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STATUTORY INSTRUMENTS

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**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<sup>F1</sup> . . . child and a child en ventre sa mère at the death of the deceased;

<sup>F2</sup> . . .

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

<sup>F2</sup> . . .

[<sup>F3</sup>“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;]

[<sup>F4</sup>[<sup>F3</sup>“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) [<sup>F3</sup>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<sup>F5</sup> 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<sup>F5</sup> 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.

[<sup>F6</sup>(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.]

[<sup>F5</sup>(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.

<b>F5</b>	<a href="#">2004 c. 33</a>
<b>F6</b>	<a href="#">1996 NI 26</a>

### **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.

[<sup>F7</sup>(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 [<sup>F8</sup>—

- (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]

; and

- (b) the surviving spouse becomes entitled under the deceased's will or the law relating to intestacy, or a combination of his will and that law, to the net estate of the deceased or to an interest in the estate which amounts to reasonable financial provision for both the surviving spouse and the children,

the court shall not make an order under this Article on the application of any of the children who is a minor.

[<sup>F9</sup>(6) Where—

- (a) the deceased is survived by a civil partner (“the surviving civil partner”) and is also survived by children who are—
- (i) issue of the deceased and the surviving civil partner,
  - (ii) children adopted by the deceased and the surviving civil partner jointly,
  - (iii) issue of the deceased and adopted by the surviving civil partner, or
  - (iv) adopted by the deceased and the issue of the surviving civil partner; and
- (b) the surviving civil partner becomes entitled under the deceased’s will or the law relating to intestacy, or a combination of the deceased’s will and that law, to the net estate of the deceased or to an interest in the estate which amounts to a reasonable financial provision for both the surviving civil partner and the children,

the court shall not make an order under this Article on the application of any of the children who is a minor.]

**F7** 2004 c. 33

**F8** Words in art. 4(5)(a) substituted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **137(2)** (with regs. 6-9, 137(4))

**F9** Art. 4(6) inserted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), **137(3)** (with regs. 6-9, 137(4))

#### **Matters to which court is to have regard in exercising powers under Article 4**

**5.—(1)** Where an application is made for an order under Article 4, the court shall, in determining whether 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 such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that Article, have regard to the following matters:—

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which any other applicant for an order under Article 4 has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under Article 4 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased and the likely effect on any business undertaking included in the estate of an order resulting in the division of property;

- (f) any physical or mental disability of any applicant for an order under Article 4 or any beneficiary or the estate of the deceased;
- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

[<sup>F10</sup>(2) This paragraph applies, without prejudice to the generality of sub-paragraph (g) of paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1) (a) or (b).]

[<sup>F10</sup>The court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to—

- (a) the age of the applicant and the duration of the marriage or civil partnership];
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

<sup>F10</sup> . . .

[<sup>F10</sup> In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce.]

[<sup>F10</sup>>In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 4 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order.]

[<sup>F11</sup>(2A) Without prejudice to the generality of sub-paragraph (g) of paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1)(ba), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to—

- (a) the age of the applicant and the length of the period during which the applicant lived as the husband or wife<sup>F10</sup> or civil partner] of the deceased and in the same household as the deceased; and
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.]

(3) Without prejudice to the generality of sub-paragraph (g) or paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1)(c) or (d), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of Article 3(1)(d) the court shall also have regard—

- (a) to whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility;
- (b) to whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child;
- (c) to the liability of any other person to maintain the applicant.

(4) Without prejudice to the generality of sub-paragraph (g) of paragraph (1), where an application for an order under Article 4 is made by virtue of Article 3(1)(e), the court shall, in addition to the matters specifically mentioned in sub-paragraphs (a) to (f) of that paragraph, have regard to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant and to the length of time for which the deceased discharged that responsibility.

(5) In considering the matters to which the court is required to have regard under this Article, the court shall take into account the facts as known to the court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this Article the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this Article the court shall take into account his financial obligations and responsibilities.

<p><b>F10</b> 2004 c. 33  <b>F11</b> 1996 NI 26</p>
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### **Time-limit for applications**

6. An application for an order under Article 4 shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.

### **Interim orders**

7.—(1) Where on an application for an order under Article 4 it appears to the court—

- (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made under that Article; and
- (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;

the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals as the court thinks reasonable; and the court may order that, subject to the provisions of this Order, such payments are to be made until such date as the court may specify, not being later than the date on which the court either makes an order under Article 4 or decides not to exercise its powers under that Article.

