



# Administration of Estates Act (Northern Ireland) 1955

## 1955 CHAPTER 24

An Act to make provision with respect to the devolution and distribution of the estates of deceased persons and to amend the law with respect to the representation of deceased persons, the administration of their estates and related matters. [13th December 1955]

### PART I

#### ASSIMILATION OF REAL AND PERSONAL ESTATE FOR PURPOSES OF DEVOLUTION ON DEATH AND OF DESCENT ON INTESTACY

#### **1 Realty to devolve and descend as personalty.**

- (1) Real estate to which a deceased person was entitled for an estate or interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his personal representatives from time to time as if it were personal estate vesting in them, and shall on intestacy be distributed in accordance with Part II as if it were the personal estate of an intestate who died domiciled in Northern Ireland.
- (2) Personal representatives shall be the representatives of a deceased person in regard to his real estate as well as in regard to his personal estate, and probate and letters of administration may be granted either separately in respect of real estate and in respect of personal estate, or in respect of real estate together with personal estate and may be granted in respect of real estate although there is no personal estate, or in respect of personal estate although there is no real estate so, however, that where the estate of the deceased person is known to be insolvent, the grant shall not be severed except as regards a trust estate.
- (3) Without prejudice to the succeeding provisions of this section all existing rules, modes and canons of descent and of devolution by special occupancy are hereby abolished except in so far as they may apply to the descent of an entailed estate or interest.

*Status: Point in time view as at 01/08/2008.*

*Changes to legislation: There are currently no known outstanding effects for the*  
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- (4) Dower and tenancy by the curtesy are hereby abolished.
- (5) Escheat to the Crown and escheat to a mesne lord for want of heirs are hereby abolished.
- (6) This section shall apply to any real estate over which a person exercises by will a general power of appointment, as if it were real estate vested in him.

## **2 Further assimilation of law respecting real and personal estates of deceased persons.**

- (1) All enactments (including this Act) and rules of law relating to—
  - (a) the effect of probate or letters of administration as respects personal estate;
  - (b) the dealing with personal estate before probate or letters of administration;
  - (c) the powers, rights, duties, and liabilities of personal representatives in respect of personal estate;
  - (d) the payment of costs of administration; and
  - (e) all other matters with respect to the administration of personal estate;
 shall, so far as the same are applicable, extend and apply to real estate as if it were personal estate; and subsequent provisions of this section shall not prejudice the generality of this sub-section.
- (2) All jurisdiction of any court with respect to the appointment of administrators or otherwise with respect to the grant of probate or letters of administration as respects personal estate shall extend over, and be exercisable in relation to, real estate as if it were personal estate and the rights, as respects citations to see proceedings, of persons interested or claiming to be interested in the real estate of a deceased person shall be the same as those of persons interested or claiming to be interested in the personal estate of that deceased person.
- (3) A grant of probate or letters of administration shall, unless containing an express limitation to the contrary, have effect as well over the real as over the personal estate and the personal representatives of a deceased person shall hold his real estate as trustees for the persons by law entitled thereto.

*Subs. (4) rep. by 1958 c. 10 (NI)*

- (5) In the administration of the assets of a deceased person, his real estate shall be administered, subject to and in accordance with the provisions of Part IV, in the same manner and with the same incidents as if it were personal estate.

## **3<sup>F1</sup> Vesting of estate before grant of administration.**

All the estate, real as well as personal, of an intestate shall, until administration is granted in respect thereof, vest in the Probate Judge in the same manner and to the same extent as the personal estate of an intestate would, apart from this Act, have vested in such Judge.

**F1** mod. 1994 c. 36

*Status: Point in time view as at 01/08/2008.*

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#### **4 Abolition of term “real representative” and construction of references to estates of deceased persons.**

- (1) The term “real representative” shall cease to be used and the term “representatives” shall, unless the contrary intention appears, mean personal representatives.
- (2) References in the subsequent provisions of this Act and in any subsequent enactment to the estate of a deceased person shall, unless the contrary intention appears, include references to both the real and personal estate of that deceased person.

#### **5 Construction of references to heirs.**

- (1) The word “heir” or “heirs” used as a word of limitation in any enactment, deed or instrument passed or executed either before or after the commencement of this Act, shall have the same effect as if this Act had not passed.
- (2) The word “heir” or “heirs” used as a word of purchase in any enactment, deed or instrument passed or executed after the commencement of this Act, shall bear the same meaning as if this Act had not passed.
- (3) The word “heir” or “heirs” used as a word of purchase in any enactment, deed or instrument passed or executed after the commencement of this Act shall, unless the contrary intention appears, be construed to mean the person or persons, other than a creditor, who would be beneficially entitled under Part II to the estate of the ancestor if the ancestor had died intestate.
- (4) Subject as aforesaid, references in this Act and in any enactment, deed or instrument passed or executed either before or after the commencement of this Act to the heirs of any person, shall be construed as including references to his personal representatives.

