



# Inheritance (Provision for Family and Dependants) Act 1975

## 1975 CHAPTER 63

### *Miscellaneous and supplementary provisions*

#### **19 Effect, duration and form of orders.**

- (1) Where an order is made under section 2 of this Act then for all purposes, including the purposes of the enactments relating to capital transfer tax, 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 be deemed to have had effect as from the deceased's death subject to the provisions of the order.
- (2) Any order made under section 2 or 5 of this Act in favour of—
  - (a) an applicant who was the [<sup>F1</sup>former spouse or former civil partner] of the deceased, or
  - (b) an applicant who was the husband or wife of the deceased in a case where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing, [<sup>F2</sup> or
  - (c) an applicant who was the civil partner of the deceased in a case where, at the date of death, a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force in relation to their civil partnership and the separation was continuing,]shall, in so far as it provides for the making of periodical payments, cease to have effect [<sup>F3</sup>on the formation by the applicant of a subsequent marriage or civil partnership, except in relation to any arrears due under the order on the date of the formation of the subsequent marriage or civil partnership.]
- (3) A copy of every order made under this Act [<sup>F4</sup>other than an order made under section 15(1) [<sup>F5</sup>or 15ZA(1)] of this Act] shall be sent to the principal registry of the Family Division 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.

*Status: Point in time view as at 22/04/2014.*

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**Textual Amendments**

- F1** Words in s. 19(2)(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 71, 263\(2\), Sch. 4 para. 26\(2\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F2** S. 19(2)(c) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 71, 263\(2\), Sch. 4 para. 26\(3\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F3** Words in s. 19(2) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 71, 263\(2\), Sch. 4 para. 26\(4\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1
- F4** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\), s. 52](#)
- F5** Words in s. 19(3) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 71, 263\(2\), Sch. 4 para. 26\(5\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

**20 Provisions as to personal representatives.**

- (1) The provisions of this Act shall not render the personal representative of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that he ought to have taken into account the possibility—
  - (a) that the court might permit the making of an application for an order under section 2 of this Act after the end of that period, or
  - (b) that, where an order has been made under the said section 2, the court might exercise in relation thereto the powers conferred on it by section 6 of this Act, but this subsection shall not prejudice any power to recover, by reason of the making of an order under this Act, any part of the estate so distributed.
- (2) Where the personal representative of a deceased person pays any sum directed by an order under section 5 of this Act 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.
- (3) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Act, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under section 2 of this Act, until the determination of the proceedings on that application.

**F6**<sup>21</sup> .....

**Textual Amendments**

- F6** S. 21 repealed (31.1.1997) by [1995 c. 38, s. 15\(2\), Sch. 2](#); S.I. 1996/3217, [art. 2](#)

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22 ..... F7

**Textual Amendments**

F7 S. 22 repealed by [Administration of Justice Act 1982 \(c. 53, SIF 116:5\)](#), s. 75, [Sch. 9 Pt. I](#)

**23 Determination of date on which representation was first taken out.**

In considering for the purposes of this Act when representation with respect to the estate of a deceased person 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.

**24 Effect of this Act on s. 46(1)(vi) of Administration of Estates Act 1925.**

Section 46(1)(vi) of the <sup>M1</sup>Administration of Estates Act 1925, in so far as it provides for the devolution of property on the Crown, the Duchy of Lancaster or the Duke of Cornwall as bona vacantia, shall have effect subject to the provisions of this Act.

**Marginal Citations**

M1 1925 c. 23.

