

# The New UK Succession Rules – A Brief Overview

By David J Kidd

## Intestacy

When a person dies “intestate”, that is without leaving a valid will disposing of the whole of his property, the distribution of his estate is governed in the UK by special legal rules. These intestacy rules typically prescribe that the estate passes to certain surviving family members or relatives in prescribed proportions and a prescribed manner, whether absolutely or in trust. The rules take effect automatically without the intervention of a Court application.

Studies have shown that in the UK up to two-thirds of people die without leaving a will, and thus are brought within the scope of these rules.

## Applicants for financial provision

It does not follow, however, that making a will in the UK means that the estate necessarily passes entirely in line with the deceased’s will. There is no complete testamentary freedom in the UK. Since 1975 certain family members and dependants may apply to Court for reasonable financial provision from the estate. If successful, this results to a greater or lesser extent in the will being overridden. The persons who may make these applications are:

The husband or wife or former (not remarried) husband or wife; a person who lived in the same household with the deceased as man and wife; a child, or stepchild, provided



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in the latter case the deceased was married; and, most importantly, any person who was maintained wholly or partly by the deceased.

Such claimants must apply to the Court. Though bound to have regard to certain facts, it has discretion as to how much, if any, “reasonable provision” will be made. Naturally this uncertainty in the place of clear rules encourages disputes over deceased’s estates.

**Example:** The wife of a man, both with previous dissolved marriages, left her entire £2.3m estate, including a family home in London, to her two sons from a previous marriage. Her surviving husband received no other benefit from her will than to live rent-free in the family home. Application to the Court resulted after three years dispute in the husband receiving £375,000 in cash as well as reasonable provision for his daughter from a previous marriage. The stepsons shared £235,000 and any property

bought with the proceeds of the London family home when the husband dies.

## Law Commission and statutory changes

The UK’s Law Commission, a body established to review areas of law and make recommendations for amendments, recently made proposals in these two areas, part of which were enacted in late 2014. This was in the Inheritance and Trustees’ Powers Act 2014.

## Intestacy changes

– **Spouse entitlement where deceased leaves no issue.** Where a married person dies leaving no children, his entire estate will now pass to the surviving spouse. The prior position was that the surviving spouse received personal chattels, a statutory legacy, and one half of residue absolutely. The remaining half-share of the estate passed to the surviving parents or brothers or sisters or their children.

Thus the most significant change is that neither parents nor siblings nor the latter’s children will have any entitlement; they have been disinherited on intestacy in favour of the surviving spouse.

– **Spouse entitlement where deceased leaves issue.** Where children are left, personal chattels, a statutory legacy, and one-half of residue will go absolutely to the surviving spouse. The other half of residue will be held on trust for

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the children. The former position was that the surviving spouse had no more than a life interest in one-half of the residue, so that the capital was in principle preserved ultimately for the children on her death.

The change represents a further move in favour of the surviving spouse, whilst affecting adversely children's long-term entitlement to capital.

– **Trustees' powers changes.** As part of its review of intestacy, the Law Commission had to consider trustees' powers. Where a settlor is living, the extent of trust powers is largely a matter of choice, but a person who dies intestate never considers the position. It is currently governed by Trustee Act 1925, dealing with powers to apply income, and advance capital. The provisions are, however, widely regarded as technical and restrictive, and rather than restrict the changes to intestacies, they have been generally changed, so that the wider new versions in relation to powers of maintenance or advancement apply to any intestacy, will or trust created after 1st October 2014.

## Changes concerning Court applications by dependants for financial provision

One of the categories of persons who can apply to the Court to make a claim against a deceased's estate is a person who was wholly or partly maintained by the deceased, "dependants" for short.

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An existing hurdle on such applicants succeeding was removed.

The Courts had held such dependency could not be demonstrated in cases where the parties benefited each other, such as by contributing roughly equally to a household budget. There needed to be a net benefit to the person claiming to be dependant, which was often difficult to show. This restriction was removed. Only commercial arrangements are now excluded from qualifying, e.g. an employed live-in nurse.

## Stepchildren where stepparents not married or are single parents

Another category of applicant was a stepchild, but only if the stepparents were married. This restriction was removed and now any child may apply provided the deceased stood in the role of a parent, even if there was no marriage, and even if the deceased was the only person apart from the child i.e. single parent.

## Extension of powers of Court to vary deceased's trust

There is added a power to the Court to make an order varying for the appli-

cant's benefit the trusts on which the deceased's estate is held (whether under a will or on intestacy).

## Matters not enacted

– **Jurisdiction change from UK domicile to habitually resident.** The Commission recommended that the Courts have jurisdiction in financial provision cases whenever the applicant was habitually resident in the UK. Currently the Court only has jurisdiction if the deceased was domiciled in England and Wales. 'Domicile' essentially means that a person of foreign origin can remain domiciled overseas, and thus not subject to jurisdiction, whilst remaining for long periods of residence in the UK.

In one case a Cypriot had been in the UK for forty-three years and lived with the applicant for ten years, but as the applicant could not show that the deceased Cypriot had become domiciled in England and Wales, her claim against his estate could not proceed. The Commission's recommended change to use the applicant's "habitual residence" in the UK was not enacted.

– **Cohabitation and intestacy.** The Commission recommended that intestacy rules be extended to cohabitants, but the matter has not been taken forward by the government. However, a privately sponsored Bill was introduced to this effect in Parliament in 2014, but has made no further progress towards enactment.