

*Status: Point in time view as at 03/04/2006.*

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## STATUTORY INSTRUMENTS

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# 1979 No. 1575 (N.I. 14)

## Administration of Estates (Northern Ireland) Order 1979

[3rd December  
1979]

### Modifications etc. (not altering text)

- C1** Order: functions of the Lord Chancellor are transferred to the Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1)(6), [Sch. 17 para. 32](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)

## PART I

### INTRODUCTORY

#### Title and commencement

- 1.—(1) This Order may be cited as the Administration of Estates (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—

“administration” includes all letters of administration of the estate of a deceased person whether granted with or without a will annexed and whether for general, special, or limited purposes; and references to an administrator shall be construed accordingly;

“branch office business”, in relation to any branch office of the Probate and Matrimonial Office, means any business for the purposes of this Order which, by virtue of an order made under section 68(3) of the Judicature (Northern Ireland) Act 1978 or by virtue of paragraph 9 of Schedule 6 to that Act, may be transacted at that branch office;

“contentious matter” means any matter not falling within the definition of non-contentious probate business;

“the court” means the High Court or, where a county court has jurisdiction, a county court;

“executor” includes an original executor and one who is executor by virtue of the chain of representation;

“grant” (as a noun) means a grant of representation;

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“intestate” includes a person who leaves no will and one who leaves a will but dies intestate as to some beneficial interest in his property;

“the Master” means the Master (Probate and Matrimonial);

“non-contentious probate business” means the business of obtaining grants where there is no contention as to the right thereto, the obtaining of grants in contested cases where the contest has been terminated, the entry of caveats under Article 14 and all business of a non-contentious nature in matters of testacy or intestacy not being proceedings in an action;

“personal representative” means an executor or administrator;

“probate” means probate of a will;

“the Registrar” means a Registrar (Probate and Matrimonial);

“reseal” means reseal under the Colonial Probates Act 1892 as amended by section 4 of the Administration of Estates Act (Northern Ireland) 1971 ;

“representation” means probate or administration;

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

“will” includes codicil.

## PART II

### GRANTS OF PROBATE OR ADMINISTRATION

#### *Introductory*

#### **Application of Part II**

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

#### *Jurisdiction of High Court*

#### **Power of High Court to grant probate and letters of administration**

4.—(1) The High Court has power—

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

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

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

(4) The High Court has jurisdiction—

- (a) to make a grant in respect of a deceased person notwithstanding that he left no estate in Northern Ireland;

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

### **Discretionary power to appoint administrator in certain cases**

#### **5.—(1) Where—**

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

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

#### **(2) Administration under this Article—**

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

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

### **Administration pendente lite**

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

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

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

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

**F1** [1980 NI 3](#)

### **Administration during minority of executor**

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

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

### **Grant of special administration where personal representative is abroad**

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

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person, grant to him in such form as the High Court thinks fit special administration of the estate of the deceased person.

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

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

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

**F2** prosp. subst. by 2005 c. 4

### Grant of representation to trust corporation

9.—(1) The High Court may—

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

(b) grant administration to a trust corporation, either solely or jointly with another person; and the corporation may act accordingly as executor or administrator, as the case may be.

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

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

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

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

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

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

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

(b) a corporation which—

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

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

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

(iv) is—

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

(bb) a company registered (with or without limited liability) in the United Kingdom under the<sup>F3</sup> Companies (Northern Ireland) Order 1986] or the corresponding law in Great Britain (or under any earlier corresponding Act or law), or in another Member State of the European Economic Community,

