
STATUTORY INSTRUMENTS

1979 No. 924

Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979

Powers of court in relation to transactions intended to defeat applications for financial provision

Dispositions intended to defeat applications for financial provision

12.—(1) Where an application is made to the court for an order under Article 4, the applicant may, in the proceedings on that application, apply to the court for an order under paragraph (2).

(2) Where on an application under paragraph (1) the court is satisfied—

- (a) that, less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Order made a disposition, and
- (b) that full valuable consideration for that disposition was not given by the person to whom or for the benefit of whom the disposition was made (in this Article referred to as “the donee”) or by any other person, and
- (c) that the exercise of the powers conferred by this Article would facilitate the making of financial provision for the applicant under this Order,

then, subject to the provisions of this Article and of Articles 14 and 15, the court may order the donee (whether or not at the date of the order he holds any interest in the property disposed of to him or for his benefit by the deceased) to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order.

(3) Where an order is made under paragraph (2) as respects any disposition made by the deceased which consisted of the payment of money to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that paragraph shall not exceed the amount of the payment made by the deceased after deducting therefrom any capital transfer tax borne by the donee in respect of that payment.

(4) Where an order is made under paragraph (2) as respects any disposition made by the deceased which consisted of the transfer of property (other than a sum of money) to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that paragraph shall not exceed the value at the date of the death of the deceased of the property disposed of by him to or for the benefit of the donee (or if that property has been disposed of by the person to whom it was transferred by the deceased, the value at the date of that disposal thereof) after deducting therefrom any capital transfer tax borne by the donee in respect of the transfer of that property by the deceased.

(5) Where an application (in this paragraph referred to as “the original application”) is made for an order under paragraph (2) in relation to any disposition, then, if on an application under this paragraph by the donee or by any applicant for an order under Article 4 the court is satisfied—

- (a) that, less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Order made a disposition other than the disposition which is the subject of the original application, and

(b) that full valuable consideration for that other disposition was not given by the person to whom or for the benefit of whom that other disposition was made or by any other person, the court may exercise in relation to the person to whom or for the benefit of whom that other disposition was made the powers which the court would have had under paragraph (2) if the original application had been made in respect of that other disposition and the court had been satisfied as to the matters set out in sub-paragraphs (a), (b) and (c) of that paragraph: and where any application is made under this paragraph, any reference in this Article (except in paragraph (2)(b)) to the donee shall include a reference to the person to whom or for the benefit of whom that other disposition was made.

(6) In determining whether and in what manner to exercise its powers under this Article, the court shall have regard to the circumstances in which any disposition was made and any valuable consideration which was given therefor, the relationship, if any, of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(7) In this Article “disposition” does not include—

- (a) any provision in a will, any such nomination as is mentioned in Article 10(1) or any donatio mortis causa, or
- (b) any appointment of property made, otherwise than by will, in the exercise of a special power of appointment,

but, subject to these exceptions, includes any payment of money (including the payment of a premium under a policy of assurance) and any conveyance, assurance, appointment or gift of property of any description, whether made by an instrument or otherwise.

(8) The provisions of this Article do not apply to any disposition made before the commencement of this Order.

Contracts to leave property by will

13.—(1) Where an application is made to the court for an order under Article 4, the applicant may, in the proceedings on that application, apply to the court for an order under this Article.

(2) Where on an application under paragraph (1) the court is satisfied—

- (a) that the deceased made a contract by which he agreed to leave by his will a sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, and
- (b) that the deceased made that contract with the intention of defeating an application for financial provision under this Order, and
- (c) that when the contract was made full valuable consideration for that contract was not given or promised by the person with whom or for the benefit of whom the contract was made (in this Article referred to as “the donee”) or by any other person, and
- (d) that the exercise of the powers conferred by this Article would facilitate the making of financial provision for the applicant under this Order,

then, subject to the provisions of this Article and of Articles 14 and 15, the court may make any one or more of the following orders:—

- (i) if any money has been paid or any other property has been transferred to or for the benefit of the donee in accordance with the contract, an order directing the donee to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order;
- (ii) if the money or all the money has not been paid or the property or all the property has not been transferred in accordance with the contract, an order directing the personal representative of the deceased not to make any payment or transfer any property, or not to make any further payment

or transfer any further property, as the case may be, in accordance therewith or directing the personal representative only to make such payment or transfer such property as may be specified in the order.

(3) Notwithstanding anything in paragraph (2), the court may exercise its powers thereunder in relation to any contract made by the deceased only to the extent that the court considers that the amount of any sum of money paid or to be paid or the value of any property transferred or to be transferred in accordance with the contract exceeds the value of any valuable consideration given or to be given for that contract, and for this purpose the court shall have regard to the value of property at the date of the hearing.