**25 Interpretation.**

(1) In this Act—

“beneficiary”, in relation to the estate of a deceased person, means—

- (a) a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate or would be so interested if an order had not been made under this Act, and
- (b) a person who has received any sum of money or other property which by virtue of section 8(1) or 8(2) of this Act is treated as part of the net estate of the deceased or would have received that sum or other property if an order had not been made under this Act;

“child” includes an illegitimate child and a child en ventre sa mere at the death of the deceased;

“the court” means [<sup>F8</sup>unless the context otherwise requires] the High Court, or where [<sup>F9</sup>the county] court has jurisdiction by virtue of section [<sup>F10</sup>25 of the County Courts Act 1984], [<sup>F9</sup>the county] court;

[<sup>F11</sup> “ former civil partner ” means a person whose civil partnership with the deceased was during the lifetime of the deceased either—

- (a) dissolved or annulled by an order made under the law of any part of the British Islands, or
- (b) dissolved or annulled in any country or territory outside the British Islands by a dissolution or annulment which is entitled to be recognised as valid by the law of England and Wales;]

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[<sup>F12</sup>[<sup>F13</sup> “ former spouse ” ] means a person whose marriage with the deceased was during the lifetime of the deceased either—

- (a) dissolved or annulled by a decree of divorce or a decree of nullity of marriage granted under the law of any part of the British Islands, or
- (b) dissolved or annulled in any country or territory outside the British Islands by a divorce or annulment which is entitled to be recognised as valid by the law of England and Wales;]

“net estate”, in relation to a deceased person, means:—

- (a) all property of which the deceased 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, including any capital transfer tax payable out of his estate on his death;
- (b) any property in respect of which the deceased held a general power of appointment (not being a power exercisable by will) which has not been exercised;
- (c) any sum of money or other property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of section 8(1) or (2) of this Act;
- (d) any property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of an order made under section 9 of the Act;
- (e) any sum of money or other property which is, by reason of a disposition or contract made by the deceased, ordered under section 10 or 11 of this Act to be provided for the purpose of the making of financial provision under this Act;

“property” includes any chose in action;

“reasonable financial provision” has the meaning assigned to it by section 1 of this Act;

“valuable consideration” does not include marriage or a promise of marriage;

“will” includes codicil.

- (2) For the purposes of paragraph (a) of the definition of “net estate” in subsection (1) above a person who is not of full age and capacity shall be treated as having power to dispose by will of all property of which he would have had power to dispose by will if he had been of full age and capacity.
- (3) Any reference in this Act to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.
- (4) For the purposes of this Act any reference to a [<sup>F14</sup>spouse,] wife or husband shall be treated as including a reference to a person who in good faith entered into a void marriage with the deceased unless either—
  - (a) the marriage of the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of England and Wales, or
  - (b) that person has during the lifetime of the deceased [<sup>F15</sup>formed a subsequent marriage or civil partnership].

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- [<sup>F16</sup>(4A) For the purposes of this Act any reference to a civil partner shall be treated as including a reference to a person who in good faith formed a void civil partnership with the deceased unless either—
- (a) the civil partnership between the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of England and Wales, or
  - (b) that person has during the lifetime of the deceased formed a subsequent civil partnership or marriage.
- (5) Any reference in this Act to the formation of, or to a person who has formed, a subsequent marriage or civil partnership includes (as the case may be) a reference to the formation of, or to a person who has formed, a marriage or civil partnership which is by law void or voidable.
- (5A) The formation of a marriage or civil partnership shall be treated for the purposes of this Act as the formation of a subsequent marriage or civil partnership, in relation to either of the spouses or civil partners, notwithstanding that the previous marriage or civil partnership of that spouse or civil partner was void or voidable.]
- (6) Any reference in this Act to an order or decree made under the <sup>M2</sup>Matrimonial Causes Act 1973 or under any section of that Act shall be construed as including a reference to an order or decree which is deemed to have been made under that Act or under that section thereof, as the case may be.
- [<sup>F17</sup>(6A) Any reference in this Act to an order made under, or under any provision of, the Civil Partnership Act 2004 shall be construed as including a reference to anything which is deemed to be an order made (as the case may be) under that Act or provision.]
- (7) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