- and having a capital in stock or shares for the time being of not less than £250,000 (or its equivalent in the currency of the State where the company is registered), of which not less than £100,000 (or its equivalent) has been paid up in cash, or
- (cc) a company which is registered without limited liability in the United Kingdom under the<sup>F3</sup> Companies (Northern Ireland) Order 1986] or the corresponding law in Great Britain (or under any earlier corresponding Act or law), or in another Member State of the European Economic Community, and of which one of the members is a corporation within any of the previous provisions of this sub-paragraph; or
- (c) a corporation which is constituted under the law of the United Kingdom or any part of it, or under the law of any other Member State of the European Economic Community or any part of it, and which satisfies the Lord Chief Justice—
- (i) that it undertakes the administration of any charitable, ecclesiastical or public trust without remuneration, or
- (ii) that by its constitution it is required to apply the whole of its net income for charitable, ecclesiastical or public purposes and is prohibited from distributing, directly or indirectly, any part thereof by way of profit,
- and which is authorised by the Lord Chief Justice to act in relation to any charitable, ecclesiastical or public trust (as the case may be) as a trust corporation.
- (5) This Article has effect whether the deceased person died before or after the end of the year 1955.

F3 1986 NI 9

### Administration of intestates' estates devolving on the Crown

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

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

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

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

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

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

- (a) any nomination of him by the Treasury Solicitor shall, until revoked, apply also to his successors;

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

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

(7) Neither the Treasury Solicitor nor the Crown Solicitor acting on the nomination of the Treasury Solicitor shall, when applying for or obtaining administration for the use or benefit of Her Majesty under this Article, be required to deliver, nor shall the High Court or the Commissioners of Inland Revenue be entitled to receive, in connection with any such application or grant of administration, any affidavit, statutory declaration, account, certificate or other statement verified on oath; but he shall deliver, and the Court and the Commissioners respectively shall accept, in lieu thereof, an account or particulars of the estate of the intestate signed by him or on his behalf.

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

### **Revocation of grants**

**11.—**(1) The High Court has power—

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

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

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

### *Jurisdiction of county court*

### **Jurisdiction of county court in contentious matters**

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

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

(3) Where it is shown to a county court before which any matter is pending under this Article that the place of abode or the value of the property included in the net estate of the deceased person has not been correctly stated in the affidavit, and, if it had been correctly stated, that court would not have been authorised to exercise jurisdiction in the matter, that court shall stay all further proceedings in

the matter and make such order as to the costs of the proceedings as it considers just, and any party may apply to the High Court for the grant or revocation in question.

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

(5) In paragraph (1) “net estate” means all property of which the deceased person had power to dispose by his will, otherwise than by virtue of a special power of appointment, less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax or estate duty payable out of his estate on his death.

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

## PART III

### POWERS AND PROCEDURE OF COURTS

#### *Powers of High Court preliminary or incidental to grants of probate or administration*

#### **Citation to prove will or renounce probate**

**13.** The High Court may cite any person appointed executor by a will to prove or renounce probate of the will.

#### **Caveat against grant**

**14.**—(1) Subject to rules of court under section 55(1)(e) of the Judicature (Northern Ireland) Act 1978 (rules as to practice and procedure in non-contentious probate business)—

- (a) a caveat against a grant may be entered in the Probate and Matrimonial Office; and
- (b) no grant shall be made while a caveat so entered has effect.

(2) Such rules shall make provision about the warning of caveators and the circumstances in which caveats cease to have effect.

#### **Production of instruments purporting to be testamentary**

**15.** The High Court may, whether or not any legal proceeding is pending with respect to the administration of the estate of a deceased person, require (by order or otherwise) any person to lodge in the Probate and Matrimonial Office any paper or writing, being or purporting to be testamentary, which may be shown to be in his possession or under his control.

#### **Examination of witnesses and production of documents**

**16.** In any proceedings for purposes of this Order the High Court may—

- (a) cause any person it thinks fit to be examined upon interrogatories;
- (b) require the personal attendance of any such person to enable him to be examined on oath;
- (c) require the production by any such person of any document in his possession or under his control which the High Court considers is or may be relevant to the proceedings.

