



Intestates' Estates Act 1952

1952 CHAPTER 64 15 and 16 Geo 6 and 1 Eliz 2

An Act to amend the law of England and Wales about the property of persons dying intestate; to amend the Inheritance (Family Provision) Act, 1938; and for purposes connected therewith. [30th October 1952]

Modifications etc. (not altering text)

C1 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

PART I

AMENDMENTS OF LAW OF INTESTATE SUCCESSION

1 Succession to estate of intestate leaving a surviving spouse.

- (1) As respects a person dying intestate after the commencement of this Act sections forty-six, forty-seven and forty-eight of the ^{M1}Administration of Estates Act, 1925 (hereafter in this Part of this Act referred to as the “principal Act”), shall have effect subject to the amendments set out in this section.
- (2) For paragraph (i) of subsection (1) of the said section forty-six (which relates to the disposition of the residuary estate of an intestate leaving a surviving spouse) there shall be substituted the following paragraph—
 - “(i) If the intestate leaves a husband or wife, then in accordance with the following Table:

TABLE

If the intestate—

(1) leaves —

the residuary estate shall be held in trust for the surviving husband or wife absolutely.

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Changes to legislation: There are currently no known outstanding effects for the Intestates' Estates Act 1952. (See end of Document for details)

(a) no issue, and

(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood

(2) leaves issue (whether or not persons mentioned in subparagraph (b) above also survive)

the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of five thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of four pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—

(a) as to one half upon trust for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate, and

(b) as to the other half, on the statutory trusts for the issue of the intestate.

(3) leaves one or more of the following, that is to say, a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but leaves no issue

the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of twenty thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of four pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—

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(a) as to one half in trust for the surviving husband or wife absolutely, and

(b) as to the other half—

(i) where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive) in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely

(ii) where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.”

(3) In accordance with subsection (2) of this section—

- (a) in paragraph (iii) and (iv) of subsection (1) of the said section forty-six, after the word “leaves” there shall be inserted the words “ no husband or wife and ”; and the words “subject to the interests of a surviving husband or wife” shall be omitted,
- (b) in paragraph (v) of the said subsection (1)—
 - (i) for the words “issue or” there shall be substituted the words “ husband or wife and no issue and no ” and
 - (ii) the words “subject to the interests of a surviving husband or wife” and the words “but if no person takes an absolutely vested interest under such trusts; then Sixthly, for the surviving husband or wife of the intestate absolutely” shall be omitted,
- (c) at the end of section forty-seven of the principal Act there shall be added the following subsections—

“(4) References in paragraph (i) of subsection (1) of the last foregoing section to the intestate leaving, or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate and issue of brothers or sisters of the whole blood of the intestate shall be construed as references to the intestat leaving, or not leaving, a member of that class who attains an absolutely vested interest.”

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- (d) in paragraph (a) of subsection (2) of section forty-eight of the principal Act, for the words “one thousand pounds” there shall be substituted the words “ five thousand, or, as the case may be, twenty thousand pounds ”.

(4) At the end of the said section forty-six there shall be added the following subsections—

“(3) Where the intestate and the intestate’s husband or wife have died in circumstances rendering it uncertain which of them survived the other and the intestate’s husband or wife is by virtue of section one hundred and eighty-four of the Law of Property Act, 1925, deemed to have survived the intestate,

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this section shall, nevertheless, have effect as respects the intestate as if the husband or wife had not survived the intestate.

- (4) The interest payable on the net sum of five thousand pounds or, as the case may be, twenty thousand pounds payable to a surviving husband or wife shall be primarily payable out of income.”

Textual Amendments

F1 Words repealed by [Family Provision Act 1966 \(c. 35\)](#), s. 10(2), [Sch. 2](#)

Modifications etc. (not altering text)

C2 The text of ss. 1(2)(4), 2(a)(b), 3(2)(3) 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.

C3 The text of s. 1(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M1 [1925 c. 23](#).

