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LIFE INSURANCE SPECIALISTS

Intestacy in England and Wales - a guide

Synopsis: The key provisions.

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General considerations

When a person dies without having made a valid Will, the legal term for this is intestacy.

The estate of the deceased, that is all the property which he or she owned immediately before his or her death, passes under the statutory rules which are set out in the Administration of Estates Act 1925, as substantially amended (most recently by the Inheritance and Trustees Powers Act 2014 – please see below).

Apart from the surviving spouse/civil partner, the intestate distribution is, typically, to a class of beneficiaries established at the date of death, e.g. children or, if none, brothers and sisters.

Children and Issue

Generally speaking, the term “issue” is used instead of “children”, but “issue” has a wider meaning and includes the lineal descendants, i.e. children, grandchildren etc.

For example, if a child does not survive his or her parent but is in turn survived by his or her own children, those children (i.e. the grandchildren) will take the share of the deceased parent. Illegitimate children (and their issue) are entitled to the same rights under intestacy as are legitimate children (section 14 Family Law Reform Act 1969).

It is important to remember that personal representatives are given power to distribute the estate on the basis that the only illegitimate children (or issue thereof) are the ones known to them (Section 17 Family Law Reform Act 1969) - thus avoiding potential problems of illegitimate children turning up subsequently.

An adopted child is treated as a legal child of the adopting parents and has the same rights as the adopting parents’ other natural children (but generally loses any rights he or she may have had in law to his or her natural parents’ estate). Similarly, the natural parents of an adopted child lose their rights on the child’s death under intestacy laws.

Distribution of estate on intestacy

As already indicated, this is governed by the Administration of Estates Act 1925.

A key amendment to the rules was introduced by Section 1(1) Law Reform (Succession) Act 1995 which introduced the survivorship rule in respect of spouses (and now civil partners) of intestate persons and for deaths occurring on or after 1 January 1996 a surviving spouse/civil partner will only benefit if he or she survives the intestate spouse/civil partner by 28 days. Where a spouse/civil partner does not

survive, the intestate's estate will be dealt with as if there had been no spouse/civil partner.

The rules have been further amended by the Inheritance and Trustees Powers Act 2014 which came into force for deaths occurring on or after 1 October 2014.

Subject to the above caveat, where a person dies intestate, the destination of their estate will currently depend upon which of their relatives survive him or her, as set out below...

Spouse/civil partner alone (no issue)

- Spouse/civil partner takes the entire estate absolutely.

Spouse/civil partner and issue

Spouse/civil partner takes...

- All the personal chattels absolutely.
- £270,000 (the statutory legacy), plus interest at Bank of England rate payable from the date of death until the date of payment.
- Half the balance of the residuary estate.

Issue take...

The remainder of the residuary estate subject to the "statutory trusts". The statutory trusts give the children an absolute right to income and capital at age 18 and qualify as trusts for bereaved minors for inheritance tax (IHT) purposes. Children will share the balance of the estate in equal shares. Where children are adult, they will receive a proportionate share of capital immediately.

Since the implementation of the Trustee Act 2000 trustees of statutory trusts in England and Wales have had wide powers of investment. When a child predeceases a parent who subsequently dies intestate, his/her share will be taken by his/her children who are living at the death of the intestate who attain age 18 or marry under that age.

What is included in personal chattels is defined in Section 55 Administration of Estates Act as amended by the Inheritance and Trustees Powers Act 2014.

Historically these would normally include motor cars and accessories, garden effects, domestic animals, linen, china, books, pictures, jewellery, articles of household or personal use, musical instruments, wines and consumable stores but not chattels used at the death of the intestate for business purposes, nor money or securities.

Following the introduction of the Inheritance and Trustees Powers Act 2014, the somewhat outdated definition of personal chattels included in the 1925 Act has

been redefined as meaning "tangible movable property, other than any such property which...