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### **Power to require administrators to produce sureties**

17.—(1) Where the High Court grants to a person ( “the administrator”) administration of the estate of a deceased person, the High Court may—

- (a) as a condition of making the grant, and
- (b) subject to the following provisions of this Article, and subject to and in accordance with rules of court,

require one or more than one surety to guarantee that he will make good, within any limit imposed by the High Court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate may suffer in consequence of a breach by the administrator of his duties as such.

(2) A guarantee given in pursuance of a requirement under paragraph (1) shall enure for the benefit of every person interested in the administration of the deceased person's estate—

- (a) as if the guarantee were contained in a contract<sup>F4</sup> executed as a deed] made by the surety or sureties with every such person, and
  - (b) where there are two or more sureties, as if the sureties had bound themselves jointly and severally.
- (3) No action shall be brought on any such guarantee without the leave of the High Court.
- (4) Stamp duty shall not be chargeable on any such guarantee.
- (5) This Article does not apply—
- (a) where administration is granted—
    - (i) to the Treasury Solicitor;
    - (ii) to the Crown Solicitor for Northern Ireland;
    - (iii) to a consular officer of a foreign state to which section 1 of the Consular Conventions Act 1949 applies; or
  - (b) in such other cases as may be prescribed by rules of court.

**F4** 2005 NI 7

### *Procedure in relation to representation*

#### **Applications for grants and revocations**

18.—(1) An application for a grant, or for the revocation of a grant, shall be made to the Probate and Matrimonial Office and, where the matter is branch office business, may be made to the appropriate branch office of that Office.

- (2) The application may be made either in person or through a solicitor.

#### **Procedure in branch office**

19.—(1) Where it appears to the circuit registrar who has supervision of a branch office of the Probate and Matrimonial Office that the making of a grant for which an application has been made to that office is branch office business, he may make the grant in the name of the High Court and under the seal of the branch office.

(2) The validity of a grant shall not be questioned on the ground that the making of it was not branch office business.

- (3) A circuit registrar shall not make a grant—



- (a) in a contentious matter, until the contention is disposed of; or
  - (b) in any case in which a doubt or question such as is mentioned in paragraph (4) arises, except in accordance with a direction under that paragraph.
- (4) Where—
- (a) it appears doubtful to a circuit registrar whether a grant should be made, or
  - (b) any question arises in relation to a grant, or an application for a grant,
- the circuit registrar shall submit the matter for the directions of the High Court, and the High Court may either—
- (i) direct the circuit registrar to proceed with the matter in accordance with any instructions of the Court, or
  - (ii) forbid any further proceedings by the circuit registrar in relation to the matter, leaving the party applying for the grant to apply either to the High Court otherwise than through the branch office or, if the case is within the jurisdiction of the county court, to that court.
- (5) The foregoing provisions of this Article shall have effect with the necessary modifications in relation to the revocation of a grant as they have effect in relation to the making of a grant.

### Capital transfer tax accounts

**20.**—<sup>F5</sup>(1) The High Court shall not make any grant, or reseal any grant made outside the United Kingdom, except—

- (a) on the production of information or documents under regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (excepted estates); or
- (b) on the production of an account prepared in pursuance of that Act showing by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either—
  - (i) that the inheritance tax payable on the delivery of the account has been paid; or
  - (ii) that no such tax is so payable.]

(2) Arrangements may be made between the<sup>F6</sup>Lord Chief Justice] and the Commissioners of Inland Revenue providing for the purposes of<sup>F5</sup> paragraph (1)(b)] that, in such cases as may be specified in the arrangements, the receipt or certification of an account may be dispensed with or that some other document may be substituted for the account required by Part III of the Finance Act 1975 .

<sup>F7</sup>(2A) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under paragraph (2)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (3) This Article has effect only in relation to the estates of persons dying after 12th March 1975.

