before the testator, leaving issue; and
- (c) issue of the intended beneficiary are living at the testator's death,

then, unless a contrary intention appears from the will, the gift takes effect as a gift to the issue living at the testator's death.

(2) Where—

- (a) a will contains a gift to a class of persons consisting of children or remoter descendants of the testator; and
- (b) a member of the class dies before the testator, leaving issue; and
- (c) issue of that member are living at the testator's death,

then, unless a contrary intention appears from the will, the gift takes effect as if the class included the issue of its deceased member living at the testator's death.

(3) Issue take under this Article through all degrees, according to their stock, in equal shares if more than one, any gift or share which their parent would have taken and so that no issue take whose parent is living at the testator's death and so capable of taking.

(4) For the purposes of this Article—

- (a) the illegitimacy of any person is to be disregarded; and
- (b) a person conceived before the testator's death and born living thereafter is to be taken to have been living at the testator's death.

(5) This Article applies to a devise of an estate tail with the substitution for references to issue of references to issue who would be inheritable under the entail.

Presumption as to effect of gifts to spouses

23. Except where a contrary intention is shown, it is to be presumed that if, by his will, a testator makes a gift of property to his spouse in terms which in themselves would give an absolute interest to the spouse, but by the same will purports to give his issue an interest in the same property, the gift to the spouse is absolute notwithstanding the purported gift to the issue.

Property subject to an option

24. The exercise after a testator's death of an option to purchase property contained in or comprising his estate does not adeem a gift of the property or, in the case of land, effect a conversion with effect from any time other than that at which the option is exercised.

Interpretation of wills

Extrinsic evidence

25.—(1) This Article applies to a will—

- (a) in so far as any part of it is meaningless;
- (b) in so far as the language used in any part of it is ambiguous on the face of it;
- (c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) In so far as this Article applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.

Construction of certain expressions

26.—(1) Unless a contrary intention appears from the will, in a will—

- (a) "month" means calendar month;
- (b) "person" includes a corporation;
- (c) words in the singular include the plural, and words in the plural include the singular;
- (d) words importing the masculine gender include the feminine, and words importing the feminine gender include the masculine;
- (e) "land" includes—
 - (i) buildings and other structures;
 - (ii) land covered by water;
 - (iii) any estate in land;
 - (iv) any beneficial interest, of which the testator could dispose by will, in capital money;
 - (v) if the testator dies owning no other property passing under a gift of land, any beneficial interest, of which the testator could dispose by will, in proceeds of sale under a trust for sale of land;
- (f) "realty" or any cognate expression includes—
 - (i) any beneficial interest, of which the testator could dispose by will, in capital money arising from a legal or equitable fee simple;
 - (ii) if the testator dies owning no other property passing under a gift of realty, any beneficial interest, of which the testator could dispose by will, in proceeds of sale under a trust for sale of a legal or equitable fee simple.

(2) In this Article "capital money" means capital money under the Settled Land Acts 1882 to 1890.

Construction and effect of references to failure of issue

27.—(1) Where by a will a person is entitled to any property subject to a condition precedent or subsequent (whether or not giving rise to an executory limitation) importing a default or failure of

the issue of any person, whether within or at any specified time or not, in his lifetime, at the time of his death or thereafter (including an indefinite failure of issue), the provisions of this Article apply to that condition.

(2) Unless a contrary intention appears from the will, the words of the condition shall be construed to import a default or failure of the issue of the said person only in the lifetime of that person.

(3) Where the condition gives rise to an executory limitation over, a right of entry or re-entry or any right equivalent thereto, a possibility of reverter or a possibility of a resulting trust on default or failure of any of the said person's issue, whether or not—

(a) the construction is governed by paragraph (2); and

(b) the default or failure is to be within any specified period of time,

then, if and as soon as there is living any issue, who has attained the age of 18 or married, to whose default or failure the condition relates, a default or failure ceases to be possible and the limitation over, right or possibility, as the case may be, ceases to exist.

(4) This Article does not apply to an estate tail.