## **PART II**<sup>F2</sup>

### DISTRIBUTION ON INTESTACY

**F2** 1977 NI 17

#### **6 Rules for the distribution on intestacy.**

All estate to which a deceased person was entitled for an estate or interest not ceasing on his death and as to which he dies intestate after the commencement of this Act shall, after payment of all debts, duties and expenses properly payable thereout, be distributed in accordance with this Part.

#### **[<sup>F3</sup>6A Spouse<sup>F4</sup> or civil partner] dying within 28 days of intestate.**

Where—

- (a) the intestate dies leaving a spouse<sup>F4</sup> or civil partner], but
- (b) the spouse<sup>F4</sup> or civil partner] dies before the end of the period of 28 days beginning on (and including) the day on which the intestate died,

this Part shall have effect as respects the intestate as if the spouse<sup>F4</sup> or civil partner] had not survived the intestate.]

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**F3** 1996 NI 26

**F4** 2004 c.33

## 7 **Rights of surviving spouse<sup>F5</sup> or civil partner].**

- (1) The surviving spouse<sup>F5</sup> or civil partner] of the intestate shall take the personal chattels.
  - (2) If an intestate dies leaving a spouse<sup>F5</sup> or civil partner] and issue the surviving spouse<sup>F5</sup> or civil partner] shall, in addition to the personal chattels, take—
    - (a) where the net value of the remaining estate does not exceed<sup>F6</sup>£250,000], the whole of the remaining estate;
    - (b) <sup>F7</sup> where the net value of the remaining estate exceeds<sup>F6</sup>£250,000], the sum of<sup>F6</sup>£250,000], free of all duties, charges and costs, and shall have a charge upon the remaining estate for that sum with interest thereon at the rate of four<sup>F8</sup> pounds per centum per annum [<sup>F9</sup> or at such other rate as the head of the Department of Finance may specify by an order made subject to affirmative resolution] from the date of the death of the intestate until the date of payment thereof, together with—
      - (i) where only one child of the intestate also survives, one-half of any residue left of the remaining estate after providing for that sum and the interest thereon;
      - (ii) where more than one child of the intestate also survives, one-third of any residue left of the remaining estate after providing for that sum and the interest thereon.
  - (3) For the purposes of the last preceding sub-section, if a child of the intestate predeceased him leaving issue who survive the intestate, the surviving spouse<sup>F5</sup> or civil partner] of the intestate shall take the same share of the estate as if the child had survived the intestate.
  - (4) If an intestate dies leaving a spouse<sup>F5</sup> or civil partner] and no issue, but leaving parents or brothers or sisters or issue of deceased brothers or sisters, the spouse<sup>F5</sup> or civil partner] shall, in addition to the personal chattels, take—
    - (a) where the net value of the remaining estate does not exceed<sup>F10</sup>£450,000], the whole of the remaining estate;
    - (b) where the net value of the remaining estate exceeds<sup>F10</sup>£450,000]
      - (i) <sup>F7</sup> the sum of<sup>F10</sup>£450,000], free of all duties, charges and costs, and shall have a charge upon the remaining estate for that sum with interest thereon at the rate of four<sup>F8</sup> pounds per centum per annum [<sup>F9</sup> or at such other rate as the head of the Department of Finance may specify by an order made subject to affirmative resolution] from the date of the death of the intestate until the date of payment thereof together with—
        - (ii) one-half of any residue left of the remaining estate after providing for that sum and the interest thereon.
- <sup>F11</sup>(4A) The Minister of Home Affairs<sup>F12</sup> may from time to time by order, subject to affirmative resolution, substitute larger amounts for the amounts mentioned in sub-sections (2) and (4) of this section but the amounts substituted in sub-section (2)( b) by any such order shall be the same as the amount substituted by that order in sub-section (2)( a) and the amounts substituted in sub-section (4)( b) by any such order shall be the same as the amount substituted by that order in sub-section (4)( a).

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- (4B) Any order under sub-section (4A) shall have effect, and shall supersede any previous order, in relation to the estate of any person dying after the coming into force of the order.]
- (5) If an intestate dies leaving a spouse<sup>F5</sup> or civil partner] but neither issue nor parents nor brothers nor sisters nor issue of deceased brothers or sisters, the spouse<sup>F5</sup> or civil partner] shall take the whole of his estate.
- (6) In this section references to the net value of the estate, or any part of the estate, of an intestate are references to the estimated market value thereof as at the date of the death of the intestate, after payment of all duties and charges thereon and of debts, funeral expenses and expenses of administration.
- (7) Nothing in this section shall prejudice or affect the operation of section fifteen<sup>F13</sup> of the Matrimonial Causes Act (Northern Ireland), 1939 , [<sup>F14</sup> or Article 20(2) of the Matrimonial Causes (Northern Ireland) Order 1978 ], with respect to the property of a wife who has been judicially separated from her husband<sup>F5</sup>, or of section 180 of the Civil Partnership Act 2004].

