



**Law  
Commission**  
Reforming the law

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# **Intestacy and Family Provision Claims on Death**

## **Executive Summary**

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**Consultation Paper No 191 (Summary)**  
**29 October 2009**

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THE LAW COMMISSION

**INTESTACY AND FAMILY PROVISION  
CLAIMS ON DEATH  
EXECUTIVE SUMMARY**

**INTRODUCTION**

1. Every year, many tens of thousands of people die without a will and their property is distributed according to rules which date back to 1925. Even where there is a will, it can be challenged in court if reasonable provision has not been made for certain family members and dependants. It is therefore vital that the law remains relevant and up to date, reflecting the reality of modern society and the reasonable expectations of those who have been bereaved.
2. The Law Commission has carried out a detailed review of the law in this area and our findings and provisional proposals for reform are set out in a Consultation Paper, *Intestacy and Family Provision Claims on Death*, published on 29 October 2009. This can be downloaded free of charge from our website at [www.lawcom.gov.uk/intestacy.htm](http://www.lawcom.gov.uk/intestacy.htm), where a more detailed overview and other documents are also available. This executive summary sets out some of the main issues. We invite responses to the Consultation Paper from members of the public, the legal profession and any other interested parties by 28 February 2010.
3. The purpose of this consultation is to generate responses to our discussion, provisional proposals and questions with a view to making recommendations for reform to Parliament.

**THE NEED FOR REFORM**

4. English law entitles us to make a will stating who should inherit our property when we die. Research consistently shows strong support for this freedom, yet around a third of those who die each year have not made a will (and are said to die “intestate”). In such cases, the deceased’s property is distributed among family members according to the intestacy rules which, despite periodic amendments, still reflect some of the social conditions and attitudes of a different era.
5. Other legal rules enable certain relatives and dependants to go to court to challenge the results that flow from the strict application of the intestacy rules or the distribution of property under the terms of a will. These rules are contained in the “family provision” legislation, currently set out in the Inheritance (Provision for Family and Dependants) Act 1975, which has been amended since its enactment but has not been comprehensively reviewed.

6. Our project is concerned with both of these areas of the law – the intestacy rules and the family provision legislation. We have reviewed the current law and, just as importantly, examined the social context in which the law operates. In doing this we have taken account of a wide range of evidence, including public attitude surveys. We have considered the law in other countries, in particular those that share our legal traditions. We have also commissioned our own research to provide information about the amount and type of property that people leave on death (referred to as the “estate”) and up-to-date evidence of public attitudes to inheritance.
7. We have concluded that the current law suffers from a number of weaknesses, and that reform is therefore needed. In some cases we make provisional proposals for reform and ask for consultees’ comments. Where there are a number of ways in which the law could be reformed, we set out a series of options and ask for consultees’ views. Some of our proposals would bring significant changes to the current law; others are more technical and would rectify anomalies or simplify the process of administering a deceased person’s estate (administration is usually undertaken by family members during a period of financial and emotional strain). We summarise our main proposals here but stress that this is only a summary – readers should refer to the Consultation Paper for details.

## **SPOUSES**

8. Where a person dies leaving a surviving spouse (by which we mean a husband, wife or civil partner), the spouse’s inheritance depends on the size of the estate and whether or not the deceased left children or other relatives.
9. Where the deceased is not survived by any children (or grandchildren or great-grandchildren), his or her spouse is entitled to everything in the estate up to a maximum of £450,000 but must share anything over that sum with any surviving parent or any surviving brother or sister of the deceased. This is relatively rare – figures set out in the Consultation Paper suggest that the estate is split in this way in fewer than one in 50 cases. We have proposed changes to the intestacy rules so that a surviving spouse would inherit the whole estate in such cases.
10. More complex issues arise where there are also surviving children (or other descendants). Under current law, the surviving spouse is entitled to everything in the estate up to a maximum of £250,000. Anything over this figure is divided in two, with the surviving spouse entitled only to a life interest in one half (this is a type of trust which allows the surviving spouse to use assets or receive income from them during his or her lifetime).
11. As we explain in the Consultation Paper, the practical effect of the current law is that at least nine out of 10 surviving spouses inherit the whole estate in cases of intestacy. It is only in the wealthiest 10 per cent of estates that children are likely to inherit anything.
12. One reform option would be to give a surviving spouse the whole estate in every case. In fact, research suggests that many people already think that this happens now. This would simplify the law and bring the effect of the intestacy rules on wealthier estates into line with most other estates.

13. However, when this reform was recommended by the Law Commission in 1989 it was not implemented, because of concerns that some children would be “disinherited”, particularly where a parent had remarried. There are strong arguments in favour of a provision in the intestacy rules that a surviving spouse always inherits the whole estate, but we recognise that there are valid concerns about this. We therefore include this approach as one of a series of options for reform on which we want consultees to comment. The others are:
- (1) no change to the current law;
  - (2) reform to eliminate the need for the expense and complexity of life interest trusts; and
  - (3) reform that takes account of whether the surviving spouse owned the family home jointly with the deceased.
14. We reject the suggestion that the entitlement of a surviving spouse should depend on whether the deceased had children from another relationship. We also decide against significant reforms to the rule that a surviving spouse inherits all of the deceased’s personal belongings (referred to in the intestacy rules as “personal chattels”) but we think that the definition of chattels should be clarified and modernised.

