Changes to legislation: *The Wills and Administration Proceedings (Northern Ireland) Order 1994 is up to date with all changes known to be in force on or before 26 March 2022. 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) View outstanding changes*

STATUTORY INSTRUMENTS

1994 No. 1899 (N.I. 13)

The Wills and Administration Proceedings (Northern Ireland) Order 1994

- - - - - - *19th July 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[F1].

(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.

F1 fully exercised by SRs 1994/372; 1999/21

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] 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.

F2 1954 c. 33 (NI)

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**[**F3 a spouse or civil partner**]**.

(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.

F3 2004 c.33

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**[**[F4] or civil partner**]**, 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**[**[F4] or civil partner**]** or any person claiming under the witness or spouse**[**[F4] or civil partner**]**.

(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**[**[F4] or civil partner**]**, 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.

F4 2004 c.33

Witnessing by creditor

9. Where a will charges any property with a debt, any creditor whose debt is so charged, or the spouse**[**[F5] or civil partner**]** 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.

F5 2004 c.33

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 **[**F6(5)**]**, 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.

[F7(5) Nothing in this Article applies in the case of a marriage which results from—

(a) the conversion of a civil partnership into a marriage under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020;

(b) the conversion of a civil partnership into a marriage under Part 2, 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014; or

(c) the changing of a civil partnership into a marriage under—

(i) the Marriage (Scotland) Act 1977;

(ii) the Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Regulations 2014; or

(iii) Part 5 of the Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014.**]**

F6 Word in art. 12(1) substituted (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **41(2)(a)**

F7 Art. 12(5) inserted (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **41(2)(b)**

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 Dependants) (Northern Ireland) Order 1979[F8].

(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.

F8 1979 NI 8

[F9Effect of civil partnership

13A.—(1) Subject to paragraphs (2) to **[**F10(7)**]**, a will is revoked by the formation of a civil partnership between the testator and another person.

(2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator's personal representatives.

(3) If it appears from a will—

(a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and

(b) that he intended that the will should not be revoked by the formation of the civil partnership,

the will is not revoked by its formation.

(4) Paragraphs (5) and (6) apply if it appears from a will—

(a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and

(b) that he intended that a gift in the will should not be revoked by the formation of the civil partnership.