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**INHERITANCE (PROVISION FOR FAMILY AND  
DEPENDANTS) ACT**

**Principal Act**

**Act. No. 1977-15**

*Commencement* 1.9.1977

*Assent* 25.5.1977

Relevant current  
provisions

With which is consolidated

Act. 1960-04, s.34

s.4A

**English sources**

Law Reform (Miscellaneous Provisions) Act 1970 (1970 c.33)

Inheritance (Provision for Family and Dependants) Act 1975 (1975 c.63).

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**SCHEDULE.**

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AN ACT TO MAKE PROVISION FOR EMPOWERING THE SUPREME 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; AND FOR MATTERS INCIDENTAL THERETO.

**Short title.**

1. This Act may be cited as the Inheritance (Provision for Family and Dependants) Act.

**Interpretation.**

2.(1) In this Act–

*(1975 c.63, s.25)*

“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 Act; and
- (b) a person who has received any sum of money or other property which by virtue of section 10(1) or 10(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 Act;

“child” includes an illegitimate child and a child en ventre sa mere at the death of the deceased;

“the court” means the Supreme Court;

“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 made under the Matrimonial Causes Act<sup>1</sup>;

“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

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administration expenses, debts and liabilities, including any estate duty 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 Act as part of the net estate of the deceased by virtue of section 10(1) or (2);
- (d) any property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of an order made under section 11;
- (e) any sum of money or other property which is, by reason of a disposition or contract made by the deceased, ordered under section 12 or 13 to be provided for the purpose of the making of financial provision under this Act;

“property” includes any chose in action;

“reasonable financial provision” has the meaning assigned to it by section 3;

“secured periodical payment” means a payment secured by order of the court under Part IV or V of the Matrimonial Causes Act;

“valuable consideration” does not include marriage or a promise of marriage.

(2) For the purposes of paragraph (a) of the definition of “net estate” in subsection (1) 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.

(3) Any reference in this Act to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.

(4) For the purposes of this Act 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—

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- (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 recognized by the law of Gibraltar; or
- (b) that person has during the lifetime of the deceased entered into a later marriage.

(5) Any reference in this Act 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 Act as a remarriage, in relation to any party thereto, notwithstanding that the previous marriage of that party was void or voidable.

#### **Application for financial provision from deceased's estate.**

3.(1) Where after the commencement of this Act a person dies domiciled in Gibraltar and is survived by any of the following persons— *(1975 c.63, s.1)*

- (a) the wife or husband of the deceased;
- (b) a former wife or former husband of the deceased who has not re-married;
- (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 the foregoing paragraphs) 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 section 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 to make reasonable financial provision for the applicant.

(2) In this Act "reasonable financial provision"—

- (a) in the case of an application made by virtue of subsection (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

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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 subsection (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.

(3) For the purposes of subsection (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.**

*(1975 c.63, s.2)*

4.(1) Subject to the provisions of this Act, where an application is made for an order under this section, 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

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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 subsection (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 section,

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 subsection (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 section may contain such consequential and supplemental 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 subsection—

- (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 section such powers as appears to the court to be necessary or expedient.

#### **Orders for maintenance of surviving party to void marriage.**

*(1970 c.33, s.6)*

4A.(1) Where a person domiciled in Gibraltar dies after the 19th day of January 1972 and is survived by someone (hereinafter called “the survivor”) who, whether before or after that date, had in good faith entered into a void marriage with the deceased, then, subject to subsections (2) and (3), the survivor shall be treated as a person entitled to apply to the court under section 3 and in whose favour an order may be made under section 4(1)(a).

(2) An order shall not be made in favour of the survivor unless the court is satisfied that it would have been reasonable for the deceased to make provision for the survivor’s maintenance; and if an order is so made requiring provision for the survivor’s maintenance by way of periodical payments, the order shall provide for their termination not later than the survivor’s death and, if the survivor remarries, not later than the remarriage.

(3) This section shall not apply if the marriage of the deceased and the survivor was dissolved or annulled during the deceased’s lifetime and the dissolution or annulment is recognized by the law of Gibraltar, or if the survivor has before the making of the order entered into a later marriage.

(4) It is hereby declared that the reference in subsection (2) to remarriage and the reference in subsection (3) to a later marriage include references to a marriage which is by law void or voidable.