Operative meaning to be preferred

28. If the purport of a gift admits of more than one interpretation, then, in case of doubt, the interpretation according to which the gift will be operative is to be preferred.

Rectification

Rectification of wills

29.—(1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence—

(a) of a clerical error; or

(b) of a failure to understand his instructions,

it may order that the will shall be rectified so as to carry out his intentions.

(2) An application for an order under this Article 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.

(3) The provisions of this Article do not render the personal representatives 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 they ought to have taken into account the possibility that the court might permit the making of an application for an order under this Article after the end of that period; but this paragraph does not prejudice any power to recover, by reason of the making of an order under this Article, any part of the estate so distributed.

(4) In considering for the purposes of this Article when representation with respect to the estate of a deceased person was first taken out, a grant limited to settled land or to trust property is to be left out of account, and a grant limited to real estate or to personal estate is to 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.

Personal representatives

Substitute executors: uncertainty about order of deaths

30. Where a will contains a provision for a substitute executor operative if an executor designated in the will—

- (a) dies before the testator, or
- (b) dies at the same time as the testator,

and the executor so designated dies in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides is deemed to have occurred.

PART III

ADMINISTRATION OF ESTATES AND TRUSTS

Limitation of actions

Executors de son tort

31. In Article 39 of the Administration of Estates (Northern Ireland) Order 1979⁽³⁾ (liability of person wrongfully obtaining or retaining estate of deceased), at the end of paragraph (3) (saving), there shall be inserted the words “or the Limitation (Northern Ireland) Order 1989”.

Powers of High Court in proceedings relating to estates of deceased persons and trusts

Power to make judgments binding on persons who are not parties

32.—(1) This Article applies to actions in the High Court relating to the estates of deceased persons or to trusts and falling within any description specified in rules of court.

(2) Rules of court may make provision for enabling any judgment given in an action to which this Article applies to be made binding on persons who—

- (a) are or may be affected by the judgment and would not otherwise be bound by it; but
- (b) have in accordance with the rules been given notice of the action and of such matters connected with it as the rules may require.

Power to authorise action to be taken in reliance on counsel’s opinion

33.—(1) Where—

- (a) any question of construction has arisen out of the terms of a will or a trust; and
- (b) an opinion in writing given by a barrister-at-law of at least ten years' standing has been obtained on that question by the personal representatives or trustees under the will or trust,

the High Court may, on the application of the personal representatives or trustees and without hearing argument, make an order authorising those persons to take such steps in reliance on the opinion as are specified in the order.

(3) 1979 NI 14

(2) The High Court shall not make an order under paragraph (1) if it appears to the court that a dispute exists which would make it inappropriate for the court to make the order without hearing argument.

Powers on compromise of probate action

34.—(1) Where on a compromise of a probate action in the High Court—

- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
- (b) the court is satisfied that consent to the making of the pronouncement or, as the case may be, each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,

the court may without more pronounce accordingly.

(2) In this Article—

“probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business; and

“relevant beneficiary”, in relation to a pronouncement relating to any will or wills of a deceased person, means—

- (a) a person who under any such will is beneficially interested in the deceased’s estate, and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy (or partial intestacy), or to prevent it from so devolving, a person who under the law relating to intestacy is beneficially interested in the estate.

Power to appoint substitute for, or to remove, personal representative

35.—(1) Where an application relating to the estate of a deceased person is made to the High Court under this paragraph by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—

- (a) appoint a person (in this Article called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or
- (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.

(2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—

- (a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and
- (b) in any other case the appointment shall constitute that person administrator of the deceased’s estate as from the date of the appointment.

(3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.

(4) In this Article “beneficiary”, in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.

PART IV GENERAL

Transitional provisions and savings

36. The foregoing provisions of this Order have effect subject to the transitional and saving provisions in Schedule 1.

Amendments

37. The consequential amendments set out in Schedule 2 have effect.

Repeals

38. The statutory provisions set out in Schedule 3 are hereby repealed to the extent specified in the third column of that Schedule.

N. H. Nicholls
Clerk of the Privy Council