(2) Paragraphs (2), (3) and (4) of Article 4 shall apply in relation to an order under this Article as they apply in relation to an order under that Article.

(3) In determining what order, if any, should be made under this Article the court shall, so far as the urgency of the case admits, have regard to the same matters as those to which the court is required to have regard under Article 5.

(4) An order under Article 4 may provide that any sum paid to the applicant by virtue of this Article shall be treated to such an extent and in such manner as may be provided by that order as having been paid on account of any payment provided for by that order.

### **Variation, discharge, etc., of orders for periodical payments**

8.—(1) Subject to the provisions of this Order, where the court has made an order under Article 4(1)(a) (in this Article referred to as “the original order”) for the making of periodical payments to any person (in this Article referred to as “the original recipient”), the court, on an application



under this Article, shall have power by order to vary or discharge the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) Without prejudice to the generality of paragraph (1), an order made on an application for the variation of the original order may—

- (a) provide for the making out of any relevant property of such periodical payments and for such term as may be specified in the order to any person who has applied, or would but for Article 6 be entitled to apply, for an order under Article 4 (whether or not, in the case of any application, an order was made in favour of the applicant);
- (b) provide for the payment out of any relevant property of a lump sum of such amount as may be so specified to the original recipient or to any such person as is mentioned in sub-paragraph (a);
- (c) provide for the transfer of the relevant property, or such part thereof as may be so specified, to the original recipient or to any such person as is so mentioned.

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order<sup>F12</sup> (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, then, if, before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period, an application is made for an order under this Article, the court shall have power to make any order which it would have had power to make if the application had been made before that date (whether in favour of the original recipient or any such person as is mentioned in paragraph (2)(a) and whether having effect from that date or from such later date as the court may specify).

(4) Any reference in this Article to the original order shall include a reference to an order made under this Article and any reference in this Article to the original recipient shall include a reference to any person to whom periodical payments are required to be made by virtue of an order under this Article.

(5) An application under this Article may be made by any of the following persons, that is to say—

- (a) any person who by virtue of Article 3(1) has applied, or would but for Article 6 be entitled to apply, for an order under Article 4,
- (b) the personal representative of the deceased,
- (c) the trustees of any relevant property, and
- (d) any beneficiary of the estate of the deceased.

(6) An order under this Article may only affect—

- (a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for an order under this Order, or
- (b) in the case of an application under paragraph (3) in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be,

and any such property as is mentioned in sub-paragraph (a) or (b) is in paragraphs (2) and (5) referred to as “relevant property”.

(7) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

(8) Where the court makes an order under this Article, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order.

(9) No such order as is mentioned in Article 4(1)( *d*), ( *e*)[<sup>F12</sup> ( *f*) or ( *g*)], 11, 12 or 13 shall be made on an application under this Article.

(10) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order[<sup>F12</sup> (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the expiration of that period or the occurrence of that event.

**F12** 2004 c. 33

### **Payment of lump sums by instalments**

**9.—**(1) An order under Article 4(1)( *b*) or 8(2)( *b*) for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(2) Where an order is made by virtue of paragraph (1), the court shall have power, on an application made by the person to whom the lump sum is payable, by the personal representative of the deceased or by the trustees of the property out of which the lump sum is payable, to vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

### Property available for financial provision

### **Property treated as part of “net estate”**

**10.—**(1) Where a deceased person has in accordance with any statutory provision nominated any person to receive any sum of money or other property on his death and that nomination is in force at the time of his death, that sum of money, after deducting therefrom any capital transfer tax payable in respect thereof, or that other property, to the extent of the value thereof at the date of the death of the deceased after deducting therefrom any capital transfer tax so payable, shall be treated for the purposes of this Order as part of the net estate of the deceased; but this paragraph shall not render any person liable for having paid that sum or transferred that other property to the person named in the nomination in accordance with the directions given in the nomination.

(2) Where any sum of money or other property is received by any person as a donatio mortis causa made by a deceased person, that sum of money, after deducting therefrom any capital transfer tax payable thereon, or that other property, to the extent of the value thereof at the date of the death of the deceased after deducting therefrom any capital transfer tax so payable, shall be treated for the purposes of this Order as part of the net estate of the deceased; but this paragraph shall not render any person liable for having paid that sum or transferred that other property in order to give effect to that donatio mortis causa.

(3) The amount of capital transfer tax to be deducted for the purposes of this Article shall not exceed the amount of that tax which has been borne by the person nominated by the deceased or, as the case may be, the person who has received a sum of money or other property as a donatio mortis causa.