**F5** 2004 c. 12

**F6** Words in art. 20(2) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 44(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

**F7** Art. 20(2A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 44(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

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### *Other powers of courts*

#### **Continuance of legal proceedings after revocation of temporary administration**

**21.** If, while any legal proceedings are pending in any court by or against an administrator to whom temporary administration has been granted, that administration is revoked, that court may order that the proceedings be continued by or against the new personal representative in like manner as if the proceedings had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

#### **Power of High Court to order sale of land where there is a Crown interest**

**22.—**(1) Where in any proceeding in the High Court it appears to the Court that Her Majesty is entitled in right of the Crown to any estate in land derived from the estate of a deceased person, the Court may, on the application or with the consent of the Treasury Solicitor or a person nominated by the Treasury Solicitor, order that estate in land or the land itself to be sold.

(2) On a sale in pursuance of an order under paragraph (1)—

- (a) section 47 of the Trustee Act (Northern Ireland) 1958 (power of court to make vesting order consequential on order for sale) shall apply; and
- (b) such portion of the net proceeds of sale (that is to say, the price received for the land less the expenses of sale) as represents Her Majesty's estate—
  - (i) shall be paid to the Treasury Solicitor and dealt with in accordance with section 4 of the Treasury Solicitor Act 1876, or
  - (ii) where the order was made on the application or with the consent of a person nominated by the Treasury Solicitor, shall be paid to that person and dealt with by him in accordance with any directions in writing given to him by the Treasury Solicitor.

### *Documents and records*

#### **Keeping and inspection of wills and other documents**

**23.—**(1) Subject to paragraph (2), all original wills of which representation has been granted in the Probate and Matrimonial Office and such other documents as the Lord Chancellor may direct shall be kept in that Office or at such other place as the<sup>[F8]</sup>Lord Chief Justice] may direct.

(2) Where representation of a will has been granted in a branch office of the Probate and Matrimonial Office, the original will shall be kept in that branch office or at such other place as the<sup>[F9]</sup>Lord Chief Justice] may direct.

(3) The wills and documents mentioned in paragraph (1) and the wills mentioned in paragraph (2) may be inspected in accordance with rules of court.

(4) Paragraphs (1) and (2) shall have effect subject to the provisions of the Public Records Act (Northern Ireland) 1923 (which provides for the establishment of a Public Record Office of Northern Ireland and for the removal to that Office of certain public records, including court records, appertaining to Northern Ireland).

<sup>[F10]</sup>(5) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

- F8** Words in [art. 23\(1\)](#) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 45(2); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 12(a)
- F9** Words in [art. 23\(2\)](#) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 45(3); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 12(a)
- F10** [Art. 23\(5\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 45(4); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para 12(a)

### Records of grants

**24.**—(1) Records shall be kept of all grants issued or resealed by the Probate and Matrimonial Office.

(2) The records shall be in such form and contain such particulars as the<sup>[F11]</sup>Lord Chief Justice] may direct.

<sup>[F12]</sup>(3) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

- F11** Words in [art. 24\(2\)](#) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 46(2); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1 para. 12(a)
- F12** [Art. 24\(3\)](#) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15, 148, Sch. 5 para. 46(3); S.I. 2006/1014, [art. 2\(a\)](#), Sch. 1

### Official copies of wills and certificates of grants

**25.**—(1) An official copy of a will, or a certificate of a grant, may be obtained from the Probate and Matrimonial Office.

(2) Without prejudice to the provisions of section 4(2)( *b*) of the Administration of Estates Act 1971 (evidence of Northern Ireland grants in England and Wales and in Scotland), an official copy of a will shall be sufficient evidence of the will, and a certificate of a grant shall be sufficient evidence of the grant.

