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STATUTORY INSTRUMENTS

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**1994 No. 1899**

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

**PART II**

**WILLS**

*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.

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: The Wills and Administration Proceedings (Northern Ireland) Order 1994, Cross Heading: Gifts is up to date with all changes known to be in force on or before 28 February 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### **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<sup>[F1]</sup> or civil partners]**

**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<sup>[F1]</sup> or civil partner] in terms which in themselves would give an absolute interest to the spouse<sup>[F1]</sup> or civil partner], but by the same will purports to give his issue an interest in the same property, the gift to the spouse<sup>[F1]</sup> or civil partner] is absolute notwithstanding the purported gift to the issue.

**F1** 2004 c.33

### **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.

**Status:**

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