
STATUTORY INSTRUMENTS

1979 No. 924

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

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

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

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.

[^{F1}Provision as to cases where no financial relief was granted in proceedings for the dissolution etc. of a civil partnership N.I.]

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.]

F1 2004 c. 33

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

17.—^{F2}(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 ^{F3}... 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.

F2 1989 NI 4

F3 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)

^{F4}Restriction imposed in proceedings for the dissolution etc. of a civil partnership on application under this Order **N.I.**

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 ^{F5}... 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.]

F4 2004 c. 33

F5 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)

[^{F6}Restriction imposed in proceedings under Matrimonial and Family Proceedings (Northern Ireland) Order 1989 on applications under this Order **N.I.**

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.]

F6 1989 NI 4

[^{F7}Restriction imposed in proceedings under Schedule 17 to the Civil Partnership Act 2004 on application under this Order **N.I.**

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.]

F7 2004 c. 33

Variation and discharge of secured periodical payments orders **N.I.**

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 [^{F8} 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 [^{F8} 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.

F8 2004 c. 33

Variation and revocation of maintenance agreements **N.I.**

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^[F9] 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^[F9] or of the civil partners] (whether or not the marriage^[F9] 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^[F9] or civil partnership].

F9 2004 c. 33

Availability of court's powers under this Order in certain applications **N.I.**

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.

[^{F10}Availability of court's powers under this Order in applications under paragraphs 53 and 66 of Schedule 15 to the Civil Partnership Act 2004 **N.I.]**

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.]

F10 2004 c. 33

Changes to legislation:

There are currently no known outstanding effects for the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979, Special provisions relating to cases of divorce, separation, etc..