- Consists of money or securities for money, or...
- Was used at the death of the intestate solely or mainly for business purposes, or...
- Was held at the death of the intestate solely as an investment.

Where the surviving spouse/civil partner occupied the private residence owned by the deceased at the date of death, he or she has the right to require the administrator to appropriate this in or towards satisfaction of any interest that he or she has in the intestate's estate. This right must be exercised within 12 months of issue of the grant. If the value (at the date of appropriation) of the property is greater than the value of the surviving spouse's/civil partner's absolute interest in the estate, the surviving spouse/civil partner must pay the balance to the administrator in cash.

If the intestate's interest, say in the private residence, was held subject to a joint tenancy, the surviving joint tenant (in most cases the spouse/civil partner) will automatically receive the intestate's share by the right of survivorship, wholly unaffected by the intestacy provisions.

Note that where a deceased died before 1 October 2014, leaving a surviving spouse/civil partner and issue, the spouse/civil partner was entitled to personal chattels and a statutory legacy of £250,000 but only half of the residue outright. The other half would have been held on immediate post-death interest (life interest) trusts for the spouse/civil partner for life and thereafter for the children on the statutory trusts. The spouse/civil partner has the right, which must have been exercised in writing within 12 months of the issue of the grant of representation, to request the redemption of the life interest and receipt of the capital value instead.

Calculation of the lump sum must be in accordance with the rules and tables laid down in the Intestate Succession (Interest and Capitalisation) Order 1977 (SI 1977 No 1491) as amended by the Intestate Succession (Interest and Capitalisation) (Amendment) Order 2008 (SI 2008 No 3162) with effect from 1 February 2009. Capitalisation of the life interest may be administratively convenient in that it can speed up the distribution of the whole estate. It should be added that where all the issue are of full age and capacity, there can be an agreement that the share of the capital to be taken by the surviving spouse/civil partner and the calculation under the above mentioned regulations will not be needed.

Issue but no spouse/civil partner

- The issue take the entire estate absolutely subject to the statutory trusts (if appropriate).

No spouse/civil partner or issue

The specified relatives take the whole estate in the following order and only if there is nobody in a prior class will the next class benefit...

- parents equally if both living,
- brothers and sisters of the whole blood,
- brothers and sisters of the half blood,
- grandparents equally if more than one living,
- uncles and aunts of the whole blood, and
- uncles and aunts of the half blood.

All classes, except parents and grandparents, take subject to the statutory trusts which provide for the issue of a deceased member of the class to take his or her share.

In the absence of all the above the Crown, Duchy of Lancaster or the Duchy of Cornwall takes the whole estate

The Inheritance and Trustees Powers Act 2014, which came into force on 1 October 2014 made a number of significant changes to the way an estate is distributed on intestacy. Most notably, parents, brothers and/or sisters now only benefit from a deceased's estate where there is no surviving spouse/civil partner. The changes are summarised below....

Partial intestacy

The term partial intestacy refers to a situation where an individual leaves a Will which does not dispose of the whole of the estate. This could occur where not all the assets are covered by the Will or where a beneficiary under a Will disclaims his or her interest under the Will. Partial intestacy may also arise where the residuary beneficiary under the Will themselves dies first.

The above mentioned rules of intestacy apply equally to partial intestacy. That is, to the extent that the Will does not deal with particular assets, the above rules will apply as if the estate subject to intestacy was self-contained.

Where an individual dies partially testate and partially intestate, the dispositions in the Will take precedence and the personal representatives then deal with the undisposed property under the partial intestacy.

Until the Law Reform (Succession) Act 1995, the hotchpot rules applied which meant the issue and the surviving spouse/civil partner had to bring into account the value of certain beneficial interests received under the Will in determining their entitlement on intestacy. The 1995 Act (S1(2)) abolishes the hotchpot rules in respect of partial intestacy for children and spouses/civil partners.