### Copies of wills, etc., to be delivered to Inland Revenue Commissioners

**26.**—(1) Subject to any arrangements which may from time to time be made between the<sup>[F13]</sup>Lord Chief Justice] and the Commissioners of Inland Revenue, the Probate and Matrimonial Office shall, within such period after a grant as the<sup>[F13]</sup>Lord Chief Justice] may direct, deliver to the Commissioners or their proper officer the following documents—

- (a) in the case of a probate or of administration with a will annexed, a copy of the will (if required) and, where the deceased died before 13th March 1975, the Inland Revenue affidavit;
- (b) in the case of administration without a will annexed of the estate of a person dying before 13th March 1975, the Inland Revenue affidavit;
- (c) in every case of administration where the Commissioners so require, a copy or extract of the letters of administration;
- (d) in every case, such certificate or note of the grant as the Commissioners may require.

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[<sup>F14</sup>(1A) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(2) In this Article “Inland Revenue affidavit” has the same meaning as in Part I of the Finance Act 1894 .

- F13** Words in art. 26(1) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 47(2); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)
- F14** Art. 26(1A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, Sch. 5 para. 47(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

### Depositories of wills of living persons

27.—[<sup>F15</sup>(1)] Safe and convenient depositories for the custody of wills of living persons shall be provided and managed in accordance with [<sup>F16</sup>directions given by the Lord Chief Justice with the concurrence of the Lord Chancellor].

[<sup>F17</sup>(2) The Lord Chief Justice may nominate any of the following to exercise his functions under this Article—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

- F15** Art. 27 renumbered as art. 27(1) (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(2)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)
- F16** Words in art. 27(1) substituted (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(3)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)
- F17** Art. 27(2) inserted (temp. from 3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 131, 148, Sch. 5 para. 133(4)(5); S.I. 2006/1014, art. 2(a), Sch. 1 para. 12(a)

### *General provisions as to practice and procedure*

#### **Practice and procedure**

28. The practice of the High Court regarding grants shall, except where otherwise provided by this Order or by rules of court, be regulated, so far as the circumstances of the case admit, by the practice heretofore in force.

## PART IV

### EXECUTORS AND ADMINISTRATORS

#### *Executors*

#### **Cesser of right of executor to prove**

**29.**—(1) Subject to Article 30 where a person appointed executor by a will—

- (a) survives the testator but dies without having taken out probate, or
- (b) is cited to take out probate and does not appear to the citation, or
- (c) renounces probate,

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.

(2) Where a person is appointed by the will of a person dying after the commencement of this Article to be both executor and trustee and his rights in respect of the executorship wholly cease under paragraph (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee, but nothing in this Article shall prevent his subsequent appointment as trustee.

#### **Withdrawal of renunciation**

**30.**—(1) Notwithstanding anything to the contrary in Article 29, an executor who has renounced probate (whether before or after the commencement of this Article) may be permitted by the court to withdraw the renunciation and prove the will.

(2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will,—

- (a) the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person who has previously proved the will or to whom administration has been granted;
- (b) a memorandum of the subsequent probate shall be endorsed on the original grant; and
- (c) his rights as a trustee which ceased by virtue of Article 29, shall notwithstanding anything to the contrary in that Article, revive, except so far as the court otherwise orders.

#### **Right of proving executors to exercise powers**

**31.**—(1) When probate is granted to one or some of two or more persons appointed executors by a will, whether or not power is reserved to the other or others to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons appointed executors had concurred therein.

(2) This Article applies whether the testator died before or after the commencement of this Article.

#### **Executor of executor represents original testator**

**32.**—(1) An executor of a sole or last surviving executor of a testator shall be the executor of that testator, but—

- (a) this paragraph shall not apply to a person who does not prove the will of his testator, and

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- (b) in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, this paragraph shall cease to apply when probate is granted to that surviving executor.
- (2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- (3) The chain of representation is broken by—
  - (a) an intestacy; or
  - (b) the failure of a testator to appoint an executor; or
  - (c) the failure to obtain probate of a will; or
  - (d) a grant of administration in pursuance of Article 5;
 but is not broken by a temporary grant of administration if probate is subsequently granted.
- (4) Every person in the chain of representation to a testator—
  - (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
  - (b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

#### *Administrators*

#### **Effect of grant of administration**

**33.** Every person to whom administration is granted in respect of the estate of a person dying after the end of the year 1955 shall, subject to any limitations contained in the grant, have the same rights and liabilities and be accountable in the same manner as if he were the executor of the deceased; and, where the High Court grants administration with a will annexed, that will shall be performed and observed by the administrator in the same manner as if probate of it had been granted to him as executor.

