

SCHEDULES

SCHEDULE 1

Section 6.

NEW SECTION 4A (INTERIM ORDERS) OF INHERITANCE (FAMILY PROVISION) ACT 1938

- “(1) Where on an application for maintenance under this Act it appears to the court—
- (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made on the application for the provision of maintenance for the applicant; and
 - (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;
- the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to or for the benefit of the applicant out of the deceased's net estate such sum or sums and (if more than one) at such intervals as the court thinks reasonable.
- (2) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.
- (3) Subject to subsection (2) above, section 3 of this Act shall apply in relation to an order under this section as it applies in relation to an order providing for maintenance.
- (4) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.”

SCHEDULE 2

Section 10.

REPEALS

Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5. c. 23.	The Administration of Estates Act 1925.	In section 47, the subsection (5) inserted by the Intestates' Estates Act 1952.
1 & 2 Geo. 6. c. 45.	The Inheritance (Family Provision) Act 1938.	In section 1, subsection (1) proviso and subsection (3).

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Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 6 and 1 Eliz. 2. c. 64.	The Intestates' Estates Act 1952.	<p>In section 2, the subsection (1A) inserted by the Intestates' Estates Act 1952.</p> <p>In section 4(1), the words (inserted as aforesaid) " or, as the case may be, of that period as extended under subsection (1A) of that section ".</p> <p>In section 5(1) the definition of " annual income "</p> <p>So much of section 1(3) or of Schedule 1 as sets out the new subsection (5) of section 47 of the Administration of Estates Act 1925.</p> <p>Section 8.</p> <p>So much of Schedule 3 as amends section 1(1) proviso of the Inheritance (Family Provision) Act 1938, or substitutes a new section 1(3) of that Act, or amends section 2(1) of that Act, or inserts section 2(1 A) of that Act, or inserts in section 4(1) or 5(1) of that Act words repealed by this Schedule.</p> <p>Schedule 4</p>
1965 c. 72.	The Matrimonial Causes Act 1965.	<p>Section 25(1)(a) and (b).</p> <p>Section 26(1)(a) and (b)</p>

SCHEDULE 3

Section 10.

INHERITANCE (FAMILY PROVISION) ACT 1938 AS AMENDED
 BY INTESTATES' ESTATES ACT 1952 AND THIS ACT

“1 Power for court to order payment out of net estate of deceased for benefit of surviving spouse or child.

- (1) Where, after the commencement of this Act, a person dies domiciled in England leaving—
- (a) a wife or husband,

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- (b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself,
- (c) an infant son, or
- (d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (in this Act referred to as a "dependant" of the deceased) is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant.

- (2) The provision for maintenance to be made by an order shall, subject to the provisions of subsection (4) of this section, be by way of periodical payments and the order shall provide for their termination not later than—
 - (a) in the case of a wife or husband, her or his re-marriage;
 - (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;
 - (c) in the case of an infant son, his attaining the age of twenty-one years;
 - (d) in the case of a son under disability, the cesser of his disability;or, in any case, his or her earlier death.
- (4) The court shall have power, if it sees fit, to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.
- (5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependants and of the person who, apart from the order, would be entitled to that property.
- (6) The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to persons interested in the estate of the deceased, or otherwise.
- (7) The court shall also, on any such application, have regard to the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.
- (8) The court in considering for the purposes of subsection (1) of this section whether the disposition of the deceased's estate effected by the law relating to intestacy, or by

the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.

2 Time within which application must be made.

- (1) Except as provided by section 4 of this Act, an application under this Act shall not, without the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out.
- (1B) The provisions of this Act shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application under this Act after the end of that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.
- (1C) In considering under the foregoing subsections the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.
- (2) For the purpose of section 162(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (which relates to the discretion of the court as to the persons to whom administration is to be granted) a dependant of a deceased person by whom or on whose behalf an application under this Act is proposed to be made shall be deemed to be a person interested in his estate.

3 Effect and form of order.

- (1) Where an order is made under this Act then for all purposes including the purposes of the enactments relating to death duties the will or the law relating to intestacy or both the will and the law relating to intestacy, as the case may be, shall have effect, and shall be deemed to have had effect as from the deceased's death, subject to such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.
- (1A) Any order under this Act providing for maintenance by way of periodical payments may provide for payments of a specified amount, or for payments equal to the whole or part of the income of the net estate or of the income of any part to be set aside or appropriated under this Act of the net estate, or may provide for the amount of the payments or any of them to be determined in any other way which the court thinks fit.
- (2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.
- (3) A copy of every order made under this Act shall be sent to the principal probate registry for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

4 Variation of orders.

- (1) On an application made at a date after the expiration of the period specified in section 2(1) of this Act the court may make such an order as is hereinafter mentioned, but only as respects property the income of which is at that date applicable for the maintenance of a dependant of the deceased, that is to say,
 - (a) an order for varying the previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependant or of a person beneficially interested in the property under the will or, as the case may be, under the law relating to intestacy, or
 - (b) an order for making provision for the maintenance of another dependant of the deceased.
- (2) An application to the court for an order under paragraph (a) of the preceding subsection may be made by or on behalf of a dependant of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested therein under the will or, as the case may be, under the law relating to intestacy.

4A Interim orders.

- (1) Where on an application for maintenance under this Act it appears to the court—
 - (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made on the application for the provision of maintenance for the applicant; and
 - (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant;the court may order that, subject to such conditions or restrictions, if any, as the court may impose and to any further order of the court, there shall be paid to or for the benefit of the applicant out of the deceased's net estate such sum or sums and (if more than one) at such intervals as the court thinks reasonable.
- (2) In determining what order, if any, should be made under this section the court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant; and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.
- (3) Subject to subsection (2) above, section 3 of this Act shall apply in relation to an order under this section as it applies in relation to an order providing for maintenance.
- (4) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.

5 Interpretation.

- (1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

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" the court " means the High Court and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham or a county court where those courts respectively have jurisdiction;

" death duties " means estate duty and every other duty leviable or payable on death;

" net estate " means all the property of which a deceased person had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death;

" will " includes codicil;

" son " and " daughter " respectively include a male or female child adopted by the deceased in pursuance of adoption proceedings taken in any part of the United Kingdom, the Isle of Man and the Channel Islands, and also the son or daughter of the deceased en ventre sa mere at the date of the death of the deceased.

- (2) .References in this Act to any enactment or any provision of any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.

6 Short title and extent.

- (1) This Act may be cited as the Inheritance (Family Provision) Act 1938.
- (2) This Act shall not extend to Scotland or to Northern Ireland.”