The abolition of the hotchpot rules means that where there is partial intestacy, a beneficiary will no longer have his or her fixed net sum under the intestacy rules reduced by the value of any interest he or she takes under the Will. The same applies to children's entitlements on intestacy.

For example, where there are two children and there is a Will that disposes of half of the estate only, leaving it all to one child, the undisposed half of the estate will be divided equally between the two children, with the result that one child takes three quarters of the estate and the other one quarter. Under the old hotchpot rules the child who benefits under the Will would have to bring their share into hotchpot as part of their equal share under intestacy so that the result would be that the whole of the estate would be split equally between the two. Although the latter might seem fairer it might not have been in accordance with the testator's wishes.

The statutory trusts

Where property passes on intestacy to the issue of the deceased it is held upon the statutory trusts. The term is defined in Section 47(1) Administration of Estates Act 1925 as amended by Section 3(2) of the Family Law Reform Act 1969. Where all or part of the estate is held upon the statutory trusts for issue of the intestate, such whole or part is divided in equal shares between such of the children of the deceased as survive him or her and reach the age of 18 or marry under that age. I

f a child dies before the intestate, leaving children living at the intestate's death, they take in equal shares between them the share which their parent would have taken had he or she survived - again, subject to their reaching the age of 18 or marrying under that age. This method of distribution is described as being *"per stirpes"* - according to the stocks and is in contrast to distribution per capita - according to the heads.

Consequently, where the children benefiting under intestacy are under age 18, the statutory trust that comes into effect on the death of the parent for each such child will meet the conditions for a Bereaved Minor's Trust (BMT) because the child will become absolutely entitled at 18.

For IHT purposes a BMT is exempt from the periodic and exit charges. Before the Finance Act 2006 (which introduced the BMT) the funds would be held on statutory accumulation and maintenance trusts. With regard to income and capital rights under such a trust, sections 31 and section 32 of the Trustee Act 1925 will apply.

When the beneficiary attains age 18 (or on previous marriage), he or she can demand payment of the capital.

When statutory trusts apply on intestacy, it will be the administrators who will be the trustees of the trust, although they will have a power to appoint other trustees if necessary or desired. In all other areas of trust administration, the statutory rules will apply, in particular the Trustee Act 2000 in respect of any investments of the trust fund.

The Inheritance and Trustees Powers Act 2014

The draft Inheritance and Trustees Powers Bill, which gave effect to the recommendations set out in parts 2–7 of the Law Commission's 2011 report: Intestacy and Family Provision Claims on Death, was passed on 14 May 2014 and

the Act came into force on 1 October 2014. The new rules on intestacy are summarised above and the main changes from the pre-October 2014 position are highlighted in this section.

The Inheritance and Trustees Powers Act 2014 abolished the pre-October 2014 spouse's/civil partner's life interest trust so that now where a deceased leaves a surviving spouse/civil partner and children, the surviving spouse/civil partner will receive the statutory legacy of £250,000, the deceased's personal chattels and half the balance of the remaining estate outright (with children or other descendants sharing the other half of the balance).

Note that in January 2020 a statutory instrument (Administration of Estates Act 1925 (Fixed Net Sum) Order 2020) was laid, increasing the net sum that a surviving spouse or civil partner is entitled to receive if a person dies intestate leaving issue. The new legacy has been increased from £250,000 to £270,000, and came into force on 6 February 2020.

The other major change in October 2014 was to the position where the deceased dies with a surviving spouse/civil partner but no children.

For deaths occurring prior to 1 October 2014, if the estate was worth in excess of £450,000 the spouse/civil partner had to share it with the deceased's parents and full siblings (or their descendants). According to the Law Commission, most people thought this was unfair and the new Act therefore provided that in these circumstances, the whole estate will always pass to the surviving spouse/civil partner.

The Act goes some way to reflecting the needs and expectations of modern families. However, the second part of the Law Commission's 2011 recommendations – which would grant 'common-law spouse' rights to the survivor of an intestate cohabitant – has still not been implemented.