### **COHABITANTS**

15. Where a couple live together without getting married or forming a civil partnership and one of them dies, the survivor has no automatic right under the current intestacy rules to inherit any part of his or her partner’s estate. This is the case no matter how long they lived together and even if they had children together. It can lead to significant hardship when longstanding cohabitants are bereaved. Many cohabitants do not realise that, if one of them dies without leaving a will, the other will not automatically inherit anything under the intestacy rules.
16. In some circumstances, a surviving cohabitant can go to court to challenge the distribution of a deceased partner’s estate under the family provision legislation. But that will often be emotionally and financially draining.
17. We therefore propose to reform the intestacy rules so that, in some circumstances at least, a surviving cohabitant can share in a partner’s estate without having to go to court. This would extend the existing legal protection afforded to cohabitants when a relationship is cut short by death (existing legislation recognises the needs of cohabitants when a partner is killed in a fatal accident). It would also bring English law into line with the law in other Commonwealth jurisdictions.
18. While some may find this idea controversial, research indicates that it would match public expectations and attitudes. It would still be open to cohabitants to make a will naming other beneficiaries (subject to the family provision legislation).

19. We ask two key questions: which cohabitants should qualify for inclusion under the rules, and what should they receive? Although we recognise that there is a huge range of possible answers, we provisionally propose that couples who have had a child together or lived continuously as a couple for more than five years should have the same rights on intestacy as spouses.
20. We also consider childless relationships of less than five years. We provisionally propose that where a couple have lived together for more than two (but less than five) years up to the date of death, the survivor should be entitled to half of the share of the estate that a surviving spouse would have received. The surviving cohabitant should not be entitled to the deceased's personal chattels in addition to that share, but should be allowed to choose items up to the value of any cash entitlement. We propose that a cohabitant should not receive anything under the intestacy rules if the deceased was still married or in a civil partnership at the time of death, however long the cohabitation.
21. We make a number of other proposals for changing the family provision legislation which would bring the definition and treatment of cohabitants into line with our proposals for reform of the intestacy rules.

#### **OTHER REFORM QUESTIONS AND PROPOSALS**

22. We ask a number of other questions in the Consultation Paper and in some cases make provisional proposals for reform. Some of these concern technical issues which are likely to be of interest mainly to professionals involved in the administration of estates.
23. For example, we ask whether the current preference in the intestacy rules for parents over brothers and sisters should be retained, and whether the rules should continue to give preference to full siblings (brothers and sisters who share both parents with the deceased) over half siblings (who share only one parent with the deceased). We also propose that the current rule that children who are adopted after the death of a parent lose their right to inherit from that parent on turning 18 should be reversed. We consider whether, where family members entitled to an inheritance are hard to locate, the cost of tracing them should come from their share of the estate. And we ask whether the limit to the value of assets that can be administered without having to obtain formal authority to deal with the estate should be raised (from the present level of £5,000).
24. In relation to the Inheritance (Provision for Family and Dependants) Act 1975, we examine, among other issues, whether a wider range of family members should be entitled to bring a claim, and whether changes are needed so that adult children have a greater prospect of success. We propose that anyone treated by the deceased as his or her child should be able to bring a claim, and seek to clarify the position of those who claim as dependants of the deceased. We also discuss possible reforms to the orders that the court can make.
25. The Consultation Paper examines a number of other issues and concludes that reform is unnecessary. For example, we consider that there should be no change to the range of relatives entitled to inherit under the intestacy rules and that, where there are no such relatives, property should continue to pass to the Crown.

## **IMPACT OF OUR PROPOSALS**

26. Throughout the Consultation Paper we discuss the impact of the current law and of our provisional proposals on individuals and particular groups in society. We also ask for consultees' help in quantifying these potential impacts and identifying any human rights implications.

## **RESPONDING TO OUR CONSULTATION PAPER**

27. Copies of the Consultation Paper are available to download free of charge from our website at [www.lawcom.gov.uk/intestacy.htm](http://www.lawcom.gov.uk/intestacy.htm).
28. We seek responses to the Consultation Paper by 28 February 2010:
  - (1) by email to [propertyandtrust@lawcommission.gsi.gov.uk](mailto:propertyandtrust@lawcommission.gsi.gov.uk); or
  - (2) by post to Jack Connah, Law Commission, Steel House,  
11 Tothill Street, London SW1H 9LJ
29. We will treat all responses as public documents in accordance with the Freedom of Information Act 2000 and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. Please note that we will disregard automatic confidentiality statements generated by an IT system.