**F5** [2004 c.33](#)

**F6** Words in s. 7(2) substituted (1.1.2008) by [Administration of Estates \(Rights of Surviving Spouse or Civil Partner\) Order \(Northern Ireland\) 2007 \(S.R. 2007/452\)](#), **art. 2(a)**

**F7** mod. by SR 1985/8

**F8** Increased to 7 per cent., SR 1980/90

**F9** [1979 NI 14](#)

**F10** Words in s. 7(4) substituted (1.1.2008) by [Administration of Estates \(Rights of Surviving Spouse or Civil Partner\) Order \(Northern Ireland\) 2007 \(S.R. 2007/452\)](#), **art. 2(b)**

**F11** [1969 c. 38 \(NI\)](#)

**F12** Functions transf. to Head of D/Fin., SRO (NI) 1973/504

**F13** Rep. (with saving for deaths before 18.4.1979), [1978 NI 15](#)

**F14** [1978 NI 15](#)

## **8 Rights of issue.**

If an intestate dies leaving issue his estate shall, subject to the rights of the surviving spouse<sup>F15</sup> or civil partner], if any, be distributed *per stirpes* among such issue.

**F15** [2004 c.33](#)

## **9 Rights of parents.**

If an intestate dies leaving no issue, his estate shall, subject to the rights of the surviving spouse<sup>F16</sup> or civil partner], if any, be distributed between his parents in equal shares if both survive the intestate, but if only one parent survives the intestate, such surviving parent shall, subject as aforesaid, take the whole estate.

**F16** [2004 c.33](#)

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## 10 Rights of brothers and sisters and their issue.

- (1) If an intestate dies leaving neither issue nor parent, his estate shall, subject to the right of the surviving spouse<sup>F17</sup> or civil partner], if any, be distributed between his brothers and sisters in equal shares, and if any brother or sister predeceases the intestate the surviving issue of the deceased brother or sister shall take *per stirpes* the share that brother or sister would have taken if he or she had survived the intestate.
- (2) If an intestate dies leaving neither issue nor parent nor brother nor sister, his estate shall, subject to the rights of the surviving spouse<sup>F17</sup> or civil partner], if any, be distributed *per stirpes* among the issue of his brothers and sisters.

F17 2004 c.33

## 11 Rights of next-of-kin.

- (1) If an intestate dies leaving neither spouse<sup>F18</sup> nor civil partner] nor issue nor parent nor brother nor sister nor issue of any deceased brother or sister, his estate shall, subject to the succeeding provisions of this Part, be distributed in equal shares among his next-of-kin.
- (2) Where any uncle or aunt of the intestate (being brother or sister of a parent of the intestate) who would have been, or been included among, such next-of-kin if he or she had survived the intestate has predeceased the intestate leaving issue who survive the intestate such issue shall represent that uncle or aunt and shall by such representation take *per stirpes* the share that uncle or aunt would have taken as next-of-kin if he or she had survived the intestate.
- (3) Representation of next-of-kin shall not be admitted amongst collaterals except in the case of issue of brothers and sisters of the intestate and issue of uncles and aunts of the intestate.

F18 2004 c.33

## 12 Ascertainment of next-of-kin.

- (1) Subject to the rights of representation mentioned in sub-section (2) of the last preceding section, the person or persons who at the date of the death of the intestate stand nearest in blood relationship to him shall be taken to be his next-of-kin.
- (2) Degrees of blood relationship of a direct lineal ancestor shall be computed by counting upwards from the intestate to that ancestor and degrees of blood relationship of any other relative shall be ascertained by counting upwards from the intestate to the nearest ancestor common to the intestate and that relative, and then downward from that ancestor to the relative, but, where a direct lineal ancestor and any other relative are so ascertained to be within the same degree of blood relationship to the intestate, the other relative shall be preferred to the exclusion of the direct lineal ancestor.

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### **13 Saving for children begotten but not born.**

Descendants and relatives of the intestate begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

### **14 Half-blood.**

Relatives of the half-blood shall be treated as, and shall inherit equally with, relatives of the whole blood in the same degree.

### **15 Operation of provisions for distribution or taking per stirpes.**

Where under any provision of this Act an intestate's estate or any share therein is to be distributed *per stirpes* among, or taken *per stirpes* by, the issue or surviving issue of any person, any issue more remote than a child of that person shall take through all degrees, according to their stocks, in equal shares if more than one, the share which the parent of such issue would have taken if living at the death of the intestate, and no issue of that person shall take if the parent of such issue is living at the death of the intestate and so capable of taking.