#### **Matters to which court is to have regard in exercising powers under section 4.**

*(1970 c.33, s.3)*

5.(1) Where an application is made for an order under section 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 section have regard to the following matters, that is to say: –

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;



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- (b) the financial resources and financial needs which any other applicant for an order under section 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 section 4 or towards any beneficiary of the estate of the deceased;
- (e) the size and nature of the net estate of the deceased;
- (f) any physical or mental disability of any applicant for an order under section 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 subsection (1)(g) where an application for an order under section 4 is made by virtue of section 3(1)(a) or 3(1)(b), the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, 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, or a matrimonial order made under section 5 of the Maintenance Act<sup>2</sup> which contains a provision that the complainant be no longer bound to cohabit with the defendant, 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 paragraph (g) of subsection (1), where an application for an order under section 4 is made by virtue of section 3(1)(c) or 3(1)(d) the court shall, in addition to the matters

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specifically mentioned in paragraphs (a) to (f) of that subsection, 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 section 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 paragraph (g) of subsection (1) where an application for an order under section 4 is made by virtue of section 3(1)(e) the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, 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 section, 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 section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

#### **Time-limit for applications.**

*(1975 c.63, s.4)*

6. An application for an order under section 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.**

*(1975 c.63, s. 5)*

7.(1) Where on an application for an order under section 4 it appears to the court—

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- (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 section; 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 Act, 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 section 4 or decides not to exercise its powers under that section.

(2) Section 4(2), (3) and (4) shall apply in relation to an order under this section as they apply in relation to an order under that section.

(3) In determining what order, if any, should be made under this section 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 section 5.

(4) An order made under section 4 may provide that any sum paid to the applicant by virtue of this section 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 Act, where the court has made an order under section 4(1)(a) (in this section referred to as “the original order”) for the making of periodical payments to any person (in this section referred to as “the original recipient”), the court on an application under this section, 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. *(1975 c.63, s.6)*

(2) Without prejudice to the generality of subsection (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

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section 6 be entitled to apply, for an order under section 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 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 section, 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 subsection (2)(a) and whether having effect from that date or from such later date as the court may specify).

(4) Any reference in this section to the original order shall include a reference to an order made under this section and any reference in this section 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 section.

(5) An application under this section may be made by any of the following persons, that is to say—

- (a) any person who by virtue of section 3(1) has applied, or would but for section 6 be entitled to apply, for an order under section 4;
  - (b) the personal representatives 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 section may only affect—

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- (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 Act; or
- (b) in the case of an application under subsection (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 paragraph (a) or (b) is in subsections (2) and (5) referred to as “relevant property”.

(7) In exercising the powers conferred by this section 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 section, 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 section 4(1)(d), (e) or (f), 11, 12 or 13, shall be made on an application under this section.

(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 re-marriage 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 section 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. *(1975 c.63, s.7)*

(2) Where an order is made by virtue of subsection (1), the court shall have power, on an application made by the person to whom the lump sum is payable by the personal representatives 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 treated as part of “net estate”.**

(1975 c.63,s.8)

10.(1) Where a deceased person has in accordance with the provisions of any enactment 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 estate duty 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 estate duty so payable, shall be treated for the purposes of this Act as part of the net estate of the deceased; but this subsection 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 estate duty 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 estate duty so payable, shall be treated for the purposes of this Act as part of the net estate of the deceased; but this subsection 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 estate duty to be deducted for the purposes of this section shall not exceed the amount of that duty 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.**

(1975 c.63, s.9)

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, an application is made for an order under section 4, the court for the purpose of facilitating the making of financial provision for the applicant under this Act 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 Act 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

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subsection (1), the court shall have regard to any estate duty payable in respect of that severable share.

(3) Where an order is made under subsection (1), the provisions of this section shall not render any person 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 section there may be a joint tenancy of a chose in action.

**Dispositions intended to defeat applications for financial provision.**

12.(1) Where an application is made to the court for an order under section 4, the applicant may, in the proceedings on that application, apply to the court for an order under subsection (2) of this section. *(1975 c.63,s.10)*

- (2) Where on an application under subsection (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 Act 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 section referred to as “the donee”) or by any other person; and
  - (c) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Act,

then, subject to the provisions of this section and of sections 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 subsection (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 subsection shall not exceed the amount of the payment made by the deceased after deducting therefrom any estate duty borne by the donee in respect of that payment.

(4) Where an order is made under subsection (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 subsection 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 estate duty borne by the donee in respect of the transfer of that property by the deceased.

(5) Where an application (in this subsection referred to as “the original application”) is made for an order under subsection (2) in relation to any disposition, then, if on the application under this subsection by the donee or by any applicant for an order under section 4 the court is satisfied—

- (a) that, less than six years before the date of the death of the deceased, the deceased with intention of defeating an application for financial provision under this Act 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 subsection (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 paragraphs (a), (b) and (c) of that subsection; and where any application is made, under this subsection, any reference in this section (except in subsection (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 section, 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 section “disposition” does not include—

- (a) any provision in a will, any such nomination as is mentioned in section 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 section do not apply to any disposition made before the commencement of this Act.

**Contracts to leave property by will.**

13.(1) Where an application is made to a court for an order under section 4, *(1975 c.63, s.11)* the applicant may, in the proceedings on that application, apply to the court for an order under this section.

- (2) Where on an application under subsection (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 Act; 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 section referred to as “the donee”) or by any other person; and
  - (d) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Act,

then subject to the provisions of this section and of sections 14 and 15, the court may make any one or more of the following orders, that is to say—

- (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

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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 representatives 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 representatives only to make such payment or transfer such property as may be specified in the order.