### **Property held on a joint tenancy**

**11.—**(1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if, before the end of the period of six months from the date on which representation with respect to the estate of the deceased was first taken out or 18 months from the date of the death (whichever first occurs), an application is made for an order under Article 4,

the court for the purpose of facilitating the making of financial provision for the applicant under this Order may order that the deceased's severable share of that property, at the value thereof immediately before his death, shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Order as part of the net estate of the deceased.

(2) In determining the extent to which any severable share is to be treated as part of the net estate of the deceased by virtue of an order under paragraph (1), the court shall have regard to any capital transfer tax payable in respect of that severable share.

(3) Where an order is made under paragraph (1), the provisions of this Article shall not render any person (other than a surviving joint tenant) liable for anything done by him before the order was made.

(4) For the avoidance of doubt it is hereby declared that for the purposes of this Article there may be a joint tenancy of a chose in action.

### 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.

Special provisions relating to cases of divorce, separation, etc.

### **Provision as to cases where no financial relief was granted in divorce proceedings, etc.**

16.—(1) Where, within twelve months from the date on which a decree of divorce or nullity of marriage has been made absolute or a decree of judicial separation has been granted, a party to the marriage dies and—

- (a) an application for a financial provision order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 or a property adjustment order under Article 26 of that Order has not been made by the other party to that marriage, or

- (b) such an application has been made but the proceedings thereon have not been determined at the date of the death of the deceased,

then, if an application for an order under Article 4 is made by that other party, the court shall, notwithstanding anything in Article 3 or 5 have power, if it thinks it just to do so, to treat that party for the purposes of that application as if the decree of divorce or nullity of marriage had not been made absolute or the decree of judicial separation had not been granted, as the case may be.

(2) This Article shall not apply in relation to a decree of judicial separation unless at the date of the death of the deceased the decree was in force and the separation was continuing.

**[<sup>F13</sup> Provision as to cases where no financial relief was granted in proceedings for the dissolution etc. of a civil partnership**

**16A.**—(1) Paragraph (2) applies where—

- (a) a dissolution order, nullity order, separation order or presumption of death order has been made under Chapter 2 of Part 4 of the Civil Partnership Act 2004 in relation to a civil partnership,
- (b) one of the civil partners dies within twelve months from the date on which the order is made, and
- (c) either—
  - (i) an application for a financial provision order under Part 1 of Schedule 15 to that Act or a property adjustment order under Part 2 of that Schedule has not been made by the other civil partner, or
  - (ii) such an application has been made but the proceedings on the application have not been determined at the time of the death of the deceased.

(2) If an application for an order under Article 4 is made by the surviving civil partner, the court shall, notwithstanding anything in Article 3 or 5, have power, if it thinks it just to do so, to treat the surviving civil partner as if the order mentioned in paragraph (1)(a) had not been made.

(3) This Article shall not apply in relation to a separation order unless at the date of the death of the deceased the separation order was in force and the separation was continuing.]

**F13** 2004 c. 33

**Restriction imposed in divorce proceedings, etc., on application under this Order**

**17.**—[<sup>F14</sup>(1) On the grant of a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter the High Court or a <sup>F15</sup>... county court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under Article 4.]

(2) In the case of a decree of divorce or nullity of marriage an order may be made under paragraph (1) before or after the decree is made absolute, but if it is made before the decree is made absolute it shall not take effect unless the decree is made absolute.

(3) Where an order made under paragraph (1) on the grant of a decree of divorce or nullity of marriage has come into force with respect to a party to a marriage, then, on the death of the other party to that marriage, the court shall not entertain any application for an order under Article 4 made by the first-mentioned party.

(4) Where an order made under paragraph (1) on the grant of a decree of judicial separation has come into force with respect to any party to a marriage, then, if the other party to that marriage

dies while the decree is in force and the separation is continuing, the court shall not entertain any application for an order under Article 4 made by the first-mentioned party.

**F14** 1989 NI 4

**F15** Word in art. 17(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 78(2), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(l) (with art. 3)

#### **[<sup>F16</sup>Restriction imposed in proceedings for the dissolution etc. of a civil partnership on application under this Order**

**17ZA.**—(1) On making a dissolution order, nullity order, separation order or presumption of death order under Chapter 2 of Part 4 of the Civil Partnership Act 2004, or at any time after making such an order, the High Court or a <sup>F17</sup>... county court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) In the case of a dissolution order, nullity order or presumption of death order ("the main order") an order may be made under paragraph (1) before (as well as after) the main order is made final, but if made before the main order is made final it shall not take effect unless the main order is made final.