#### **Executor not to act while administration is in force**

**34.** Where administration has been granted to any person, no other person shall be entitled to institute any legal proceedings or otherwise act as executor of the deceased in relation to any estate comprised in or affected by the grant, unless the grant has been revoked or has expired.

*Provisions applying to both executors and administrators, and to persons dealing with them*

#### **Duty of personal representative**

- 35.—**(1) The personal representative of a deceased person shall be under a duty—
- (a) to collect and get in the estate of the deceased and administer it according to law;
  - (b) when required to do so by the High Court, to exhibit on oath in that court a full inventory of the estate and when so required render an account of the administration of the estate to that court;
  - (c) when required to do so by the High Court, to deliver up the grant of representation to that court.
- (2) In paragraph (1) “personal representative”, as regards the duty to exhibit an inventory of the estate of a deceased person or to render an account of its administration, includes an executor in his own wrong.

### **Debtor who becomes creditor's personal representative to account for debt to estate**

**36.**—(1) Subject to paragraph (2), where a debtor becomes either the executor, by virtue of the chain of representation, or the administrator of his deceased creditor—

- (a) his debt shall thereupon be extinguished; but
- (b) he shall be accountable for the amount of the debt as part of the creditor's estate in any case where he would be so accountable if he had been appointed as an executor by the creditor's will.

(2) Paragraph (1) does not apply where the debtor's authority to act as executor or administrator is limited to part only of the creditor's estate which does not include the debt; and a debtor whose debt is extinguished by virtue of sub-paragraph (a) shall not be accountable for its amount by virtue of sub-paragraph (b) of that paragraph in any case where the period of limitation under<sup>F18</sup> the Limitation (Northern Ireland) Order 1989] in respect of the debt had expired before the debtor became the creditor's executor or administrator.

(3) In this Article “debt” includes any liability, and “debtor” and “creditor” shall be construed accordingly.

**F18** 1989 NI 11

### **Payment of debts by personal representative**

**37.**—(1) A personal representative shall not pay the debt of a creditor (including himself) of the estate of any degree in preference to the debt of any other creditor of the same degree.

- (2) Nevertheless a personal representative—
- (a) other than one mentioned in sub-paragraph (b) who, in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate; or
  - (b) to whom administration had been granted solely by reason of his being a creditor and who in good faith and at such a time pays the debt of another person who is a creditor of the estate;

shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

(3) This Article has effect only in relation to the estates of persons dying after the end of the year 1971.

### **Protection of persons acting on invalid or revoked probate or administration**

**38.**—(1) Every person making or permitting to be made any payment or disposition in good faith under any grant shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the grant.

(2) When any grant is revoked, all payments and dispositions made in good faith to a personal representative under it before the revocation are a valid discharge to the person making them; and the personal representative who acted under the revoked grant may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom a grant is afterwards made might have properly made.

(3) This Article has effect only in relation to the estates of persons dying after the end of the year 1971.

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### *Misapplication of assets*

#### **Liability of person wrongfully obtaining or retaining estate of deceased**

**39.**—(1) If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives, administers or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased person, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting—

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death, or, where Article 37 would have applied to him had he been a personal representative, so much of that debt as he might properly have paid to himself in accordance with that Article; and
- (b) any payment made by him which might properly be made by a personal representative.

(2) In this Article, “full valuable consideration” means such valuable consideration as amounts or approximates to the value of that for which it is given.