### **16 Rights of the Crown.**

(1 <sup>F19</sup> In default of any person taking the estate of an intestate under the foregoing provisions of this Part, that estate shall pass to the Crown as *bona vacantia*.

*Subs. (2) rep. by 1997 NI 8*

**F19** Mod., 1979 NI 8

*S. 17 rep. by 1996 NI 26*

### **18 Partial intestacy.**

Where the will of a testator effectively disposes of part only of his estate, then, unless it appears by the will that his personal representatives are intended to take beneficially the remainder of his estate, the personal representatives shall, subject to their powers and rights for the purposes of administration, hold the remainder of his estate upon trust for the persons who would have been entitled thereto under this Part if the testator had died intestate and left no other estate.

### **19 Construction of documents.**

(1 <sup>F20</sup> References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, after the commencement of this Act, shall, unless the contrary thereby appears, be construed as references to this Part; and references in such an instrument or will to statutory next-of-kin shall, unless the contrary thereby appears, be construed as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part.

(2) Trusts declared by reference to the Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act shall, unless the contrary thereby appears, be construed as referring to the enactments (other

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than the Intestates' Estates Act, 1890) relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

**F20** 1977 NI 17

*Part III (ss. 20-28) rep. by 1971 c. 25; 1971 c. 31 (NI); 1979 NI 14*

## PART IV

### ADMINISTRATION OF ASSETS

#### **29 Real and personal estate of deceased are assets for payment of debts.**

- (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power disposes by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.
- (2) This section takes effect without prejudice to the rights of incumbrancers.

#### **30 Administration of assets.**

*Subs. (1) rep. by 1989 NI 19*

*Subs. (2) rep. by 1971 c. 31 (NI)*

- (3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule.

#### **31 Charges on property of deceased to be paid primarily out of the property charged.**

- (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal or equitable mortgage or charge or otherwise (including a lien for unpaid purchase money), and the deceased person has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased person, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.
- (2) Such contrary or other intention shall not be deemed to be signified—
  - (a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or



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(b) by a charge of debts upon any such estate;  
unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

### **32 Powers of personal representatives to sell or transfer.**

(1) The personal representatives may sell the whole or any part of the estate of a deceased person for the purpose not only of paying debts, but also (whether there are or are not debts) of distributing the estate among the persons beneficially entitled thereto, and before selling for the purposes of distribution the personal representatives shall, so far as practicable, give effect to the wishes of the persons of full age for the time being beneficially entitled to the property proposed to be sold, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons so, however, that—

(a) a purchaser shall not be concerned to see that the personal representatives have complied with such wishes; and

(b) it shall not in any case be necessary for any person beneficially entitled to concur in any such sale.

(2) It shall not be lawful for some or one only of several joint personal representatives, without leave of the court, to exercise any power conferred by this section or by section forty to dispose of any land, save that where probate is granted to one or some of several persons named as executors, whether or not power is reserved to the others or other to prove, the disposition of the land may, notwithstanding any other provision or rule of law to the contrary, be made by the proving executor or executors, without leave of the court, as fully and effectually as if all the persons named as executors had concurred therein. Where a disposition is so made by the proving executor or executors sub-section (1) and the said section forty shall have effect as if references therein to personal representatives were references to the proving executor or executors.

### **33<sup>F21</sup> Protection of bona fide purchasers.**

(1) A purchaser, in good faith and for value, from the personal representatives of a deceased person, of any property, being the whole or part of the estate of that deceased person, shall be entitled to hold that property freed and discharged from any debts or liabilities of the deceased person, except such as are charged thereon otherwise than by the will of the deceased person, and from all claims of the persons beneficially entitled thereto, and shall not be concerned to see to the application of the purchase money.

(2) A purchaser in good faith and for value of any property to which this sub-section applies, being the whole or part of the estate of a deceased person, which has been transferred by the personal representatives to the person beneficially entitled thereto, or to the vesting of which in the person beneficially entitled thereto the personal representatives have assented, shall be entitled to hold that property freed and discharged from the claims of creditors of the deceased person except claims of which the purchaser had actual or constructive notice at the time of his purchase.

(3) Sub-section (2) applies to all property other than registered land.