(3) Where an order under paragraph (1) made in connection with a dissolution order, nullity order or presumption of death order has come into force with respect to a civil partner, then, on the death of the other civil partner, the court shall not entertain any application for an order under Article 4 made by the surviving civil partner.

(4) Where an order under paragraph (1) made in connection with a separation order has come into force with respect to a civil partner, then, if the other civil partner dies while the separation order is in force and the separation is continuing, the court shall not entertain any application for an order under Article 4 made by the surviving civil partner.]

**F16** 2004 c. 33

**F17** Words in art. 17ZA repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 78(3), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(l) (with art. 3)

#### **[<sup>F18</sup>Restriction imposed in proceedings under Matrimonial and Family Proceedings (Northern Ireland) Order 1989 on applications under this Order**

**17A.**—(1) On making an order under Article 21 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (orders for financial provision and property adjustment following overseas divorces, etc.) the High Court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) Where an order under paragraph (1) has been made with respect to a party to a marriage which has been dissolved or annulled, then, on the death of the other party to that marriage, the court shall not entertain an application under Article 4 made by the first-mentioned party.

(3) Where an order under paragraph (1) has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court shall not entertain an application under Article 4 made by the first-mentioned party.]

**F18** 1989 NI 4



**[<sup>F19</sup>Restriction imposed in proceedings under Schedule 17 to the Civil Partnership Act 2004 on application under this Order**

**17B.**—(1) On making an order under paragraph 9 of Schedule 17 to the Civil Partnership Act 2004 (orders for financial provision, property adjustment and pension-sharing following overseas dissolution etc. of civil partnership) the High Court, if it considers it just to do so, may, on the application of either of the civil partners, order that the other civil partner shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) Where an order under paragraph (1) has been made with respect to one of the civil partners in a case where a civil partnership has been dissolved or annulled, then, on the death of the other civil partner, the court shall not entertain an application under Article 4 made by the surviving civil partner.

(3) Where an order under paragraph (1) has been made with respect to one of the civil partners in a case where civil partners have been legally separated, then, if the other civil partner dies while the legal separation is in force, the court shall not entertain an application under Article 4 made by the surviving civil partner.]

**F19** 2004 c. 33

**Variation and discharge of secured periodical payments orders**

**18.**—(1) Where an application for an order under Article 4 is made to the court by any person who was at the time of the death of the deceased entitled to payments from the deceased under a secured periodical payments order made under the Matrimonial Causes (Northern Ireland) Order 1978 [<sup>F20</sup> or Schedule 15 to the Civil Partnership Act 2004], then, in the proceedings on that application, the court shall have power, if an application is made under this Article by that person or by the personal representative of the deceased, to vary or discharge that periodical payments order or to revive the operation of any provision thereof which has been suspended under Article 33 of that Order [<sup>F20</sup> or Part 10 of that Schedule].

(2) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, including any order which the court proposes to make under Article 4 or Article 7, and any change (whether resulting from the death of the deceased or otherwise) in any of the matters to which the court which made the secured periodical payments order was required to have regard when making it.

(3) The powers exercisable by the court under this Article in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

**F20** 2004 c. 33

**Variation and revocation of maintenance agreements**

**19.**—(1) Where an application for an order under Article 4 is made to the court by any person who was at the date of the death of the deceased entitled to payments from the deceased under a maintenance agreement which provided for the continuation of payments under the agreement after the death of the deceased, then, in the proceedings on that application, the court shall have power, if an application is made under this Article by that person or by the personal representative of the deceased, to vary or revoke that agreement.

(2) In exercising the powers conferred by this Article the court shall have regard to all the circumstances of the case, including any order which the court proposes to make under Article 4

or 7 and any change (whether resulting from the death of the deceased or otherwise) in any of the circumstances in the light of which the agreement was made.

(3) If a maintenance agreement is varied by the court under this Article the like consequences shall ensue as if the variation had been made immediately before the death of the deceased by agreement between the parties and for valuable consideration.

(4) In this Article “maintenance agreement”, in relation to a deceased person, means any agreement made, whether in writing or not and whether before or after the commencement of this Order by the deceased with any person with whom he<sup>[F21]</sup> formed a marriage or civil partnership], being an agreement which contained provisions governing the rights and liabilities towards one another when living separately of the parties to that marriage<sup>[F21]</sup> or of the civil partners] (whether or not the marriage<sup>[F21]</sup> or civil partnership] has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the deceased or a person who was treated by the deceased as a child of the family in relation to that marriage<sup>[F21]</sup> or civil partnership].