2 Right of surviving spouse to have life interest redeemed.

As respects a person dying intestate after the commencement of this Act—

- (a) subsection (1) of section forty-eight of the principal Act (which authorises the personal representative to redeem the surviving spouse's life interest in the residuary estate with his or her consent) shall not have effect, and
- (b) Part IV of the principal Act shall have effect as if the following section were added immediately before that section:—

(1) Where a surviving husband or wife is entitled to a life interest in part of the residuary estate, and so elects, the personal representative shall purchase or redeem the life interest by paying the capital value thereof to the tenant for life, or the persons deriving title under the tenant for life, and the costs of the transaction; and thereupon the residuary estate of the intestate may be dealt with and distributed free from the life interest.

(2) The said capital value shall be reckoned in accordance with the rules set out in this subsection:—

There shall be ascertained the annual value of the life interest to which the surviving husband or wife would be entitled if the said part of the residuary estate (whether or not yielding income) were on the date of redemption of the life interest re-invested in the two-and -a -half per cent. consolidated stock referred to in section two of the National Debt (Conversion) Act, 1888.

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There shall be ascertained the amount which, if invested on the said date in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, would purchase an annuity for the tenant for life of the annual value ascertained under rule 1.

The said capital value shall, subject to rule 4, be the amount ascertained under rule 2 diminished by five per cent. thereof.

If the age of the tenant for life on the said date exceeds eighty years, a further deduction shall be made equal to five per cent. of the amount ascertained under rule 2 for each complete year by which the age exceeds eighty:

Provided that, if the effect of this rule would otherwise be that the said capital value was less than one-and-a-half times the annual value ascertained under rule 1, the said capital value shall be one-and-a-half times that annual value.

- (3) An election under this section shall only be exercisable if at the time of the election the whole of the said part of the residuary estate consists of property in possession, but, for the purposes of this section, a life interest in property partly in possession and partly not in possession shall be treated as consisting of two separate life interests in those respective parts of the property.
- (4) If the tenant for life dies after the exercise of the election under this section but before effect is given to that election, the date of redemption shall be taken for the purposes of subsection (2) of this section to be the date immediately before the death of the tenant for life.
- (5) An election under this section shall be exercisable only within the period of twelve months from the date on which representation with respect to the estate of the intestate is first taken out:
Provided that if the surviving husband or wife satisfies the court that the limitation to the said period of twelve months will operate unfairly—
 - (a) in consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid, or
 - (b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out, or
 - (c) in consequence of some other circumstances affecting the administration or distribution of the estate, the court may extend the said period.
- (6) An election under this section shall be exercisable, except where the tenant for life is the sole personal representative, by notifying the

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personal representative (or, where there are two or more personal representatives of whom one is the tenant for life, all of them except the tenant for life) in writing; and a notification in writing under this subsection shall not be revocable except with the consent of the personal representative.

- (7) Where the tenant for life is the sole personal representative an election under this section shall not be effective unless written notice thereof is given to the principal probate registrar within the period which it must be made; and provision may be made by probate rules for keeping a record of such notices and making that record available to the public.

In this subsection the expression “probate rules” means rules made under section one hundred of the Supreme Court of Judicature (Consolidation) Act, 1925.

- (8) An election under this section by a tenant for life who is an infant shall be as valid and binding as it would be if the tenant for life were of age; but the personal representative shall, instead of paying the capital value of the life interest to the tenant for life, deal with it in the same manner as with any other part of the residuary estate to which the tenant for life is absolutely entitled.

- (9) In considering for the purposes of the foregoing provisions of this section the question when representation was first taken out, a grant limited to settled land or to trust property 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”

Modifications etc. (not altering text)
C4 The text of ss. 1(2)(4), 2(a)(b), 3(2)(3) 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.

3 Partial intestacies.

- (1) As respects a person dying intestate after the commencement of this Act, section forty-nine of the principal Act (which contains modifications of the general rules of intestacy in cases of partial intestacy) shall have effect subject to the amendments set out in this section.

^{F2}(2)

- (3) At the end of the said section forty-nine there shall be added the following subsections:

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“(2) References in the foregoing provisions of this section to beneficial interests acquired under a will shall be construed as including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment (including the statutory power to dispose of entailed interests), but not of a special power of appointment.

