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## STATUTORY INSTRUMENTS

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# 1994 No. 1899

## The Wills and Administration Proceedings (Northern Ireland) Order 1994

### PART III

#### ADMINISTRATION OF ESTATES AND TRUSTS

##### *Limitation of actions*

##### **Executors de son tort**

**31.** In Article 39 of the Administration of Estates (Northern Ireland) Order 1979<sup>F1</sup> (liability of person wrongfully obtaining or retaining estate of deceased), at the end of paragraph (3) (saving), there shall be inserted the words “ or the Limitation (Northern Ireland) Order 1989 ”.

**F1** 1979 NI 14

##### *Powers of High Court in proceedings relating to estates of deceased persons and trusts*

##### **Power to make judgments binding on persons who are not parties**

**32.**—(1) This Article applies to actions in the High Court relating to the estates of deceased persons or to trusts and falling within any description specified in rules of court.

(2) Rules of court may make provision for enabling any judgment given in an action to which this Article applies to be made binding on persons who—

- (a) are or may be affected by the judgment and would not otherwise be bound by it; but
- (b) have in accordance with the rules been given notice of the action and of such matters connected with it as the rules may require.

##### **Power to authorise action to be taken in reliance on counsel's opinion**

**33.**—(1) Where—

- (a) any question of construction has arisen out of the terms of a will or a trust; and
- (b) an opinion in writing given by a barrister-at-law of at least ten years' standing has been obtained on that question by the personal representatives or trustees under the will or trust,

the High Court may, on the application of the personal representatives or trustees and without hearing argument, make an order authorising those persons to take such steps in reliance on the opinion as are specified in the order.

(2) The High Court shall not make an order under paragraph (1) if it appears to the court that a dispute exists which would make it inappropriate for the court to make the order without hearing argument.

### **Powers on compromise of probate action**

**34.**—(1) Where on a compromise of a probate action in the High Court—

- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
- (b) the court is satisfied that consent to the making of the pronouncement or, as the case may be, each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,

the court may without more pronounce accordingly.

(2) In this Article—

“probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business; and

“relevant beneficiary”, in relation to a pronouncement relating to any will or wills of a deceased person, means—

- (a) a person who under any such will is beneficially interested in the deceased's estate, and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy (or partial intestacy), or to prevent it from so devolving, a person who under the law relating to intestacy is beneficially interested in the estate.

### **Power to appoint substitute for, or to remove, personal representative**

**35.**—(1) Where an application relating to the estate of a deceased person is made to the High Court under this paragraph by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—

- (a) appoint a person (in this Article called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or
- (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.

(2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—

- (a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and
- (b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.

(3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.

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**Changes to legislation:** *The Wills and Administration Proceedings (Northern Ireland) Order 1994, PART III is up to date with all changes known to be in force on or before 21 December 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

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(4) In this Article “beneficiary”, in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Order modified by [2016 c. 18 \(N.I.\) Sch. 5 para. 4\(2\)](#)