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**F21** 1979 NI 14

### **34 General provisions as to assent or transfer by personal representatives.**

- (1) In this and the next succeeding section—
  - (a) references to the land of a testator or intestate are references to land to which the testator or intestate was entitled or over which he exercised a general power of appointment by will; and
  - (b) the expression “person entitled” includes, in relation to any estate or interest in the land of a testator or intestate—
    - (i) the persons or person (including the personal representatives of the testator or intestate or any of them) who (whether by devise, bequest, devolution, appropriation or otherwise) may be beneficially entitled to that estate or interest; and
    - (ii) the trustees or trustee or the personal representatives or representative of any such persons or person.
- (2) Without prejudice to any other power conferred by this Act on personal representatives with respect to any land of a testator or intestate, the personal representatives may execute an assent vesting any estate or interest in any such land in the person entitled thereto, or may transfer any such estate or interest to the person entitled thereto and may make the assent or transfer either subject to or free from a charge for the payment of any money which the personal representatives are liable to pay; and where the assent or transfer is made subject to a charge for all moneys, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before the assent or transfer.
- (3) At any time after the expiration of one year from the death of an owner of land, if the personal representatives have failed on the request of the person entitled to transfer, by assent or otherwise, the land to the person entitled, the court may, if it thinks fit, on the application of the person entitled and after notice to the personal representatives, order that the transfer be made, and in default of compliance with that order within the time specified therein by the court, may make an order vesting the land in the person entitled as fully and effectually as might have been done by a transfer thereof by the personal representatives.
- (4) An assent not in writing shall not be effectual to pass any estate or interest in land.
- (5) The statutory covenants implied by a person being expressed in a deed to convey as personal representative shall also be implied in any assent signed by a personal representative unless the assent otherwise provides.
- (6) It shall not be lawful for some or one only of several joint personal representatives, without leave of the court, to make any assent or transfer under this section, save that:
  - (a) where probate is granted to one or some of several persons named as executors, whether or not power is reserved to the others or other to prove, such assent or transfer may, notwithstanding any other provision or rule of law to the contrary, be made by the proving executor or executors, without leave of the court, as fully and effectually as if all the persons named as executors had concurred therein; and

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- (b) where the proving executor or executors exercise any power conferred by the preceding paragraph this section and the next two succeeding sections shall have effect as if references therein to personal representatives were references to the proving executor or executors.
- (7) The court may order land not specifically devised or land vested in a personal representative as such to be sold on such terms and within such period as may appear reasonable, and, on the failure of the personal representative to comply with such order, the court may, on the application of the person entitled or any person beneficially interested, direct a sale of the lands upon such terms as it thinks fit.
- (8) This section shall not operate to impose any stamp duty in respect of an assent.

### **35 Special provisions as to unregistered land.**

- (1) An assent to the vesting of any estate or interest in unregistered land of a testator or intestate in favour of the person entitled thereto shall—
  - (a) be in writing;
  - (b) be signed by the personal representatives;
  - (c) be deemed, for the purposes of the Registration of Deeds Acts, to be a conveyance of that estate or interest from the personal representatives to the person entitled;
  - (d) operate, subject to the provisions of the Registration of Deeds Acts with respect to priorities, to vest that estate or interest in the person entitled subject to such charges and encumbrances, if any, as may be specified in the assent and as may otherwise affect that estate or interest; and
  - (e) subject to the said provisions, be deemed (unless a contrary intention appears therein) for all purposes necessary to establish the title of the person entitled to intervening rents and profits, to relate back to the date of the death of the deceased person so, however, that nothing in this paragraph shall operate to enable any person to establish a title inconsistent with the will of the deceased person.
- (2) Any person in whose favour an assent or conveyance of any unregistered land is made by personal representatives may at his own expense require the personal representatives to register that assent or conveyance in the Registry of Deeds pursuant to the Registration of Deeds Acts.
- (3) An assent or conveyance of unregistered land by a personal representative shall, in favour of a purchaser, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person who was entitled to have the estate or interest to which the assent relates vested in him but shall not otherwise prejudicially affect the claim of any person originally entitled to that estate or interest or to any charge or encumbrance thereon.

*S. 36 rep. with savings by 1970 c. 18 (NI)*

### **37 Powers of personal representative as to appropriation.**

- (1) The personal representative may appropriate any part of the estate of the deceased person in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased person, or of any other interest or share in his property, whether settled or not, as to the personal

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representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased person:

Provided that—

- (a) an appropriation shall not be made under this section—
  - (i) so as to affect prejudicially any specific devise or bequest; or
  - (ii) unless notice of the intended appropriation has been served on all parties interested in the residuary estate (other than persons who may come into existence after the time of the appropriation or who cannot be found or ascertained at that time) any one of which parties may within six weeks from the service of such notice on him apply to the court to prohibit the appropriation;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased person for the investment of money subject to the trust, shall not (save as in this section mentioned) be made under this section except with the following consents:—
  - (i) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
  - (ii) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income:

If the person whose consent is so required as aforesaid is an infant or<sup>F22</sup> is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, of managing and administering his property and affairs] the consent shall be given on his behalf by his parents or parent, testamentary or other guardian,<sup>F22</sup> or controller], or if, in the case of an infant there is no such parent or guardian, by the court on the application of his next friend;

- (c) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
  - (d) if no<sup>F22</sup> controller is acting for a person suffering from mental disorder], then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased person for the investment of money subject to the trust, no consent shall be required on behalf of<sup>F22</sup> that person];
  - (e) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.
- (2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.
  - (3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased person as he may think fit, and may for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance or transfer (including an assent) which may be requisite for giving effect to the appropriation.

