
STATUTORY INSTRUMENTS

1979 No. 1575

Administration of Estates (Northern Ireland) Order 1979

PART II

GRANTS OF PROBATE OR ADMINISTRATION

Introductory

Application of Part II

3. Except as provided to the contrary in this Part, the provisions of this Part have effect only in relation to the estates of persons dying after the end of the year 1955.

Jurisdiction of High Court

Power of High Court to grant probate and letters of administration

4.—(1) The High Court has power—

- (a) to grant probate of the will of a deceased person to one or more than one of his executors; and
- (b) to grant administration of the estate of a deceased person, or of any part of his estate, to such person as the High Court may determine in accordance with rules of court.

(2) Paragraph (1) does not prejudice the discretion conferred on the High Court by Article 5 or the provisions of Article 10 relating to the grant of administration to a nominee of the Crown where an intestate's estate devolves on the Crown.

(3) A grant may be limited in any way the High Court thinks fit.

(4) The High Court has jurisdiction—

- (a) to make a grant in respect of a deceased person notwithstanding that he left no estate in Northern Ireland;
- (b) to make a *de bonis non* or other form of grant in respect of unadministered estate notwithstanding that there is no unadministered estate of the deceased person in Northern Ireland.

Discretionary power to appoint administrator in certain cases

5.—(1) Where—

- (a) a person has died, and
- (b) by reason of any circumstances it appears to the High Court necessary or expedient to appoint an administrator under this Article,

the High Court may grant administration of the deceased person's estate, appointing as administrator such person as the High Court in its discretion thinks fit.

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(2) Administration under this Article—

- (a) may be granted whether the deceased person died before or after the end of the year 1955;
- (b) may be limited as the High Court thinks fit.

(3) On administration being granted under this Article no person shall be or become entitled to administer the estate of the deceased person by virtue of the chain of representation.

Administration pendente lite

6.—(1) Where any legal proceedings are pending touching the validity of the will of a deceased person, or for obtaining or revoking any grant, the High Court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate of the deceased.

(2) Every person to whom administration is so granted shall be subject to the immediate control of the High Court and act under its direction.

(3) The High Court may, out of the estate of the deceased person, assign to an administrator appointed under this Article such reasonable remuneration as the High Court thinks fit.

(4) This Article does not prejudice the power of a county court judge to grant limited administration under [^{F1} Article 16 of the County Courts (Northern Ireland) Order 1980] (death of a person concerning whose property proceedings are pending in a county court).

F1 1980 NI 3

Administration during minority of executor

7.—(1) Where a minor is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the High Court thinks fit, until the minor attains the age of 18 years and applies for and obtains a grant of probate, and on the minor attaining that age, and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a minor to be an executor, the appointment shall not operate to transfer any interest in the property of the deceased to the minor or to constitute him a personal representative for any purpose unless and until probate is granted to him under this Article.

Grant of special administration where personal representative is abroad

8.—(1) If at the expiration of 12 months from the death of a person any personal representative of his to whom a grant has been made is residing out of the jurisdiction of the High Court, the High Court may, on the application of any creditor or person interested in the estate of the deceased person, grant to him in such form as the High Court thinks fit special administration of the estate of the deceased person.

(2) The High Court may, for the purposes of any legal proceedings to which the administrator under the special administration (“the special administrator”) is a party, order the transfer into the^{F2} Supreme Court of any money or securities belonging to the estate of the deceased person.

(3) If the special administrator becomes aware that a personal representative capable of acting as such has returned to reside within the jurisdiction of the High Court while any legal proceedings to which the special administrator is a party are pending, he shall apply to have that personal representative made a party to the proceedings.

(4) The costs of and incidental to the special administration and any legal proceedings to which the special administrator is a party shall be paid by such person or out of such fund as the court in which the proceedings are pending may direct.

F2 prosp. subst. by 2005 c. 4

Grant of representation to trust corporation

9.—(1) The High Court may—

(a) where a trust corporation is appointed by a will as executor, whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require; and

(b) grant administration to a trust corporation, either solely or jointly with another person;

and the corporation may act accordingly as executor or administrator, as the case may be.

(2) Representation shall not be granted to a nominee on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation,—

(a) swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of representation, or

(b) renounce the corporation's right to a grant,

and the acts of an officer so authorised shall be binding on the corporation

(4) In this Article, “trust corporation” means—

(a) a corporation appointed by the High Court in any particular case to be a trustee; or

(b) a corporation which—

(i) is constituted under the law of the United Kingdom or any part of it, or under the law of any other Member State of the European Economic Community or any part of it; and

(ii) is empowered by its constitution to undertake in Northern Ireland the business of acting as trustee under wills and settlements and as executor and administrator; and

(iii) has one or more places of business in the United Kingdom; and

(iv) is—

(aa) a company incorporated by special Act or Royal Charter, or

(bb) a company registered (with or without limited liability) in the United Kingdom under the^{F3} Companies (Northern Ireland) Order 1986] or the corresponding law in Great Britain (or under any earlier corresponding Act or law), or in another Member State of the European Economic Community, and having a capital in stock or shares for the time being of not less than £250,000 (or its equivalent in the currency of the State where the company is registered), of which not less than £100,000 (or its equivalent) has been paid up in cash, or

(cc) a company which is registered without limited liability in the United Kingdom under the^{F3} Companies (Northern Ireland) Order 1986] or the corresponding law in Great Britain (or under any earlier corresponding Act or law), or in another Member State of the European Economic Community, and of which one of the members is a corporation within any of the previous provisions of this sub-paragraph; or

