

INHERITANCE AND TRUSTEES' POWERS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: intestacy: surviving spouse or civil partner

13. [Section 1](#) amends the entitlement of a surviving spouse or civil partner of a person who has died intestate in two situations. First, where the deceased was also survived by “issue”, meaning a direct descendant (a child, grandchild, great-grandchild and so on). Secondly, where the deceased was not survived by any issue but was survived by at least one parent or at least one full sibling (or the issue of a full sibling).
14. The property of a person who has died, after payment of all debts and administrative expenses, is known as the residuary estate. The distribution of the residuary estate of a person who has died intestate is governed by section 46 of the Administration of Estates Act 1925. Section 46(1)(i) sets out in a table what is to happen if the intestate leaves a spouse or civil partner who survives for more than 28 days after the intestate’s death (see section 46(2A)).
15. In all cases, the surviving spouse or civil partner is entitled to all of the deceased’s “personal chattels” that are not disposed of by will. The Act does not change that position but section 3 changes the statutory definition of personal chattels. That is explained in more detail in the commentary on section 3, below.
16. [Section 1\(2\)](#) substitutes a new table at section 46(1)(i) of the Administration of Estates Act 1925 in place of the current table.
17. Paragraph (1) of the new table provides that, where the intestate leaves no issue, the residuary estate shall be held in trust for the surviving spouse or civil partner absolutely. This means that, in all cases where the deceased died intestate and was survived by a spouse or civil partner, that spouse or civil partner is the only beneficiary except where the deceased was also survived by issue. This changes the current law, under which a surviving parent or full sibling (or the issue of a full sibling) is entitled to share the estate after the surviving spouse or civil partner has received the deceased’s personal chattels and the first £450,000 of the residuary estate (this is referred to in section 46 as the “fixed net sum” and commonly known as a “statutory legacy”).
18. Paragraph (2) of the new table provides that, where the intestate leaves issue, the surviving spouse or civil partner is entitled to the deceased’s personal chattels and a statutory legacy (currently £250,000). Under the law as it stands before the amendments made by section 1 come into force, a surviving spouse or civil partner would be entitled to a life interest in half of anything that is left in the estate. This means that he or she may use the property and is entitled to the income from it until his or her own death, at which point the property itself passes to the deceased’s issue (who share it under the “statutory trusts” set out in section 47 of the Administration of Estates Act 1925). Paragraph (2) changes this: instead of a life interest in half of the rest of the estate, the surviving spouse or civil partner will take that half of the rest of the estate absolutely,

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

as his or her own. The other half of the balance of the estate will continue to be held on the statutory trusts for the issue of the deceased.

19. Paragraph (2)(B) of the new table clarifies a point of uncertainty under the law by providing that the statutory legacy accrues interest from the date of death calculated on a simple basis as opposed to a compound basis.
20. The text below the new table provides for the amount of the statutory legacy to be determined by a new Schedule 1A to the Administration of Estates Act 1925, which is explained in the commentary on section 2 of and Schedule 1 to the Act below.
21. [Section 1\(3\)](#) substitutes a new section 46(1A) of the Administration of Estates Act 1925. This provides that the rate of interest which accrues from the date of death of the intestate on the statutory legacy (see paragraph (B) of case (2) of the new table at section 46(1)(i) of the Act) is the Bank of England rate that had effect at the end of the day on which the intestate died.
22. [Section 1\(4\)](#) inserts new subsections (5) to (9) after subsection (4) of section 46 of the 1925 Act. The new subsection (5) defines the Bank of England rate as being either the rate announced by the Monetary Policy Committee of the Bank of England as the official bank rate, or any equivalent rate determined by the Treasury in the exercise of its emergency powers under section 19 of the Bank of England Act 1998 to give the Bank directions with respect to monetary policy. The new subsection (6) gives the Lord Chancellor power to amend the definition of Bank of England rate, for example if the Bank of England ceases to publish a rate using the term "official bank rate". The new subsection (8) provides that a statutory instrument containing an order made under this power is subject to annulment by either House of Parliament. This negative resolution procedure means that the new definition passes into law unless there is a resolution in either the House of Commons or House of Lords annulling it.
23. The new subsection (7) contains a broader power for the Lord Chancellor to amend section 46(1A) of the 1925 Act by substituting a different interest rate for the interest rate provided for by that subsection and to make any consequential changes to the section. The new subsection (9) provides that a statutory instrument containing any such order must be approved by a positive resolution of each House of Parliament.