**F21** 2004 c. 33

#### **Availability of court's powers under this Order in certain applications**

**20.**—(1) Where—

- (a) a person against whom a secured periodical payments order was made under the Matrimonial Causes (Northern Ireland) Order 1978 has died and an application is made under Article 33(6) of that Order for the variation or discharge of that Order or for the revival of the operation of any provision thereof which has been suspended, or
- (b) a party to a maintenance agreement within the meaning of Article 36 of that Order has died, the agreement being one which provides for the continuation of payments thereunder after the death of one of the parties, and an application is made under Article 38(1) of that Order for the alteration of the agreement under Article 37 of that Order;

the court to which the application is made under the said Article 33(6) or 38(1) shall have power to direct that the application shall be deemed to have been accompanied by an application for an order under Article 4.

(2) Where the court to which an application is made under the said Article 33(6) or 38(1) gives a direction under paragraph (1), that court shall have power—

- (a) to make any order which it would have had power to make under the provisions of this Order if the application under the said Article 33(6) or 38(1) as the case may be, had been made jointly with an application for an order under Article 4; and
- (b) to give such consequential directions as may be necessary for enabling it to exercise any of the powers available to it under this Order in the case of an application for an order under Article 4.

(3) Where an order made under Article 17(1) is in force with respect to a party to a marriage, a direction shall not be given under paragraph (1) with respect to any application made under the said Article 33(6) or 38(1) by that party on the death of the other party.

#### **[F22] Availability of court's powers under this Order in applications under paragraphs 53 and 66 of Schedule 15 to the Civil Partnership Act 2004**

**20A.**—(1) Where—

- (a) a person against whom a secured periodical payments order was made under Schedule 15 to the Civil Partnership Act 2004 has died and an application is made under paragraph 53 of that Schedule for the variation or discharge of that order or for the revival of the operation of any suspended provision of the order, or
  - (b) a party to a maintenance agreement within the meaning of Part 12 of that Schedule has died, the agreement being one which provides for the continuation of payments under the agreement after the death of one of the parties, and an application is made under paragraph 66 of that Schedule for the alteration of the agreement under paragraph 62 of that Schedule,
- the court to which the application is made under paragraph 53 or 66 shall have power to direct that the application shall be deemed to have been accompanied by an application for an order under Article 4.
- (2) Where the court to which an application is made under paragraph 53 or 66 gives a direction under paragraph (1), that court shall have power—
- (a) to make any order which the court would have had power to make under the provisions of this Order if the application under paragraph 53 or 66 had been made jointly with an application for an order under Article 4; and
  - (b) to give such consequential directions as may be necessary for enabling it to exercise any of the powers available to it under this Order in the case of an application for an order under Article 4.
- (3) Where an order made under Article 17ZA(1) is in force with respect to a civil partner, a direction shall not be given under paragraph (1) with respect to any application made under paragraph 53 or 66 by that civil partner on the death of the other civil partner.]

F22 2004 c. 33

## Miscellaneous and supplementary provisions

### Effect, duration and form of orders

**21.**—(1) Where an order is made under Article 4 then, for all purposes, the will or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.

(2) Any order made under Article 4 or 7 in favour of—

- (a) an applicant who was the<sup>F23</sup> former spouse or former civil partner] of the deceased, or
- (b) an applicant who was the husband or wife of the deceased in a case 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,<sup>F23</sup> or]
- <sup>F23</sup>(c) an applicant who was the civil partner of the deceased in a case 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 their civil partnership and the separation was continuing,]

shall, in so far as it provides for the making of periodical payments, cease to have effect<sup>F23</sup> on the formation by the applicant of a subsequent marriage or civil partnership, except in relation to any arrears due under the order on the date of the formation of the subsequent marriage or civil partnership.]

(3) A copy of every order made under this Order shall be sent to the Probate and Matrimonial Office of the<sup>F24</sup>Court of Judicature] for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

**F23** 2004 c. 33

**F24** Words in art. 21(3) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, art. 2(d)

### Provisions as to personal representatives, etc.

**22.**—(1) The provisions of this Order shall not render the personal representative of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that he ought to have taken into account the possibility—

- (a) that the court might permit the making of an application for an order under Article 4 after the end of that period, or
- (b) that, where an order has been made under Article 4 the court might exercise in relation thereto the powers conferred on it by Article 8,

but this paragraph shall not prejudice any power to recover, by reason of the making of an order under this Order, any part of the estate so distributed.