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- (3) For the purposes of paragraph (aa) in the foregoing provisions of this section the personal representative shall employ a duly qualified valuer in any case where such employment may be necessary.
- (4) The references in subsection (3) of section forty-seven A of this Act to property are references to property comprised in the residuary estate and, accordingly, where a will of the deceased creates a life interest in property in possession, and the remaining interest in that property forms part of the residuary estate, the said references are references to that remaining interest (which, until the life interest determines, is property not in possession).”

Textual Amendments

- F2** S. 3(2) repealed (E.W.) (8.11.1995) by 1995 c. 41, s. 5, Sch. (with effect as mentioned in the Note to that Sch.)

Modifications etc. (not altering text)

- C5** The text of ss. 1(2)(4), 2(a)(b), 3(3) 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.

4 **Reproduction of enactments in Administration of Estate Act, 1925, as amended.**

In accordance with the provisions of the foregoing sections, sections forty-six to forty-nine of the principal Act shall have effect as respects a person dying intestate after the commencement of this Act as set out in the First Schedule to this Act.

5 **Rights of surviving spouse [^{F3}or civil partner]as respects the matrimonial [^{F3}or civil partnership] home.**

The Second Schedule to this Act shall have effect for enabling the surviving [^{F4}husband or wife][^{F4}spouse or civil partner] of a person dying intestate after the commencement of this Act to acquire the matrimonial [^{F5}or civil partnership]home.

Textual Amendments

- F3** Words in s. 5 heading inserted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), Sch. 4 para. 13(4)(a); S.I. 2005/3175, Sch. 1
- F4** Words in s. 5 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), Sch. 4 para. 13(2); S.I. 2005/3175, Sch. 1
- F5** Words in s. 5 inserted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), Sch. 4 para. 13(3); S.I. 2005/3175, Sch. 1

6 **Interpretation and construction.**

- (1) In this Part of this Act the expression “intestate” has the meaning assigned to it by section fifty-five of the principal Act.
- (2) The references in subsection (1) of section fifty of the principal Act (which relates to the construction of documents) to Part IV of that Act, or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made or a will coming into

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operation after the commencement of this Act, but not in relation to instruments inter vivos made or wills coming into operation earlier, be construed as including references to this Part of this Act and the Schedules to be read therewith.

PART II

^{M2}AMENDMENTS OF INHERITANCE (FAMILY PROVISION) ACT, 1938

Marginal Citations

M2 1938 c. 45.

7 F6

Textual Amendments

F6 S. 7 repealed by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63, SIF 116:1\)](#), s. 26(3), [Sch.](#) (with a saving in s. 26(3) in relation to any application with reference to the death of any person who died before 1.4.1976)

8 F7

Textual Amendments

F7 S. 8 repealed by [Family Provision Act 1966 \(c. 35\)](#), s. 10(2), [Sch. 2](#)

PART III

GENERAL

9 Short title and commencement.

- (1) This Act may be cited as the Intestates' Estates Act, 1952.
- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty-three.

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SCHEDULES

FIRST SCHEDULE

Section 4

^{M3}SECTIONS 46 TO 49 OF ADMINISTRATION OF ESTATES ACT, 1925, AS AMENDED BY PART I OF THIS ACT AS RESPECTS PERSONS DYING AFTER THE COMMENCEMENT OF THIS ACT

Marginal Citations

M3 1925 c. 23.

Succession to real and personal estate on intestacy.

- 46 (1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—
- (i) If the intestate leaves a husband or wife, then in accordance with the following table:

TABLE

If the intestate—	
(1) leaves—	the residuary estate shall be held in trust for the surviving husband or wife absolutely.
(a) no issue, and	
(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood.	
(2) leaves issue (whether or not persons mentioned in sub-paragraph (b) above also survive)	the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of five thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of four pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—
	(a) as to one half upon trust for the surviving husband or wife during his or

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- her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate, and
- (b) as to the other half, on the statutory trusts for the issue of the intestate.
- (3) leaves one or more of the following, that is to say, a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but leaves no issue
- the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of twenty thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of four pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—
- (a) as to one half in trust for the surviving husband or wife absolutely, and
- (b) as to the other half—
- (i) where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive) in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely,
- (ii) where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.
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- (ii) If the intestate leaves issue but no husband or wife the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
- (iii) If the intestate leaves no husband or wife and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;
- (iv) If the intestate leaves no husband or wife and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;
- (v) If the intestate leaves no husband or wife and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—
- First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

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Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then

Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate);

- (vi) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat.

