



Changes to Inheritance Law

The 14th May 2014 saw the Inheritance and Trustees Powers Act 2014 (ITPA 2014) receive Royal assent and from 1st October 2014 significant changes to the intestacy procedures, rules regarding claims against an estate and certain powers of trustees will come into force. ITPA 2014 amends existing legislation, namely:

- Administration of Estates Act 1925 (AEA 1925)
- Inheritance (Provision for Family and Dependants) Act 1975 (IPFDA 1975)
- Trustee Act 1925 (TA 1925)

In summary, these amendments will simplify the sharing of assets upon a death intestate, recognise more modern family structures upon intestacy and relevant claims against estates, modify the definition of what 'personal chattels' are and revise the powers of trustees to use income and capital for the benefit of beneficiaries.

INTESTACY RULES

The present law on the distribution of an estate upon a death intestate is laid out in a table in the AEA 1925. ITPA 2014 greatly simplifies this table in the following ways:

- if the deceased is survived by a spouse but no children, the entire estate will pass to that surviving spouse rather than giving a portion to the deceased's surviving parents.
- if the deceased is survived by a spouse and children or other issue (e.g. grandchildren), the surviving spouse will receive all personal chattels and a statutory legacy of £250,000 (with interest from the date of death accruing at the Bank of England base rate) plus half of the residue of the estate above that statutory amount. The surviving children or other descendants will take the other half of the residue. The half of the residue taken by the spouse will go to them absolutely rather than on a life interest trust.

A flowchart summarising the changes appears on the next page.

DEFINITION OF PERSONAL CHATTELS

AEA 1925 currently contains a list of items to be regarded as personal chattels including things as varied as carriages, stable furniture and scientific instruments. ITPA 2014 has simplified this to 'tangible movable property', however this definition will not include assets held for the purpose of a business or as an investment. So e.g. if the deceased was a fisherman, the fishing boat used in his business would not pass to his wife on death intestate whereas if the boat was one owned purely for personal use it would. Alternatively if the deceased had purchased a valuable bottle of wine in the hope that it would increase in value, this would be an item held as an investment and therefore would not pass to their spouse. Compare this to the situation of a deceased who simply loved to drink wine, those bottles she would have drunk for her own enjoyment will pass to her spouse upon her death intestate.

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

Children: The new law now recognises that a family unit may exist outside of what might be considered to be traditional family roles. ITPA 2014 now allows for an IPFDA 1975 claim to be brought by a person who was treated as a child of the deceased regardless of whether that relationship had arisen because of the marriage of anyone in that unit or not. This includes the situation where the family consists simply of the deceased and that person. So, in a situation where the deceased was the unmarried partner of a child's parent, the child will now have a right to make a claim against the estate as though they were a child of the deceased even if their own parent had passed away prior to the death of the deceased.

Dependants: A person making an IPFDA 1975 claim as a dependant of a deceased would currently need to show that the deceased had contributed significantly to the relationship between them to the point that, generally, the deceased had put into their relationship more than 50% of the financial contributions. The implementation of ITPA 2014 means that this 'balance sheet' approach is no longer necessary and the test will now revolve around whether or not the deceased made a substantial contribution to the needs of the individual making the claim.

TRUSTEE ACT 1925

The power given to trustees to apply half of the income and capital of a beneficiary's entitlement under a trust for the maintenance of that beneficiary is extended by ITPA 2014 to apply to the whole of that beneficiary's trust entitlement. This change will affect trusts created after the commencement date of 1st October 2014 and means that, should they consider it prudent, trustees may apply the entirety of a trust allowance toward the schooling of a beneficiary without the obligation to retain half of those assets for the beneficiary to take at a later date.