(3) Notwithstanding anything in subsection (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 section, 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 subsection (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 section 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 section do not apply to a contract made before the commencement of this Act.

#### **Provisions supplementary to sections 12 and 13.**

*(1975 c.63, s.12)*

14.(1) Where the exercise of any of the powers conferred by section 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 Act, 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

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provision being made under this Act or to reduce the amount of the provision which might otherwise be granted by an order thereunder.

(2) Where an application is made under section 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 subsection (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 Act.

(3) Where the court makes an order under section 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 section 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 section 12(4) 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 section 12(5) to an application by the donee under that subsection shall include a reference to an application by the personal representative of the donee,

but the court shall not have power under section 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 section 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 sections 12 and 13.**

15.(1) Where an application is made for—

*(1975 c.63, s.13)*

- (a) an order under section 12 in respect of a disposition made by the deceased to any person as a trustee; or

- (b) an order under section 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 section 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 section 12, to any provision regarding the deduction of estate duty) 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 such application 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 pursuance of 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 such application 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 section 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 subsection (1) or (2) to a trustee shall be construed in the same way.

**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, or a matrimonial order which contains a provision that the complainant be no longer bound to cohabit with the defendant has been made under section 5 of the Maintenance Act, a party to the marriage or dies and— *(1975 c.63, s.14)*

- (a) an application for financial provision under the Matrimonial Causes Act, or the Maintenance Act 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 time of the death of the deceased,

then, if an application for an order under section 4 of this Act is made by that other party, the court shall, notwithstanding anything in section 3 or 5 of this Act have power, if it thinks it just to do so, to treat that party for the purpose of that application as if the decree of divorce or nullity of marriage had not been made absolute or the decree order of judicial separation had not been granted, or order under the Maintenance Act had not been made as the case may be.

(2) This section shall not apply in relation to a decree of judicial separation or a matrimonial order made under section 4 of the Maintenance Act which contains a provision that the complainant be no longer bound to cohabit with the defendant, unless at the date of the death of the deceased the decree or order as the case may be was in force and the separation was continuing.

**Restriction imposed in divorce proceedings etc. on application under this Act.**

17.(1) Where an order made under section 46 of the Matrimonial Causes Act 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 section 4 made by the first-mentioned party. *(1975 c.63,s.15)*

(2) Where an order made under section 46 of the Matrimonial Causes Act 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 section 4 made by the first mentioned party.

**Variation and discharge of secured periodical payments orders made under Matrimonial Causes Act.**

*(1975 c.63, s.16)*

18.(1) Where an application for an order under section 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 Act, then, in the proceedings on that application, the court shall have power, if an application is made under this section 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.

(2) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any order which the court proposes to make under section 4 or 7 and any change (whether resulting from the death of the deceased or otherwise) in any of the matters to which the court was required to have regard when making the secured periodical payments order.

(3) The powers exercisable by the court under this section 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.**

*(1975 c.63, s.17)*

19.(1) Where an application for an order under section 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 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 section 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 section the court shall have regard to all the circumstances of the case, including any order which the court proposes to make under section 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 section the like consequences shall ensue as if the variation had been made

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immediately before the death of the deceased by agreement between the parties and for valuable consideration.

(4) In this section “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 Act 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.

#### **Effect, duration and form of orders.**

20.(1) Where an order is made under section 4 then for all purposes, including the purposes of the enactments relating to estate duty, 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. *(1975 c.63, s.19)*

- (2) Any order made under section 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 or order 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 Act 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.**

21.(1) The provisions of this Act 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 *(1975 c.63, s.20)*

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 section 4 after the end of that period; or
- (b) that, where an order has been made under section 4 the court might exercise in relation thereto the powers conferred on it by section 8,

but this subsection shall not prejudice any power to recover, by reason of the making of an order under this Act, any part of the estate so distributed.

(2) Where the personal representative of a deceased person pays any sum directed by an order under section 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 Act, 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 section 4, until the determination of the proceedings on that application.

#### **Admissibility as evidence of statements made by deceased.**

*(1975 c.63, s.21)*

22. In any proceedings under this Act a statement made by the deceased, whether orally or in a document or otherwise, shall be admissible under section 2 of the Civil Evidence Act 1968 as evidence of any fact stated therein in like manner as if the statement were a statement falling within section 2(1) of that Act; and any reference in that Act to a statement admissible, or given or proposed to be given, in evidence under section 2 thereof or to the admissibility or the giving in evidence of a statement by virtue of that section or to any statement falling within section 2(1) of that Act shall be construed accordingly.

#### **Determination of date on which representation was first taken out.**



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23. In considering for the purposes of this Act when representation with respect to the estate of a deceased person was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal 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. *(1975 c.63, s.23)*

**Repeal.**

24. *Omitted.*