*Status: Point in time view as at 01/08/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955. (See end of Document for details)*

- (4) Unless the court on an application made to it under sub-paragraph (ii) of paragraph (a) of the proviso to sub-section (1) otherwise directs, an appropriation made pursuant to this section shall bind all persons interested in the property of the deceased person whose consent is not hereby made requisite.
- (5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.
- (6) This section does not prejudice any other power of appropriation conferred by law or by the will, if any, of the deceased person, and takes effect with any extended powers conferred by the will, if any, of the deceased person, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.
- (7) If after any property has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser in good faith and for value, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite notices and consents, if any, had been given.
- (8) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity.
- (9) This section applies whether the deceased person died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.
- (10) Where any property is appropriated under the provisions of this section a transfer thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so transferred is accepted by the person to whom it is transferred in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

F22 1986 NI 4

### **38**<sup>F23</sup> **Power to appoint trustees of infant's property.**

- (1) Where an infant is absolutely entitled under the will or on the intestacy of any person dying before or after the commencement of this Act to the estate of the deceased person or to the residue thereof or to any share therein or to any devise or legacy and such estate, residue, share, devise or legacy is not under the will, if any, of the deceased person devised or bequeathed to trustees for the infant, the personal representatives of the deceased person may appoint any two or more persons (whether or not including the personal representatives or any of them) to be trustees of such estate, residue, share, devise or legacy for the infant and may execute such assurance or take such other

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action as may be necessary for vesting such estate, residue, share, devise or legacy, as the case may be, in the trustees so appointed. One of the persons so appointed may be a trust corporation.

- (2) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of the property vested in the trustees so appointed,<sup>F24</sup> . . .
- (3) Where an infant becomes entitled to any estate or interest in land under an intestacy and by reason of the intestacy there is no instrument under which the estate or interest of the infant arises or is acquired, a settlement shall be deemed for the purposes of the Settled Land Acts, 1882 to 1890, to have been made by the intestate or by the person whose interest the infant has acquired and, if there are more than one personal representative, the personal representatives, or, where trustees of that land have been appointed by the personal representatives under this section, those trustees, shall for the purposes aforesaid be deemed to be the trustees of that settlement.
- (4) Personal representatives or any trustees appointed by them under this section shall be deemed to be trustees for the purposes of sections forty-two and forty-three of the Conveyancing and Law of Property Act, 1881 .
- (5)<sup>F25</sup> Without prejudice to their powers under the said sections forty-two and forty-three, personal representatives or trustees appointed by them under this section may at any time or times, with the sanction of the court, pay or apply the capital of any estate, residue or share therein or any legacy or devise to which an infant is entitled under the will or on the intestacy of a deceased person for the advancement or benefit of the infant in such manner as the court may approve and the court may on any application made to it under this section order such capital or any part thereof to be lodged in court until the infant attains [<sup>F26</sup> eighteen] or marries [<sup>F27</sup>, or forms a civil partnership,] under that age.

**F23** 1969 c. 28 (NI)

**F24** 2001 c. 14 (NI)

**F25** 1980 NI 3

**F26** 1969 c. 28 (NI)

**F27** 2004 c.33

### **39 Right to follow property in hands of beneficiary.**

Property which has been transferred or appropriated by personal representatives to a person beneficially entitled thereto shall, so long as it remains vested in that person, or in any person claiming under him not being a purchaser in good faith and for value, continue to be liable to answer the debts of the deceased person as it would have been liable if it had remained vested in the personal representatives; and in the event of a sale or mortgage thereof in good faith and for value by such person beneficially entitled or by any person claiming under him not being a purchaser in good faith and for value, he shall continue to be personally liable for such debts to the extent to which such property was liable when vested in the personal representative, but not beyond the value thereof.

### **40 Powers to deal with estate, etc.**

- (1) The personal representatives of a deceased owner of land may, in addition to any other powers conferred on them by this Act,—

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*Status: Point in time view as at 01/08/2008.*

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- (a) make such leases of the land as may be reasonably necessary for the due administration of the estate of the deceased owner; or
- (b) with the consent of the beneficiaries, or with the approval of the court, make leases of the land for such term and on such conditions as the personal representatives may think proper; or
- (c) [<sup>F28</sup>Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997] make, on such terms and conditions as the personal representatives may think proper, a sub fee farm grant of the land, or a sub-lease thereof with a nominal reversion, where such sub fee farm grant or sub-lease amounts in substance to a sale and the personal representatives have satisfied themselves that it is the most appropriate method of disposing of the land in the course of the administration of the estate;

and where personal representatives grant or lease any land pursuant to any power conferred on them by this sub-section they may sell any rent reserved on such grant or any reversion expectant upon the determination of any such lease.