#### Textual Amendments

- F8** Words inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [s. 8\(2\)](#)
- F9** Words in [s. 25\(1\)](#) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 92\(a\)](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), [arts. 3-11](#))
- F10** Words in [s. 25\(1\)](#) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 92\(b\)](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), [arts. 3-11](#))
- F11** [S. 25\(1\)](#): definition of "former civil partner" inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 71, 263\(2\)](#), [Sch. 4 para. 27\(3\)](#); [S.I. 2005/3175, art. 2\(1\)](#), [Sch. 1](#)
- F12** Definition substituted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), [s. 25\(2\)](#)
- F13** [S. 25\(1\)](#): definition of ""former husband" or "former wife"" becomes definition of "former spouse" (5.12.2005) by virtue of [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 71, 263\(2\)](#), [Sch. 4 para. 27\(2\)](#); [S.I. 2005/3175, art. 2\(1\)](#), [Sch. 1](#)
- F14** Word in [s. 25\(4\)](#) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 71, 263\(2\)](#), [Sch. 4 para. 27\(4\)\(a\)](#); [S.I. 2005/3175, art. 2\(1\)](#), [Sch. 1](#)
- F15** Words in [s. 25\(4\)\(b\)](#) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 71, 263\(2\)](#), [Sch. 4 para. 27\(4\)\(b\)](#); [S.I. 2005/3175, art. 2\(1\)](#), [Sch. 1](#)
- F16** [S. 25\(4A\)-\(5A\)](#) substituted for [s. 25\(5\)](#) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), [ss. 71, 263\(2\)](#), [Sch. 4 para. 27\(5\)](#); [S.I. 2005/3175, art. 2\(1\)](#), [Sch. 1](#)

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**F17** S. 25(6A) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 71, 263(2), [Sch. 4 para. 27\(6\)](#); S.I. 2005/3175, [art. 2\(1\)](#), Sch. 1

#### Marginal Citations

**M2** 1973 c. 18.

## 26 Consequential amendments, repeals and transitional provisions.

<sup>F18</sup>(1) .....

- (2) Subject to the provisions of this section, the enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of the Schedule; and in paragraph 5(2) of Schedule 2 to the <sup>M3</sup>Matrimonial Causes Act 1973 for the words “that Act” there shall be substituted the words “the Matrimonial Causes Act 1965.”
- (3) The repeal of the said enactments shall not affect their operation in relation to any application made thereunder (whether before or after the commencement of this Act) with reference to the death of any person who died before the commencement of this Act.
- (4) Without prejudice to the provisions of section 38 of the <sup>M4</sup>Interpretation Act 1889 (which relates to the effect of repeals) nothing in any repeal made by this Act shall affect any order made or direction given under any enactment repealed by this Act, and, subject to the provisions of this Act, every such order or direction (other than an order made under section 4A of the <sup>M5</sup>Inheritance Family Provision Act 1938 or section 28A of the <sup>M6</sup>Matrimonial Causes Act 1965) shall, if it is in force at the commencement of this Act or is made by virtue of subsection (3) above, continue in force as if it had been made under section 2(1)(a) of this Act, and for the purposes of section 6(7) of this Act the court in exercising its powers under that section in relation to an order continued in force by this subsection shall be required to have regard to any change in any of the circumstances to which the court would have been required to have regard when making that order if the order had been made with reference to the death of any person who died after the commencement of this Act.

#### Textual Amendments

**F18** S. 26(1) repealed (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 210](#) Table; S.I. 2014/954, [art. 2\(e\)](#) (with [art. 3](#)) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### Modifications etc. (not altering text)

**C1** The text of s. 26(1)(2) and Schedule is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

**M3** 1973 c. 18.

**M4** 1889 c. 63.

**M5** 1938 c. 71.

**M6** 1965 c. 72.

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**27 Short title, commencement and extent.**

- (1) This Act may be cited as the Inheritance (Provision for Family and Dependants) Act 1975.
- (2) This Act does not extend to Scotland or Northern Ireland.
- (3) This Act shall come into force on 1st April 1976.

**Status:**

Point in time view as at 22/04/2014.

**Changes to legislation:**

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