CONCLUSION

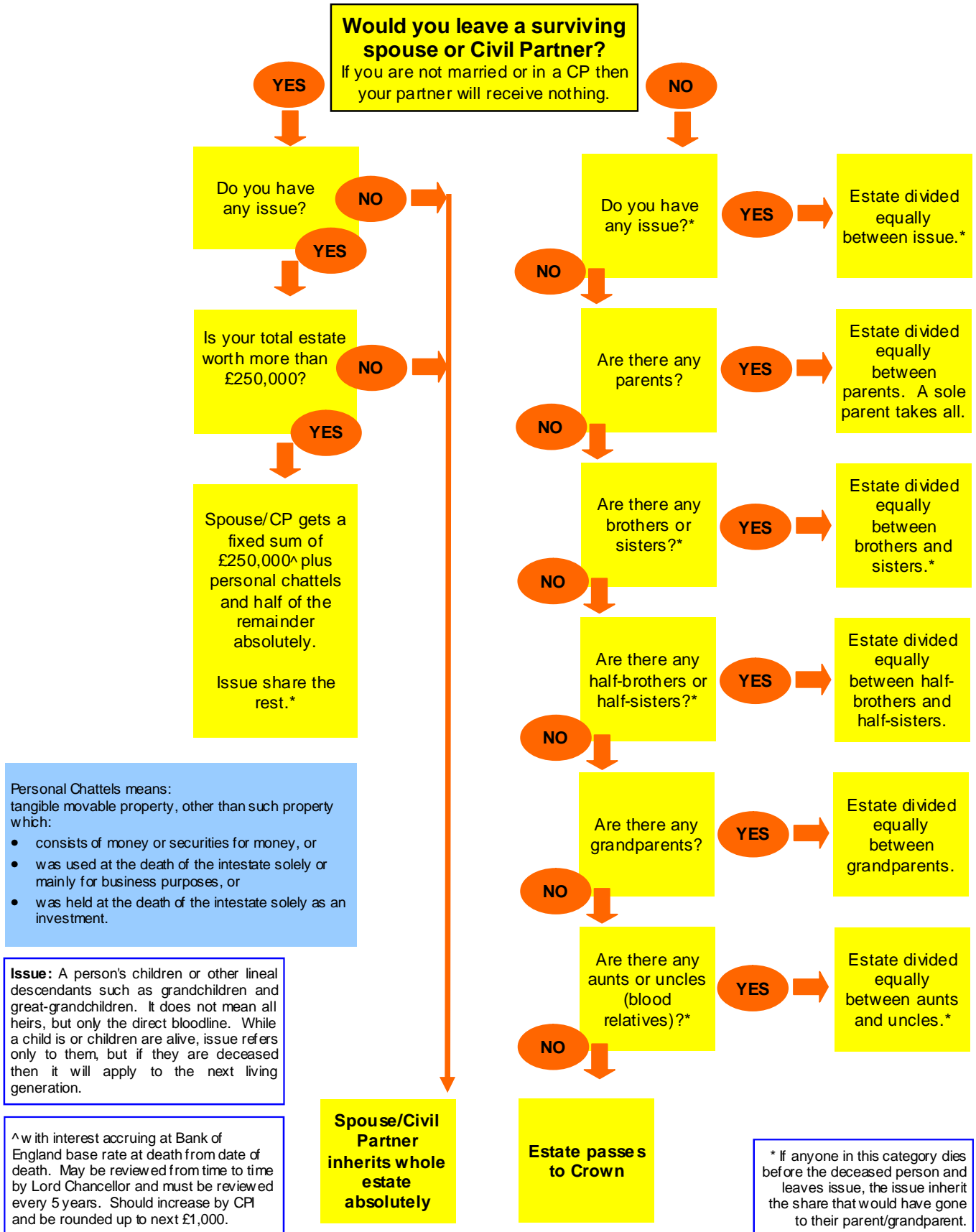
The considerations to come from these changes are varied, however there are some main practical points to be borne in mind:

- those without Wills should consider whether they would be happy for their estate to be distributed in line with the new intestacy rules. The enduring message to write a Will anyway still applies.
- it should be considered how chattels are to be dealt with.
- individuals should also consider who might be eligible to make a claim against their estate under IPFDA 1975.

The above is simply an overview of the main changes brought about by ITPA 2014 and we would encourage anyone to get in touch if they wish to discuss their situation in more detail.

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What happens if you don't write a Will?



These rules apply to the Law in England & Wales only, from 1st October 2014. This is merely a simplification of the law and not a definitive guide. Inheritances for children under the age of 18 is held in Trust until their 18th birthday or until their earlier marriage/civil partnership. Half-siblings will only benefit if there are none of the whole blood (or their issue) remaining.