(4) In determining whether and in what manner to exercise its powers under this Article, the court shall have regard to the circumstances in which the contract was made, the relationship, if any, of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(5) Where an order has been made under paragraph (2) in relation to any contract, the rights of any person to enforce that contract or to recover damages or to obtain other relief for the breach thereof shall be subject to any adjustment made by the court under Article 14(3) and shall survive to such extent only as is consistent with giving effect to the terms of that order.

(6) The provisions of this Article do not apply to a contract made before the commencement of this Order.

Provisions supplementary to Articles 12 and 13

14.—(1) Where the exercise of any of the powers conferred by Article 12 or 13 is conditional on the court being satisfied that a disposition or contract was made by a deceased person with the intention of defeating an application for financial provision under this Order, that condition shall be fulfilled if the court is of the opinion that, on a balance of probabilities, the intention of the deceased (though not necessarily his sole intention) in making the disposition or contract was to prevent an order for financial provision being made under this Order or to reduce the amount of the provision which might otherwise be granted by an order thereunder.

(2) Where an application is made under Article 13 with respect to any contract made by the deceased and no valuable consideration was given or promised by any person for that contract then, notwithstanding anything in paragraph (1), it shall be presumed, unless the contrary is shown, that the deceased made that contract with the intention of defeating an application for financial provision under this Order.

(3) Where the court makes an order under Article 12 or 13 it may give such consequential directions as it thinks fit (including directions requiring the making of any payment or the transfer of any property) for giving effect to the order or for securing a fair adjustment of the rights of the persons affected thereby.

(4) Any power conferred on the court by Article 12 or 13 to order the donee, in relation to any disposition or contract, to provide any sum of money or other property shall be exercisable in like manner in relation to the personal representative of the donee, and—

- (a) any reference in paragraph (4) of Article 12 to the disposal of property by the donee shall include a reference to disposal by the personal representative of the donee, and
- (b) any reference in paragraph (5) of Article 12 to an application by the donee under that paragraph shall include a reference to an application by the personal representative of the donee;

but the court shall not have power under Article 12 or 13 to make an order in respect of any property forming part of the estate of the donee which has been distributed by the personal representative; and the personal representative shall not be liable for having distributed any such property before

he has notice of the making of an application under Article 12 or 13 on the ground that he ought to have taken into account the possibility that such an application would be made.

Provisions as to trustees in relation to Articles 12 and 13

15.—(1) Where an application is made for—

- (a) an order under Article 12 in respect of a disposition made by the deceased to any person as a trustee, or
- (b) an order under Article 13 in respect of any payment made or property transferred, in accordance with a contract made by the deceased, to any person as a trustee,

the powers of the court under Article 12 or 13 to order that trustee to provide a sum of money or other property shall be subject to the following limitation (in addition, in a case of an application under Article 12, to any provision regarding the deduction of capital transfer tax) namely, that the amount of any sum of money or the value of any property ordered to be provided—

- (i) in the case of an application in respect of a disposition which consisted of the payment of money or an application in respect of the payment of money in accordance with a contract, shall not exceed the aggregate of so much of that money as is at the date of the order in the hands of the trustee and the value at that date of any property which represents that money or is derived therefrom and is at that date in the hands of the trustee;
- (ii) in the case of an application in respect of a disposition which consisted of the transfer of property (other than a sum of money) or an application in respect of the transfer of property (other than a sum of money) in accordance with a contract, shall not exceed the aggregate of the value at the date of the order of so much of that property as is at that date in the hands of the trustee and the value at that date of any property which represents the first-mentioned property or is derived therefrom and is at that date in the hands of the trustee.

(2) Where any application such as is mentioned in paragraph (1) is made in respect of a disposition made to any person as a trustee or in respect of any payment made or property transferred in accordance with a contract to any person as a trustee, the trustee shall not be liable for having distributed any money or other property on the ground that he ought to have taken into account the possibility that such an application would be made.

(3) Where any application such as is mentioned in paragraph (1) is made in respect of a disposition made to any person as a trustee or in respect of any payment made or property transferred in accordance with a contract to any person as a trustee, any reference in Article 12 or 13 to the donee shall be construed as including a reference to the trustee or trustees for the time being of the trust in question and any reference in paragraph (1) or (2) to a trustee shall be construed in the same way.

Changes to legislation:

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Powers of court in relation to transactions intended to defeat applications for financial provision.