

Inheritance and Trustees' Powers Bill

The government has issued a draft Inheritance and Trustees' Powers Bill based on recommendations published by the Law Commission in December 2011.

The bill will abolish the spouse's life interest trust that is automatically established on a death in intestacy under the existing law of England and Wales (the Administration of Estates Act 1925). As things stand, if the deceased leaves a spouse and children, the surviving spouse receives only the first £250,000 of the estate. The remainder is split in two, with half going to the deceased's children outright and half held in the surviving spouse's life interest trust.

This system is virtually unique to England and Wales and is generally regarded as unnecessarily complex, particularly where the resulting trust assets are modest. It can also cause bad feeling between the spouse and the children, particularly if there are stepchildren.

Under the new bill, the surviving spouse gets the £250,000 statutory legacy, the deceased's personal chattels and half the balance of the remaining estate outright. Children or other descendants share the other half of the balance.

The other major reform cuts the deceased's parents and siblings out of the distribution on intestacy. At the moment, if the deceased had no children and the estate is worth more than £450,000, the spouse has to share it with the deceased's parents and full siblings or their descendants. According to the Law Commission, most people think this is unfair. So, under the new bill, the whole estate will always pass to the surviving spouse.

The draft bill also widens the right to bring reasonable provision claims against an estate under the 1975 Inheritance (Provision for Family and Dependants) Act. At the moment such claims cannot be brought against estates where the deceased was domiciled abroad. The bill allows relatives or dependants to bring such claims against the estate of a non-domiciled deceased who left property in England or Wales.

It will also make clear that anyone treated by the deceased as a child can bring a claim whether or not there was a marriage or civil partnership and a person who was being maintained by the deceased immediately before the death will no longer have to show that the deceased contributed more to the relationship in financial terms than the applicant did and that the deceased assumed responsibility for that maintenance.

Another provision extends trustees' statutory powers to apply income and capital. At the moment, trustees are restricted in how they can distribute the assets unless the trust deed specifically gives them wider powers.

The second part of the Law Commission's 2011 recommendations – which would grant 'common-law spouse' rights to the survivor of an intestate cohabitant – is not going to be implemented in this parliament, the government has announced.

Of course, the best way of avoiding all of the anguish and grief that the current or proposed law can create and to provide a spouse/partner and family with the most suitable provision is to write a Will and we are available to provide all of the advice necessary on a free-consultation basis.

Please don't hesitate to contact us.

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