

## New Inheritance law: changes for spouses and children

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1 October 2014 sees the entry into law of the Inheritance and Trustees' Powers Act 2014 ("the Act"), which implements proposals put forward by the Law Commission as part of its review of intestacy and family provision claims on death back in 2008, which resulted in a report and draft bill in December 2011.

In addition to relatively minor amendments to the powers of trustees, the new Act introduces important changes in respect of people dying without a will, and those making claims for financial provision from a deceased's estate.

### Change to Intestacy Rules

One of the key changes introduced is a change to a spouse/civil partner's entitlement where their husband/wife/civil partner dies without a will (intestate).

Prior to 1 October 2014, a spouse/civil partner's entitlement on intestacy depended on whether there were any children or other descendants of the deceased, or other surviving relatives.

The old rules and the changes are as follows:

#### Deceased dies leaving children/other descendants

Under the old regime, if the deceased died leaving children or other descendants:

- the surviving spouse/civil partner would receive:
  - the deceased's personal effects;
  - a statutory legacy of £250,000; and
  - a life interest (i.e. the right to receive income generated by) one half of the remainder of the estate
- The surviving children/descendants would receive:
  - half of the remaining estate immediately
  - The other half on the surviving spouse / civil partner's death.

This arrangement is unsatisfactory for a number of reasons, not least because owning property on a life interest can be unnecessarily complicated (and inconvenient where the bulk of an estate is made up by a property).

Under the new rules:

- the surviving spouse/civil partner will receive:

- the deceased's personal effects;
  - a statutory legacy of £250,000; and
  - half the remaining estate outright
- The surviving children/descendants would receive:
    - The other remaining half of the estate

A further change is that the statutory legacy is now subject to increase when CPI inflation increases by 15%, or every 5 years, whichever occurs sooner.

#### Deceased dies leaving no children/descendants, but is survived by other relatives

Again under the previous rules, where a deceased died leaving a spouse/civil partner with no children / descendants, but does leave certain other relatives (principally parents or siblings / their children), the following division of the estate would apply:

- the surviving spouse/civil partner would receive:
  - the deceased's personal effects;
  - a statutory legacy of the first £450,000 in the estate; and
  - half of the remaining estate
- Other relatives would receive
  - the remaining half

This latter point often comes as surprise to many who, perhaps understandably, assume that in the absence of any children, the surviving spouse / civil partner inherits everything.

Under the new rules, the position is modified to reflect what many understand to be the position anyway: if there are no children/descendants of a deceased, the surviving spouse / civil partner will inherit the whole estate.

There were a [number of recommendations](#) that have not been implemented and one of these relates to cohabitants, who under the Law Commission's proposals would have received an automatic entitlement to a proportion of a deceased partner's estate in certain circumstances. This would have gone some way to remedy a common misconception amongst unmarried couples that they automatically have rights against their partner's estate in the event of their death, or on a breakdown of the relationship. Unfortunately, there is currently no recognition in English law of the concept of a common law spouse.

A draft bill has been put forward in respect of these suggestions; however the Government has indicated this will not be debated during the current parliament. It remains to be seen whether it will be resurrected following next year's general election.

In the meantime, these changes to the intestacy rules serve as a reminder that it remains the case that unmarried couples should give serious thought to making a will if they wish to avoid the effects of the intestacy rules, and determine for themselves what happens to their assets after their death. Dying without a will could mean that loved ones may not benefit from an estate as intended. The only certain way to ensure that a spouse/civil partner, partner, children or anyone else inherit as intended is by making a will.

A failure to do so may leave those left behind with no provision from an estate with little option but to pursue a claim against the deceased's estate pursuant to the Inheritance (Provision for Family and Dependants) Act 1975 ("the Inheritance Act"). Such claims are not always possible and where they are, litigation is time-consuming, expensive and emotionally draining at a time when the parties are grieving.

### **Changes to the Inheritance Act**

The other key change introduced by the new Act relates to the Inheritance Act. In particular, clarity has been given on when a claim can be brought, which now includes the period before a grant of representation is taken out in the estate (although this may give rise to its own problems in practice).

In addition, the definition of a person treated as a 'child of the family' has been widened in scope. The definition of what constitutes maintenance of a person who is claiming under the Inheritance Act is also slightly amended.

Again, a number of recommendations in the Law Commission's original report have not been adopted including a change to the requirement that a deceased died domiciled in England in Wales in order for a claim to be brought. This is unfortunate as arguments about domicile are by their nature complex and expensive. Furthermore, given the more global nature of people's affairs, such issues are increasingly common.

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