

# INHERITANCE AND TRUSTEES' POWERS ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 1: determination of the fixed net sum*

55. [Section 2](#) of and Schedule 1 to the Act make provision for determining the fixed net sum (often referred to as a “statutory legacy”) to which a surviving spouse or civil partner is entitled under section 46 of the Administration of Estates Act 1925. Under law as it stands before section 2 and Schedule 1 come into force, the Lord Chancellor has power to set the level of the statutory legacy but is under no obligation to do so or to keep the level under review (see section 1 of the Family Provision Act 1966). Section 2 inserts a new Schedule 1A into the Administration of Estates Act 1925. The text of that new Schedule is set out at Schedule 1 to the Act. References to paragraph numbers below are to the paragraph numbers of the new Schedule 1A.
56. [Paragraph 2](#) provides that the amount of the fixed net sum after the coming into force of the Schedule is to be the same as it was immediately before.
57. [Paragraph 3\(1\)](#) retains the Lord Chancellor’s power to set the level of the fixed net sum by order. Paragraph 3(2) provides that any such order relates only to deaths occurring after the coming into force of the order. Paragraph 3(3) provides that the current level of the fixed net sum (see paragraph 2) will be superseded once the first order is made under the power in paragraph 3(1).
58. [Paragraph 3\(4\)](#) provides that a statutory instrument containing an order made under paragraph 3(1) is subject to annulment by either House of Parliament. This means that the new amount of the fixed net sum passes into law unless there is a resolution in either the House of Commons or House of Lords annulling it. Paragraph 3(5) disappplies this negative resolution procedure in the case where the Lord Chancellor determines the amount of the fixed net sum without using the index-linking mechanism set out in paragraph 7 of the new Schedule, or amends paragraph 7 under the powers set out in paragraph 8. In those cases, each House of Parliament must positively approve the statutory instrument containing the order (see paragraph 6(3)).
59. [Paragraph 4](#) requires the Lord Chancellor to make an order setting the fixed net sum if the consumer prices index has risen by more than 15%.
60. [Paragraph 4\(1\)](#) provides that the requirement applies when a figure for the consumer prices index for a month has become available, and is more than 15% higher than the consumer prices index for the base month (that is the month in which Schedule 1A came into force, or if one or more orders under paragraph 3(1) have been made before the publication date, the most recent month for which a figure for the consumer prices index was available when the Lord Chancellor made the most recent of those orders: see paragraph 4(4)). The consumer prices index for any given month is made available by being published on the Office for National Statistics website. The future monthly publication dates are available on this website up to a year in advance.

61. [Paragraph 4\(2\)](#) requires such an order to be made within 21 days of the relevant consumer prices index figure becoming available. [Paragraph 4\(3\)](#) provides that if, on making such an order the Lord Chancellor determines the amount of the fixed net sum without using the index-linking mechanism set out in paragraphs 6 and 7, the requirement to make the order within 21 days will have been met as soon as the statutory instrument containing the order is laid before Parliament.
62. [Paragraph 4\(4\)](#) defines the “base month” against which a potential rise in the consumer prices index is to be measured and the “consumer prices index” for the purposes of this paragraph. “Consumer prices index” means the all items consumer prices index published by the Statistics Board or any substitute index published by the Statistics Board.
63. [Paragraph 5](#) requires the Lord Chancellor to make an order setting the fixed net sum at least every five years. The first such order must be made within five years of the date on which the new Schedule comes into force. Subsequent orders must be made within five years of the previous order.
64. [Paragraph 6](#) provides that, unless the Lord Chancellor otherwise determines, the fixed net sum specified in each order should be the amount given by following the procedure set out in paragraph 7. That procedure “index-links” the fixed net sum by increasing it by an amount that reflects any increase in the consumer prices index measure of economic inflation. The procedure operates on an “upwards only” basis; if there has been no inflation or there has been deflation in the economy, the amount of the fixed net sum does not change under the paragraph 7 procedure.
65. [Paragraphs 6\(2\) to 6\(4\)](#) apply where the Lord Chancellor does decide to set the fixed net sum without using the index-linking mechanism at paragraph 7.
66. [Paragraph 6\(2\)\(a\)](#) provides that the Lord Chancellor may set the fixed net sum at any amount, including an amount equal to or lower than the pre-existing figure.
67. [Paragraph 6\(2\)\(b\)](#) requires the Lord Chancellor to prepare a report stating the reason why it has been decided to set the fixed net sum without using the index-linking mechanism at paragraph 7. This report must be laid before Parliament before or at the same time as the instrument containing the draft order is laid before Parliament ([paragraph 6\(4\)](#)).
68. [Paragraph 6\(3\)](#) requires any order setting the fixed net sum at a level other than that obtained by the index-linking procedure to be positively approved by a resolution in each House of Parliament.
69. [Paragraph 7](#) sets out the procedure to be used to determine the amount of the fixed net sum in any case covered by paragraph 6(1) (that is, in every case except where the Lord Chancellor has decided otherwise). This involves ascertaining the level of the consumer prices index for the current month (that is, the most recent month for which a figure is available when the Lord Chancellor makes the statutory instrument setting the new level of the fixed net sum: see [paragraph 7\(4\)](#)). This figure is compared with the equivalent figure for the base month (that is, the month that was the “current month” for the previous order or, in the case of the first order made under the Schedule, the month in which the Schedule came into force: see [paragraph 7\(4\)](#)).
70. If the level of the consumer prices index for the current month is higher than that for the base month, then the new amount of the fixed net sum is calculated by increasing the existing figure by the same percentage as the percentage increase in the two consumer prices index figures ([paragraph 7\(1\)](#)), and then rounding the resulting figure up to the next multiple of £1,000 ([paragraph 7\(2\)](#)).
71. If the level of the consumer prices index for the current month is the same or lower than that for the base month, then the amount specified in the order is the same as the

*These notes refer to the Inheritance and Trustees' Powers Act  
2014 (c.16) which received Royal Assent on 14 May 2014*

existing amount (unless the Lord Chancellor otherwise determines). The fixed net sum therefore remains the same (paragraph 7(3)).

72. [Paragraph 7\(4\)](#) defines the terms “base month”, “current month” and “consumer prices index” for the purposes of paragraph 7.
73. [Paragraph 8](#) gives the Lord Chancellor power to amend paragraphs 4 and 7 by specifying an index other than the consumer prices index and to make any other amendments to paragraphs 4 and 7 that are required as a result of that change. This power is intended to recognise that the consumer prices index may cease to be the most appropriate index to use (for example, it may no longer be published, or the Government may decide that the retail prices index or some other index is a more appropriate measure of inflation for these purposes). Paragraph 8 enables paragraphs 4 and 7 to be amended by order without the need for further primary legislation. A statutory instrument containing any such order must be approved by a positive resolution of each House of Parliament.