The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by section nine of the ^{M4}Civil List Act, 1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

- (2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.
- (3) Where the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain which of them survived the other and the intestate's husband or wife is by virtue of section one hundred and eighty-four of the ^{M5}Law of Property Act, 1925, deemed to have survived the intestate, this section shall, nevertheless, have effect as respects the intestate as if the husband or wife had not survived the intestate.
- (4) The interest payable on the net sum of five thousand pounds or, as the case may be, twenty thousand pounds payable to a surviving husband or wife shall be primarily payable out of income.

Marginal Citations

M4 1910 c. 28.

M5 1925 c. 20.

Statutory trusts in favour of issue and other classes of relatives of intestate.

- 47 (1) Where under this Part of this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:—
- (i) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under

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that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;

- (ii) The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest;
 - (iii) Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;
 - (iv) The personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—
- (a) the residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Part of this Act as if the intestate had died without leaving issue living at the death of the intestate;
 - (b) references in this Part of this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest";
 - (c) references in this Part of this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest".
- (3) Where under this Part of this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.
- (4) References in paragraph (i) of subsection (1) of the last foregoing section to the intestate leaving, or not leaving, a member of the class consisting of brothers or sisters of the whole blood of the intestate and issue of brothers or sisters of the whole blood of the intestate shall be construed as references to the intestate leaving, or not leaving, a member of that class who attains an absolutely vested interest.

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(5) F8

Textual Amendments

F8 Words repealed by Family Provision Act 1966 (c. 35), s. 10(2), Sch. 2

Right of surviving spouse to have own life interest redeemed.

47A (1) Where a surviving husband or wife is entitled to a life interest in part of the residuary estate, and so elects, the personal representative shall purchase or redeem the life interest by paying the capital value thereof to the tenant for life, or the persons deriving title under the tenant for life, and the costs of the transaction; and thereupon the residuary estate of the intestate may be dealt with and distributed free from the life interest.

(2) The said capital value shall be reckoned in accordance with the rules set out in this subsection:—

(1) There shall be ascertained the annual value of the life interest to which the surviving husband or wife would be entitled if the said part of the residuary estate (whether or not yielding income) were on the date of redemption of the life interest re-invested in the two-and-a-half per cent. consolidated stock referred to in section two of the ^{M6}National Debt (Conversion) Act, 1888.

(2) There shall be ascertained the amount which, if invested on the said date in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, would purchase an annuity for the tenant for life of the annual value ascertained under rule 1.

(3) The said capital value shall, subject to rule 4, be the amount ascertained under rule 2 diminished by five per cent. thereof.

(4) If the age of the tenant for life on the said date exceeds eighty years, a further deduction shall be made equal to five per cent. of the amount ascertained under rule 2 for each complete year by which the age exceeds eighty:

Provided that, if the effect of this rule would otherwise be that the said capital value was less than one-and-a-half times the annual value ascertained under rule 1, the said capital value shall be one-and-a-half times that annual value.

(3) An election under this section shall only be exercisable if at the time of the election the whole of the said part of the residuary estate consists of property in possession, but, for the purposes of this section, a life interest in property partly in possession and partly not in possession may be treated as consisting of two separate life interests in those respective parts of the property.

(4) If the tenant for life dies after the exercise of the election under this section but before effect is given to that election, the date of redemption shall be taken for the purposes of subsection (2) of this section to be the date immediately before the death of the tenant for life.

(5) An election under this section shall be exercisable only within the period of twelve months from the date on which representation with respect to the estate of the intestate is first taken out:

Provided that if the surviving husband or wife satisfies the court that the limitation to the said period of twelve months will operate unfairly—

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- (a) in consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid or,
- (b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out, or
- (c) in consequence of some other circumstances affecting the administration or distribution of the estate,

the court may extend the said period.

- (6) An election under this section shall be exercisable except where the tenant for life is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the tenant for life all of them except the tenant for life) in writing; and a notification in writing under this subsection shall not be revocable except with the consent of the personal representative.
- (7) Where the tenant for life is the sole personal representative an election under this section shall not be effective unless written notice thereof is given to the principal probate registrar within the period within which it must be made; and provision may be made by probate rules for keeping a record of such notices and making that record available to the public.