- (2) Notwithstanding anything to the contrary contained in the [<sup>F29</sup>Rent (Northern Ireland) Order 1978 ], or in the Business Tenancies (Temporary Provisions) Acts (Northern Ireland), 1952<sup>F30</sup> and 1954<sup>F30</sup>, the right of the personal representatives to obtain possession of any premises demised by them pursuant to the power conferred by paragraph ( a ) of sub-section (1) shall be exercisable as if those Acts had not been passed.
- (3) Where a sub fee farm grant or sub-lease is executed by personal representatives pursuant to the power conferred on them by paragraph ( c ) of sub-section (1) it shall, until the contrary is proved, be assumed that the power was properly exercised and the grantee or lessee (as the case may be) shall not be concerned to satisfy himself that this was so or to see to the application of any rent or other moneys payable by him. In this sub-section a reference to the grantee or the lessee shall include a reference to a person purchasing from, and to a successor in title of, the grantee or lessee.
- (4) The personal representatives of a deceased person may from time to time raise money by way of mortgage for the payment of debts, death duties or other taxes and, with the approval of all the beneficiaries being *sui juris* or the court (but not otherwise), for the erection, repair, improvement or completion of buildings, or the improvement of lands forming part of the estate of that deceased person.
- (5) Where land is settled by will and there are no trustees of the settlement, the personal representatives proving the will shall for all purposes be deemed to be trustees of the settlement until trustees of the settlement are appointed but a sole personal representative shall not be deemed to be a trustee for the purposes of the Settled Land Acts, 1882 to 1890, until at least one other trustee is appointed.
- (6) This section shall not prejudice or affect any power or duty of personal representatives to execute any document or do any other act or thing for the purpose of completing any transaction entered into by a deceased person before his death.

*Subs. (7)(8) rep. by 1969 c. 30 (NI)*

- (9) <sup>F31</sup> A personal representative of a deceased person may—
  - (a) accept any property before the time at which it is transferable or payable;
  - (b) pay or allow any debt or claim on any evidence he may reasonably deem sufficient;
  - (c) accept any composition or security for any debt or property claimed;

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- (d) allow time for payment of any debt; or
- (e) compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, dispute, claim or other matter relating to the estate of that deceased;
- (f) settle and fix reasonable terms of remuneration for any trust corporation appointed by him under section thirty-eight to act as trustee over any property and authorise such trust corporation to charge and retain such remuneration out of that property

and for any of those purposes may enter into such agreements or arrangements and execute such documents as seem to him expedient, without being personally responsible for any loss occasioned by any act or thing so done by him in good faith.

- (10) This section shall not prejudice or affect any powers conferred by will on personal representatives, and the powers conferred by this section on the personal representatives of a deceased person who has died testate shall be exercised subject to any provisions contained in his will with respect to the disposal of his estate.

**F28** [1997 NI 8](#)  
**F29** [1978 NI 20](#)  
**F30** [1964 c. 36 \(NI\)](#)  
**F31** [1958 c. 23 \(NI\)](#)

#### **41 Time allowed for distribution.**

- (1) The personal representatives of a deceased person shall distribute his estate as soon after his death as is reasonably practicable having regard to the nature of that estate, the manner in which it is required to be distributed and all other relevant circumstances, but proceedings against the personal representatives in respect of their failure to distribute shall not, without leave of the court, be brought before the expiration of one year from the date of the death of the deceased person.

*Subs. (2) rep. by SLR 1976*

- (3) Nothing in this section shall prejudice or affect the rights of creditors of a deceased person to bring proceedings against his personal representatives before the expiration of one year from his death.

## **PART V**

### MISCELLANEOUS AND GENERAL

#### **42 Prescribed forms for reference in wills.**

The Lord Chief Justice may by order prescribe and publish forms to which a testator may refer in his will and give directions as to the manner in which such forms may be referred to, but, unless so referred to, such forms shall not be deemed to be incorporated in a will.



*Status: Point in time view as at 01/08/2008.*

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#### 43 Provisions as to jurisdiction.