(2) Where the personal representative of a deceased person pays any sum directed by an order under Article 7 to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract by which he agreed to leave by his will any 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, then, if the personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Order, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under Article 4, until the determination of the proceedings on that application.

(4) For the purposes of this Order, where—

- (a) an assent or transfer by a personal representative relating to a registered land, or
- (b) an application by a surviving joint tenant for his registration as owner of registered land,

is presented to the Registrar of Titles for registration, the Registrar shall, notwithstanding any provision of this Order, be entitled to assume that, as the case may be,—

- (i) the personal representative is acting correctly and within his powers, or
- (ii) the surviving joint tenant is entitled to be registered as owner of the land.

*Art. 23 rep. by 1997 NI 21*

### Jurisdiction of county courts

**24.**—(1) A county court shall have jurisdiction to hear and determine any application for an order under Article 4 (including any application for permission to apply for such an order and any application made, in the proceedings on an application for an order under Article 4, for an order under any other provision of this Order) where it is shown to the satisfaction of the court that, at the date of the death of the deceased, the property included in his net estate for the purposes of this Order by virtue of paragraph (a) of the definition thereof in Article 2(2) did not exceed<sup>F25</sup> £30,000 in value.

(2) Where a county court makes an order under Article 4, the court shall have all the jurisdiction of the High Court for the purpose of any further proceedings in relation thereto under Article 8.

(3) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred by paragraph (1) or (2) or with the dismissal of any application instituted by him under the provisions of this Order shall be entitled to appeal from the order or dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts [F26 (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly].

F25 SR 1992/372

F26 1980 NI 3

### **Determination of date on which representation was first taken out**

25. In considering for the purposes of this Order when representation with respect to the estate of a deceased person was first taken out, a grant limited to part of the estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

### **Effect of this Order on rights of Crown**

26. Section 16(1) of the Administration of Estates Act (Northern Ireland) 1955 (passing of intestate's estate, in certain circumstances, to Crown as bona vacantia) shall have effect subject to the provisions of this Order.

*Art. 27 amends art. 38 of 1978 NI 15*

### **Repeals, savings and transitional provisions**

*Para. (1), with Schedule, effects repeals*

(2) The repeal of those statutory provisions shall not affect their operation in relation to any application made thereunder (whether before or after the commencement of this Order) with reference to the death of any person who died before the commencement of this Order.

(3) Nothing in any repeal made by this Order shall affect any order made or direction given under any statutory provision repealed by this Order, and, subject to the provisions of this Order every such order or direction (other than an order made under section 3A of the Inheritance (Family Provision) Act (Northern Ireland) 1960 ) shall, if it is in force at the commencement of this Order or is made by virtue of paragraph (2), continue in force as if it had been made under Article 4(1)( a), and for the purposes of Article 8(7) the court in exercising its powers under that Article in relation to an order continued in force by this paragraph shall be required to have regard to any change in any of the circumstances to which the court would have been required to have regard when making that order if the order had been made with reference to the death of any person who died after the commencement of this Order.

(4) In the application of this Order to a former wife or former husband whose marriage with the deceased was dissolved or annulled, or to a wife or husband who was subject to a decree of judicial separation, under the Matrimonial Causes Act (Northern Ireland) 1939 before the commencement of Part III of the Matrimonial Causes (Northern Ireland) Order 1978

- (a) the references in Article 16(1)( a) to a financial provision order under Article 25 and a property adjustment order under Article 26 of that Order shall include references to an order under section 19(1) or (2) (or under either of those subsections as applied by section 19(7)), or under section 19(4), 20 or 21, of that Act of 1939;

- (b) the references in Article 18 to a secured periodical payments order under that Order shall include references to an order entitling the former wife or former husband to an annual sum of money from the deceased secured under an order made under subsection (1), or subsections (1) and (7), of section 19 of that Act of 1939 and an order in favour of a child under section 22(3) of that Act, and the reference in Article 18(1) to Article 33 of that Order shall include a reference to subsection (6) of the said section 19 as extended by section 5 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951 ;
- (c) the references in Article 20 to a secured periodical payments order under that Order shall include references to an order made under subsection (1), or subsections (1) and (7), of section 19 or under section 22(3) of that Act of 1939.

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**Changes to legislation:** *There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979. (See end of Document for details)*

*Schedule—Repeals*

**Changes to legislation:**

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.