(3) This Article does not prejudice section 33 of the Administration of Estates Act (Northern Ireland) 1955 (protection of bona fide purchaser for value)<sup>F19</sup> or the Limitation (Northern Ireland) Order 1989].

**F19** 1994 NI 13

#### **Liability of estate of personal representative**

**40.**—(1) Where a person (“the defaulter”) as personal representative of a deceased person wastes or converts to his own use any part of the estate of the deceased person, and dies, the defaulter's personal representative shall to the extent of the available assets of the defaulter to be liable and chargeable in respect of that waste or conversion in the same manner as the defaulter would have been if living.

(2) In paragraph (1) “personal representative” where it first occurs includes an executor in his own wrong.

## **PART V**

### **MISCELLANEOUS**

*Art. 41 amends s.7 of 1955 c. 24 (NI)*

#### **Proceedings against estate of deceased person**

**42.** Rules of court and, in relation to proceedings in a county court, county court rules may make provision—

- (a) for enabling proceedings to be commenced against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant has been made;
- (b) for enabling proceedings purporting to have been commenced against a person to be treated, if he was dead at their commencement, as having been commenced against his estate, whether or not a grant of probate or administration was made before their commencement; and
- (c) for enabling any proceedings commenced or treated as commenced against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise)



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against a person appointed to represent the estate or, if a grant is or has been made, against the personal representatives.

### **Transitional and saving provisions, amendments and repeals**

**43.—**(1) The transitional and saving provisions contained in Schedule 1 shall have effect.

*Para. (2), with Schedule 2, effects amendments*

*Para. (3), with Schedule 3, effects repeals*

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## SCHEDULES

### SCHEDULE 1

Article 43(1).

#### TRANSITIONAL AND SAVING PROVISIONS

1. Section 29 of the Interpretation Act (Northern Ireland) 1954 (effect of substituting provisions) shall have effect for the purposes of this Order as if all the enactments repealed by this Order were transferred provisions within the meaning of that Act.
2. All general directions given by the Probate Judge under section 20(2) of the Administration of Estates Act (Northern Ireland) 1955 and in force immediately before the commencement of Article 4(1) shall have effect as if they were contained in rules of court and may be varied or revoked accordingly.
3. The repeal by this Order of section 3 of the Northern Ireland (Miscellaneous Provisions) Act 1928 shall not affect the operation of subsection (2) of that section in relation to real estate of an intestate who died before 1st January 1938.
4. In relation to the estate of a person dying before 1st January 1938, Articles 12(1), 29(1) and 34 shall have effect with the substitution of “personal estate” for “estate”.
5. Article 19(2) shall apply to a grant made in a district probate registry before the commencement of paragraph 9 of Schedule 6 to the Judicature (Northern Ireland) Act 1978 as though the business of that registry were branch office business.
6. Article 22 applies in respect of land comprised or included in the estate of a person dying before 1st January 1956 notwithstanding that no office has been found and no commission issued or executed.
7. In Article 23(1) the first reference to the Probate and Matrimonial Office includes the Probate Registry, and for the purposes of Article 23(2) a district probate registry shall be deemed to have been a branch office of the Probate and Matrimonial Office.
8. In relation to the estate of a person dying before 1st January 1938, the references in paragraph (1)(a) and (b) of Article 35 to the estate of the deceased shall be construed as references to so much of the estate as vested in the personal representative.
9. Any administration bond given before 1st January 1972 under section 86 of the Probates and Letters of Administration Act (Ireland) 1857 may be enforced and assigned as if the Administration of Estates Act (Northern Ireland) 1971 had not been passed.
10. Nothing in this Order affects—
  - (a) any unrepealed enactment authorising grants to be dispensed with in special cases;
  - (b) any duty payable to the Crown on or in connection with the death of any person; or
  - (c) any remedy for the recovery of any such duty.

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### *Schedule 3—Repeals*

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