- (1) References in this Act to the court shall be construed as references to the High Court so, however, that where, by virtue of any provision of this Act or of any enactment relating to the jurisdiction of the county court, the county court has jurisdiction under any section of this Act, references in that section to the court shall include references to the county court.
- (2) <sup>F32</sup> Without prejudice to the operation of sub-section (1) a county court shall have jurisdiction (including power to receive payment of moneys or securities into court) in all applications and proceedings under section thirty-seven or section thirty-eight [<sup>F33</sup> where, at the date of the death of the deceased person, the property included in his net estate (that is to say, all property of which he had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral testamentary and administration expenses, debts and liabilities, including any capital transfer tax or estate duty payable out of his estate on his death) did not exceed [<sup>F34</sup> £30,000] in value] and in the case of applications or proceedings under section thirty-eight county court rules may provide that where the value of the estate or share to which the infant is entitled does not exceed [<sup>F34</sup> £4,000] the powers of the court under that section may be exercised, in accordance with such rules, by [<sup>F35</sup> a circuit registrar].

**F32** 1980 NI 3

**F33** 1979 NI 14

**F34** SR 1992/372

**F35** SR 1979/103

#### 44 Meaning of “real estate”, etc.

For the purposes of this Act—

- (a) the expression “real estate” includes chattels real, and land in possession, remainder, or reversion, and every estate or interest in or over land (including real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land) to which a deceased person was entitled at the time of his death;
- (b) an estate or interest vested on any trust in any deceased person solely shall be deemed not to be an estate or interest as to which that person dies intestate;
- (c) the estate or interest of a deceased person in an estate tail shall be deemed to be an estate or interest ceasing on his death, but any further or other estate or interest of the deceased person in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an estate or interest so ceasing;
- (d) the estate or interest of a deceased person under a joint tenancy where any tenant survives the deceased person shall be deemed to be an estate or interest ceasing on his death;
- (e) on the death of a corporator sole his estate or interest in the corporation's real estate shall be deemed to be an estate or interest ceasing on his death.

#### 45 Interpretation.

- (1) In this Act the expression—

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“enactment” includes any provision in any Act whether public general, local or private, and any provision in any Order in Council, order or regulation made under any Act;

“infant” means a person under the age of [<sup>F36</sup> eighteen];

“pecuniary legacy” includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money, including all death duties free from which any devise, bequest, or payment is made to take effect;

“personal chattels” means carriages, horses, stable furniture and effects, motor cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business or professional purposes nor money or security for money;

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

“possession” includes the receipt of, or the right to receive, rents and profits, if any;

“property” includes all property both real and personal.

- (2) Where one of two or more proving executors has died, references in sub-section (2) of section thirty-two and in sub-section (5) of section thirty-four to a proving executor or executors shall be construed as references to the survivor or survivors (as the case may be) of the proving executors.

**F36** 1969 c. 28 (NI)

*S. 46(a), with Second Schedule, effects amendments; para. (b), with Third Schedule, effects repeals*

#### **47 Savings.**

- (1) Nothing in this Act shall affect any unrepealed enactment dispensing with probate or administration as respects personal estate not including chattels real.

- (2) Nothing in this Act shall—

*Para. (a) rep. by 1975 c. 7*

(b) alter the incidence of any death duty;

(c) affect any remedy of the Ministry of Finance<sup>F37</sup> for the recovery of any death duty.

- (3) Except to the extent to which any provision of this Act expressly provides to the contrary the provisions of this Act shall not apply to the estate of any person dying before the commencement of this Act.

- (4) Nothing in this Act in any manner affects or alters the descent or devolution of any property for the time being vested in Her Majesty either in right of the Crown or of the Duchy of Lancaster or of any property for the time being belonging to the Duchy of Cornwall.

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- (5) Nothing in this Act shall affect the operation of any rule of law [<sup>F38</sup> whereby a person may by reason of his own criminal act be precluded] from taking any benefit either under the will or on the intestacy of [<sup>F38</sup> another].

<p><b>F37</b> Functions transf. to Commrs. of Inland Revenue, SI 1973/2163 <b>F38</b> 1967 c. 18 (NI)</p>
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**48 Commencement.**

This Act shall come into operation on the first day of January, nineteen hundred and fifty-six.

**49 Short title.**

This Act may be cited as the Administration of Estates Act (Northern Ireland), 1955.

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*Status: Point in time view as at 01/08/2008.*

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## SCHEDULES

### FIRST SCHEDULE

Section 30.

*Part I rep. by 1989 NI 19*

#### PART II

##### ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT

- 1 Property of the deceased person undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
- 2 Property of the deceased person not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
- 3 Property of the deceased person specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
- 4 Property of the deceased person charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for, the payment of debts.
- 5 The fund, if any, retained to meet pecuniary legacies.
- 6 Property specifically devised or bequeathed, rateably according to value.
- 7 Property appointed by will under a general power, rateably according to value.
- 8 The following provisions shall also apply—
  - (a) The order of application may be varied by the will of the deceased.

*Para. (b) rep. by 1983 c. 49*

*Second Schedule—Amendments*

*Third Schedule rep. by SLR 1973*

**Status:**

Point in time view as at 01/08/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955.