(c) a corporation which is constituted under the law of the United Kingdom or any part of it, or under the law of any other Member State of the European Economic Community or any part of it, and which satisfies the Lord Chief Justice—

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- (i) that it undertakes the administration of any charitable, ecclesiastical or public trust without remuneration, or
 - (ii) that by its constitution it is required to apply the whole of its net income for charitable, ecclesiastical or public purposes and is prohibited from distributing, directly or indirectly, any part thereof by way of profit,
- and which is authorised by the Lord Chief Justice to act in relation to any charitable, ecclesiastical or public trust (as the case may be) as a trust corporation.
- (5) This Article has effect whether the deceased person died before or after the end of the year 1955.

F3 1986 NI 9

Administration of intestates' estates devolving on the Crown

10.—(1) Where Her Majesty is entitled in right of the Crown to any estate in Northern Ireland of an intestate, the High Court shall, on application being made in that behalf, grant administration of the estate to a nominee of Her Majesty.

(2) If Her Majesty is pleased, in accordance with the Treasury Solicitor Act 1876, by warrant under Her Royal Sign Manual to nominate the Treasury Solicitor for the purpose of a grant under paragraph (1), the nominee shall be—

- (a) the Treasury Solicitor; or
- (b) if the warrant so provides, some person (who may be the Crown Solicitor for Northern Ireland (“the Crown Solicitor”)) nominated in that behalf by the Treasury Solicitor.

(3) Where administration is granted to the Treasury Solicitor, the Treasury Solicitor Act 1876 shall apply and sections 2, 4, 6 and 7 of that Act shall be deemed to extend to real as well as to personal estate.

(4) Where administration is granted to a person nominated by the Treasury Solicitor, that person shall, in his administration of the estate, act in accordance with any directions in writing given to him by the Treasury Solicitor.

(5) For the purposes of this Article the Crown Solicitor shall be deemed to be a corporation sole and—

- (a) any nomination of him by the Treasury Solicitor shall, until revoked, apply also to his successors;
- (b) a grant of administration may be made for the use of Her Majesty to him (by his official name) and his successors; and
- (c) without prejudice to any limitation contained in the grant or the power of the Court to revoke it, administration so granted, the office of administrator under such a grant, the estate of the intestate and the rights, duties and liabilities of an administrator shall, notwithstanding any change in the person who is Crown Solicitor, be vested in and imposed on the Crown Solicitor for the time being without any further grant of administration.

(6) Paragraph (1) shall not prevent the grant of administration of the intestate's estate to any other person, where the Treasury Solicitor or other nominee has not made, and has signified his intention not to make, an application under that paragraph.

(7) Neither the Treasury Solicitor nor the Crown Solicitor acting on the nomination of the Treasury Solicitor shall, when applying for or obtaining administration for the use or benefit of Her Majesty under this Article, be required to deliver, nor shall the High Court or the Commissioners

of Inland Revenue be entitled to receive, in connection with any such application or grant of administration, any affidavit, statutory declaration, account, certificate or other statement verified on oath; but he shall deliver, and the Court and the Commissioners respectively shall accept, in lieu thereof, an account or particulars of the estate of the intestate signed by him or on his behalf.

(8) This Article has effect whether the intestate died before or after the end of the year 1955.

Revocation of grants

11.—(1) The High Court has power—

- (a) to recall any grant;
- (b) to revoke any grant.

(2) Without prejudice to paragraph (1), where it appears to the High Court that a grant either ought not to have been made or contains an error, the High Court may call in the grant and, if satisfied that it would be revoked at the instance of a party interested, may revoke it.

(3) A grant may be revoked under paragraph (2) without being called in, if it cannot be called in.

Jurisdiction of county court

Jurisdiction of county court in contentious matters

12.—(1) Where, on an application to the High Court for the grant or revocation of representation, the Master or the Registrar is satisfied by affidavit, and certifies, that the property included in the net estate of the person in respect of whose estate the application is made did not at the time of his death exceed £15,000 in value, the county court for the division in which the deceased, at the time of his death, had a fixed place of abode shall have the jurisdiction of the High Court in respect of any contentious matter arising in connection with that grant or revocation.

(2) The statements in the affidavit as to the place of abode and value of the estate of the deceased person shall, subject to paragraph (3), be conclusive for the purpose of authorising the exercise of the jurisdiction conferred on a county court by paragraph (1) and the grant or revocation of representation in compliance with the order of the court.

(3) Where it is shown to a county court before which any matter is pending under this Article that the place of abode or the value of the property included in the net estate of the deceased person has not been correctly stated in the affidavit, and, if it had been correctly stated, that court would not have been authorised to exercise jurisdiction in the matter, that court shall stay all further proceedings in the matter and make such order as to the costs of the proceedings as it considers just, and any party may apply to the High Court for the grant or revocation in question.

(4) On a decree being made by a county court for the grant or revocation of representation, that court shall cause a copy of the decree to be sent as soon as is reasonably practicable to the Probate and Matrimonial Office and, on the application of the person entitled thereto, a grant shall be made, or, as the case requires, the existing grant shall be revoked (according to the effect of the decree).

(5) In paragraph (1) “net estate” means all property of which the deceased person 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.

(6) This Article has effect whether the deceased person died before or after the end of the year 1955.

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