In this subsection the expression “probate rules” means rules made under section one hundred of the ^{M7}Supreme Court of Judicature (Consolidation) Act, 1925.

- (8) An election under this section by a tenant for life who is an infant shall be as valid and binding as it would be if the tenant for life were of age; but the personal representative shall, instead of paying the capital value of the life interest to the tenant for life, deal with it in the same manner as with any other part of the residuary estate to which the tenant for life is absolutely entitled.
- (9) In considering for the purposes of the foregoing provisions of this section 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.

Marginal Citations

M6 1888 c. 2.

M7 1925 c. 49.

Powers of personal representative in respect of interests of surviving spouse.

- 48 (1)
- (2) The personal representatives may raise—
 - (a) the net sum of five thousand, or as the case may be, twenty thousand pounds or any part thereof and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest

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may not have been satisfied by an appropriation under the statutory power available in that behalf; and

- (b) in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate;

and in either case the amount, if any, properly required for the payment of the costs of the transaction.

Application to cases of partial intestacy.

- 49 (1) Where any person dies leaving a will effectively disposing of part of his property, this Part of this Act shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications:—
- (aa) where the deceased leaves a husband or wife who acquires any beneficial interests under the will of the deceased (other than personal chattels specifically bequeathed) the references in this Part of this Act to the net sum of five thousand pounds or twenty thousand pounds payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to the said sum diminished by the value at the date of death of the said beneficial interests, and to interest on that sum as so diminished and, accordingly, where the said value exceeds the said sum, this Part of this Act shall have effect as if references to the said sum, and interest thereon, were omitted,
- (a) the requirements of section forty-seven of this Act as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons;
- (b) the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part of this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.
- (2) References in the foregoing provisions of this section to beneficial interests acquired under a will shall be construed as including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment (including the statutory power to dispose of entailed interests), but not of a special power of appointment.
- (3) For the purposes of paragraph (aa) in the foregoing provisions of this section the personal representative shall employ a duly qualified valuer in any case where such employment may be necessary.
- (4) The references in subsection (3) of section forty-seven A of this Act to property are references to property comprised in the residuary estate and, accordingly, where a will of the deceased creates a life interest in property in possession, and the remaining interest in that property forms part of the residuary estate, the said references are references to that remaining interest (which, until the life interest determines, is property not in possession).

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SECOND SCHEDULE

Section 5.

RIGHTS OF SURVIVING SPOUSE [F⁹OR CIVIL PARTNER]AS RESPECTS THE MATRIMONIAL [F⁹OR CIVIL PARTNERSHIP]HOME

Textual Amendments

F9 Words in Sch. 2 heading inserted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\), Sch. 4 para. 13\(4\)\(b\)](#); S.I. 2005/3175, Sch. 1

- 1 (1) Subject to the provisions of this Schedule, where the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving [F¹⁰husband or wife][F¹⁰spouse or civil partner] was resident at the time of the intestate's death, the surviving [F¹⁰husband or wife][F¹⁰spouse or civil partner] may require the personal representative, in exercise of the power conferred by section forty-one of the principal Act (and with due regard to the requirements of that section as to valuation) to appropriate the said interest in the dwelling-house in or towards satisfaction of any absolute interest of the surviving [F¹⁰husband or wife][F¹⁰spouse or civil partner] in the real and personal estate of the intestate.
- (2) The right conferred by this paragraph shall not be exercisable where the interest is—
- (a) a tenancy which at the date of the death of the intestate was a tenancy which would determine within the period of two years from that date; or
 - (b) a tenancy which the landlord by notice given after that date could determine within the remainder of that period.
- (3) Nothing in subsection (5) of section forty-one of the principal Act (which requires the personal representative, in making an appropriation to any person under that section, to have regard to the rights of others) shall prevent the personal representative from giving effect to the right conferred by this paragraph.
- (4) The reference in this paragraph to an absolute interest in the real and personal estate of the intestate includes a reference to the capital value of a life interest which the surviving [F¹⁰husband or wife][F¹⁰spouse or civil partner] has under this Act elected to have redeemed.
- (5) Where part of a building was, at the date of the death of the intestate, occupied as a separate dwelling, that dwelling shall for the purposes of this Schedule be treated as a dwelling-house.

