
STATUTORY INSTRUMENTS

1979 No. 924 (N.I. 8)

NORTHERN IRELAND

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

Laid before Parliament in draft

Made

26th July 1979

Coming into Operation

1st September 1979

ARRANGEMENT OF ORDER

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At the Court of Saint James, the 26th day of July 1979

Present,

The Counsellors of State in Council

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 16th day of July 1979, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, and in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her Majesty in that behalf, and by and with the advice of Her Majesty's Privy Council, do on Her Majesty's behalf order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

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

(2) This Order shall come into operation on 1st September 1979.

Interpretation

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

“adopted” means adopted in pursuance of an adoption order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or, subject to sections 5 and 6 of the Adoption (Hague Convention) Act (Northern Ireland) 1969 (c), a foreign adoption as defined by section 4 (3) of that Act;

“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 or adopted child and a child en ventre sa mere at the death of the deceased;

(a) 1974 c. 28.

(b) 1954 c. 33 (N.I.).

(c) 1969 c. 22 (N.I.).

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

“divorce county court” has the same meaning as in the Matrimonial Causes (Northern Ireland) Order 1978 (a);

“former wife” or “former husband” means a person whose marriage with the deceased was during the deceased’s lifetime dissolved or annulled by a decree of divorce or of nullity of marriage granted under the Matrimonial Causes (Northern Ireland) Order 1978 or the statutory provisions repealed by that Order;

“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;
- (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 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 entered into a later marriage.

(6) Any reference in this Order to remarriage or to a person who has remarried includes a reference to a marriage which is by law void or voidable or to a person who has entered into such a marriage, as the case may be, and a marriage shall be treated for the purposes of this Order as a remarriage, in relation to any party thereto, notwithstanding that the previous marriage of that party was void or voidable.

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:—

- (a) the wife or husband of the deceased;
- (b) a former wife or former husband of the deceased who has not remarried;
- (c) a child of the deceased;
- (d) any person (not being a child of the deceased) who, in the case of any marriage 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;
- (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.

(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.

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.

(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 either issue of the deceased and the surviving spouse or children adopted by the deceased and the surviving spouse jointly; 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.

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 of 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.

(2) 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), 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;
- (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;

and, 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.

(3) 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) (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.

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 (other than the remarriage of a former wife or former husband) 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 it so 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) or (f), 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 (other than the remarriage of a former wife or former husband) 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.

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 (a) 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.

(a) S.I. 1978/1045 (N.I. 15).

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

17.—(1) On granting 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 divorce county court may, if that court considers it just to do so and the parties to the marriage agree, order that either party to the marriage shall not be entitled on the death of the other party 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.

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, 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.

(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.

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 entered into a marriage, being an agreement which contained provisions governing the rights and liabilities towards one another when living separately of the parties to that marriage (whether or not the marriage 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.

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.

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 former husband or former wife 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,

shall, in so far as it provides for the making of periodical payments, cease to have effect on the remarriage of the applicant, except in relation to any arrears due under the order on the date of the remarriage.

(3) A copy of every order made under this Order shall be sent to the Probate and Matrimonial Office of the Supreme Court 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.

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 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.

Admissibility as evidence of statements made by deceased

23.—(1) Without prejudice to the Evidence Act (Northern Ireland) 1939 (a) (admissibility of documentary evidence), in any proceedings under this Order a statement made by the deceased, whether orally or in a document or otherwise, shall, subject to this Article and to any rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by the deceased, if he could have been called as a witness, would have been admissible.

(2) Where a statement which was made otherwise than in a document is admissible by virtue of this Article, no evidence other than direct oral evidence by a person who heard or otherwise perceived the statement being made shall be admissible for the purpose of proving it; but if the statement was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the court.

