
STATUTORY INSTRUMENTS

1979 No. 924

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

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

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.

[^{F1}(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).]

[^{F1}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.

^{F1} . . .

[^{F1} 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.]

[^{F1}>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.]

[^{F2}(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^{F1} 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.

F1 2004 c. 33

F2 1996 NI 26

Changes to legislation:

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Section 5.