STATUTORY INSTRUMENTS

1979 No. 924 (N.I. 8)

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

- - - - - - *[26th July 1979]*

Introductory

Title and commencement

1.—(1) This Order may be cited as the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.

(2) *Commencement*

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply 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—

Definition rep. by 1987 NI 22

"beneficiary", in relation to the estate of a deceased person, means—

(a) a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate or would be so interested if an order had not been made under this Order, and

(b) a person who has received any sum of money or other property which by virtue of Article 10(1) or (2) is treated as part of the net estate of the deceased or would have received that sum or other property if an order had not been made under this Order;

"child" includes an illegitimate[F1]. . . child and a child en ventre sa mère at the death of the deceased;

[F2]...

"the court" means the High Court, or where a county court has jurisdiction by virtue of Article 24, a county court;

[F2]...

[F3]"former civil partner" means a person whose civil partnership with the deceased was during the lifetime of the deceased either—

(a) dissolved or annulled by an order made under the law of any part of the United Kingdom or the Channel Islands or 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 dissolution or annulment which is entitled to be recognised as valid by the law of Northern Ireland;**]**

[[F4]**[**[F3]"former spouse"**]** means a person whose marriage with the deceased was during the lifetime of the deceased either—

(a) dissolved or annulled by a decree of divorce or 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;**]**

"full valuable consideration" means such valuable consideration as amounts or approximates to the value of that for which it is given;

"net estate", in relation to a deceased person, means—

(a) all property of which the deceased 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 payable out of his estate on his death;

(b) any property in respect of which the deceased held a general power of appointment (not being a power exercisable by will) which has not been exercised;

(c) any sum of money or other property which is treated for the purposes of this Order as part of the net estate of the deceased by virtue of Article 10(1) or (2);

(d) any property which is treated for the purposes of this Order as part of the net estate of the deceased by virtue of an order made under Article 11;

(e) any sum of money or other property which is, by reason of a disposition or contract made by the deceased, ordered under Article 12 or 13 to be provided for the purpose of the making of financial provision under this Order;

"property" includes any chose in action;

"reasonable financial provision"

(a) in the case of an application made by virtue of Article 3(1)(*a*) by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance;

(aa) **[**[F3]in the case of an application made by virtue of Article 3(1)(a) by the civil partner of the deceased (except where, at the date of death, a separation order under Chapter 2 of Part 4 of the Civil Partnership Act 2004 was in force in relation to the civil partnership and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a civil partner to receive, whether or not that provision is required for his or her maintenance;**]**

(b) in the case of any other application made by virtue of Article 3(1), means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance;

"statutory provision" has the meaning given by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

"valuable consideration" does not include marriage or a promise of marriage;

"will" includes codicil.

(3) For the purposes of paragraph (*a*) of the definition of "net estate" in paragraph (2) a person who is not of full age and capacity shall be treated as having power to dispose by will of all property of which he would have had power to dispose by will if he had been of full age and capacity.

(4) Any reference in this Order to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.

(5) For the purposes of this Order any reference to a**[**F3 spouse,**]** wife or husband shall be treated as including a reference to a person who in good faith entered into a void marriage with the deceased unless either—

(a) the marriage of the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of Northern Ireland, or

(b) that person has during the lifetime of the deceased**[**F3 formed a subsequent marriage or civil partnership**]**.

[F3(5A) For the purposes of this Order any reference to a civil partner shall be treated as including a reference to a person who in good faith formed a void civil partnership with the deceased unless either—

(a) the civil partnership between the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of Northern Ireland, or

(b) that person has during the lifetime of the deceased formed a subsequent civil partnership or marriage.

(6) Any reference in this Order to the formation of, or to a person who has formed, a subsequent marriage or civil partnership includes (as the case may be) a reference to the formation of, or to a person who has formed, a marriage or civil partnership which is by law void or voidable.

(6A) The formation of a marriage or civil partnership shall be treated for the purposes of this Order as the formation of a subsequent marriage or civil partnership, in relation to either of the spouses or civil partners, notwithstanding that the previous marriage or civil partnership of that spouse or civil partner was void or voidable.**]**

F1 1987 NI 22
F2 Words in art. 2(2) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 78(1), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(l) (with art. 3)
F3 2004 c. 33
F4 1989 NI 4

Powers of court to order financial provision from deceased's estate

Application for financial provision from deceased's estate

3.—(1) Where after the commencement of this Order a person dies domiciled in Northern Ireland and is survived by any of the following persons:—

[F5(a) the spouse or civil partner of the deceased;

(b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;**]**

[F6(ba) any person (not being a person included in sub-paragraph (a) or (b)) to whom paragraph (1A)**[**F5 or (1B)**]** applies;**]**

(c) a child of the deceased;

(d) any person (not being a child of the deceased) who, in the case of any marriage**[**F5 or civil partnership**]** to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage**[**F5 or civil partnership**]**;

(e) any person (not being a person included in sub-paragraphs (*a*) to (*d*)) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

that person may apply to the court for an order under Article 4 on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.

[F6(1A) This paragraph applies to a person if the deceased died after the coming into operation of the Succession (Northern Ireland) Order 1996 and, during the whole of the period of two years ending immediately before the date when the deceased died, the person was living—

(a) in the same household as the deceased; and

(b) as the husband or wife of the deceased.**]**

[F5(1B) This paragraph applies to a person if for the whole of the period of two years ending immediately before the date when the deceased died the person was living—

(a) in the same household as the deceased, and

(b) as the civil partner of the deceased.**]**

(2) For the purposes of paragraph (1)(*e*), a person shall be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

F5 2004 c. 33
F6 1996 NI 26

Powers of court to make orders

4.—(1) Subject to the provisions of this Order, where an application is made for an order under this Article, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the

parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.

[F7(g) an order varying any settlement made—

(i) during the subsistence of a civil partnership formed by the deceased, or

(ii) in anticipation of the formation of a civil partnership by the deceased,

on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.**]**

(2) An order under paragraph (1)(*a*) providing for the making out of the net estate of the deceased of periodical payments may provide for—

(a) payments of such amount as may be specified in the order,

(b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified,

(c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside or appropriated for the making out of the income thereof of payments under this Article,

or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3) Where an order under paragraph (1)(*a*) provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

(4) An order under this Article may contain such consequential and supplementary provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this paragraph—

(a) order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;

(b) vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c) confer on the trustees of any property which is the subject of an order under this Article such powers as appear to the court to be necessary or expedient.

(5) Where—

(a) the deceased is survived by a wife or husband ("the surviving spouse") and is also survived by children who are **[**F8—

(i) issue of the deceased and the surviving spouse,

(ii) children adopted by the deceased and the surviving spouse jointly,

(iii) issue of the deceased and adopted by the surviving spouse, or

(iv) adopted by the deceased and the issue of the surviving spouse**]**

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