(3) Where a statement contained in a document is proposed to be given in evidence by virtue of paragraph (1), it may, subject to any rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

(4) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of paragraph (1), the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(5) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of paragraph (1), regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular,—

- (a) to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and
- (b) to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

(6) Subject to rules of court, where a statement is given in evidence by virtue of paragraph (1)—

- (a) any evidence which, if the deceased could have been called as a witness would have been admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose; and
- (b) evidence tending to prove that, whether before or after he made that statement, the deceased made (whether orally or in a document or otherwise) another statement inconsistent therewith shall be admissible for the purpose of showing that the deceased had contradicted himself; but nothing in this paragraph shall enable evidence to be given of any matter of which, if the deceased had been called as a witness and had denied that

(a) 1939 c. 12 (N.I.).

matter in cross-examination, evidence could not have been adduced by the cross-examining party.

(7) Section 5 (rules of court) of the Civil Evidence Act (Northern Ireland) 1971 (a) shall apply for the purposes of this Article as if any reference in that section to section 1 or 2 of that Act or to subsection (1) of either of those sections (except the reference in subsection (2) (a) to section 2 (1)) included a reference to paragraph (1), and as if, in subsection (3) (b), for the words “which is contained in a record of any direct oral evidence given” there were substituted the words “which was made by a person, whether orally or in a document, in the course of giving evidence”.

(8) References in this Article to rules of court include, in relation to a county court, references to county court rules; and expressions used in this Article which are defined in the Civil Evidence Act (Northern Ireland) 1971 have the same meanings in this Article as in that Act.

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 £15,000 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 Act (Northern Ireland) 1959 (b) and the appeal brought under the County Court Appeals Act (Northern Ireland) 1964 (c), and sections 2 (cases stated by county court judge) and 3 (cases stated by High Court on appeal from county court) of the last-mentioned Act shall apply accordingly.

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 (d) (passing of intestate's estate, in certain circumstances, to Crown as bona vacantia) shall have effect subject to the provisions of this Order.

Increase in county court jurisdiction under Article 38 (3) of the Matrimonial Causes (Northern Ireland) Order 1978

27. In Article 38 (3) of the Matrimonial Causes (Northern Ireland) Order 1978 (which gives a county court jurisdiction in certain matters affecting the

(a) 1971 c. 36 (N.I.).

(b) 1959 c. 25 (N.I.).

(c) 1964 c. 3 (N.I.).

(d) 1955 c. 24 (N.I.).

estate of a deceased person where his net estate does not exceed £5,000 in value) for “£5,000” there shall be substituted “£15,000”.

Repeals, savings and transitional provisions

28.—(1) Subject to the provisions of this Article, the statutory provisions specified in the Schedule are hereby repealed to the extent specified in the third column of the Schedule.

(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 (a)) 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 (b) 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);
- (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.

N. E. Leigh,

Clerk of the Privy Council.

(a) 1960 c. 15 (N.I.).
(b) 1939 c. 13 (N.I.). (c) 1951 c. 7 (N.I.).

SCHEDULE

Article 28.

REPEALS

Chapter or Number	Short title	Extent of Repeal
1960 c. 15.	Inheritance (Family Provision) Act (Northern Ireland) 1960.	The whole Act.
1969 c. 28.	Age of Majority Act (Northern Ireland) 1969.	Section 3 (1).
1969 c. 38.	Family Provision Act (Northern Ireland) 1969.	Sections 2 to 6. Section 7 (3).
1975 c. 7.	Finance Act 1975.	In Schedule 12, paragraph 20.
S.R. 1976 No. 22.	Revaluation (Consequential Provisions) Order (Northern Ireland) 1976.	In the Schedule, the entry relating to the Inheritance (Family Provision) Act (Northern Ireland) 1960.
S.I. 1977/1250 (N.I. 17).	Family Law Reform (Northern Ireland) Order 1977.	Article 7.
S.I. 1978/1045 (N.I. 15).	Matrimonial Causes (Northern Ireland) Order 1978.	In Schedule 4, paragraphs 8 and 9.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order, which extends to Northern Ireland only, makes fresh provision for empowering the court to make orders for the making out of the estate of a deceased person of provision for the spouse, former spouse, child, child of the family or dependant of that person.

STATUTORY INSTRUMENTS

1979 No. 924 (N.I. 8)

NORTHERN IRELAND

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

Printed in Northern Ireland by Bell, Logan & Carswell Ltd., and published by Her Majesty's Stationery Office

Dd.153289 K14 8/79 Gp.149

90p net

ISBN 0 11 093924 7