Textual Amendments

F10 Words in Sch. 2 substituted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(2\), Sch. 4 para. 13\(2\)](#); S.I. 2005/3175, Sch. 1

Modifications etc. (not altering text)

C6 Para. 1(2) excluded by [Leasehold Reform Act 1967 \(c. 88\), s. 7\(8\)](#)

- 2 Where—
- (a) the dwelling-house forms part of a building and an interest in the whole of the building is comprised in the residuary estate; or

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- (b) the dwelling-house is held with agricultural land and an interest in the agricultural land is comprised in the residuary estate; or
- (c) the whole or a part of the dwelling-house was at the time of the intestate's death used as a hotel or lodging house; or
- (d) a part of the dwelling-house was at the time of the intestate's death used for purposes other than domestic purposes,

the right conferred by paragraph 1 of this Schedule shall not be exercisable unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the residuary estate (other than the said interest in the dwelling-house) or make them more difficult to dispose of, so orders.

- 3 (1) The right conferred by paragraph 1 of this Schedule—
- (a) shall not be exercisable after the expiration of twelve months from the first taking out of representation with respect to the intestate's estate;
 - (b) shall not be exercisable after the death of the surviving [F10]husband or wife][F10]spouse or civil partner];
 - (c) shall be exercisable, except where the surviving [F10]husband or wife][F10]spouse or civil partner] is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the surviving [F10]husband or wife][F10]spouse or civil partner], all of them except the surviving [F10]husband or wife][F10]spouse or civil partner]) in writing.
- (2) A notification in writing under paragraph (c) of the foregoing sub-paragraph shall not be revocable except with the consent of the personal representative; but the surviving [F10]husband or wife][F10]spouse or civil partner] may require the personal representative to have the said interest in the dwelling-house valued in accordance with section forty-one of the principal Act and to inform him or her of the result of that valuation before he or she decides whether to exercise the right.
- (3) Subsection (9) of the section forty-seven A added to the principal Act by section two of this Act shall apply for the purposes of the construction of the reference in this paragraph to the first taking out of representation, and the proviso to subsection (5) of that section shall apply for the purpose of enabling the surviving [F10]husband or wife][F10]spouse or civil partner] to apply for an extension of the period of twelve months mentioned in this paragraph.

Textual Amendments

F10 Words in Sch. 2 substituted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 4 para. 13\(2\)](#); S.I. 2005/3175, Sch. 1

- 4 (1) During the period of twelve months mentioned in paragraph 3 of this Schedule the personal representative shall not without the written consent of the surviving [F10]husband or wife][F10]spouse or civil partner] sell or otherwise dispose of the said interest in the dwelling-house except in the course of administration owing to want of other assets.
- (2) An application to the court under paragraph 2 of this Schedule may be made by the personal representative as well as by the surviving [F10]husband or wife][F10]spouse or civil partner], and if, on an application under that paragraph, the court does not order

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that the right conferred by paragraph 1 of this Schedule shall be exercisable by the surviving [^{F10}husband or wife][^{F10}spouse or civil partner], the court may authorise the personal representative to dispose of the said interest in the dwelling-house within the said period of twelve months.

- (3) Where the court under sub-paragraph (3) of paragraph 3 of this Schedule extends the said period of twelve months, the court may direct that this paragraph shall apply in relation to the extended period as it applied in relation to the original period of twelve months.
- (4) This paragraph shall not apply where the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] is the sole personal representative or one of two or more personal representatives.
- (5) Nothing in this paragraph shall confer any right on the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] as against a purchaser from the personal representative.

Textual Amendments

F10 Words in Sch. 2 substituted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 4 para. 13\(2\)](#); S.I. 2005/3175, Sch. 1

- 5 (1) Where the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] is one of two or more personal representatives, the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] from purchasing out of the estate of the intestate an interest in a dwelling-house in which the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] was resident at the time of the intestate's death.
- (2) The power of appropriation under section forty-one of the principal Act shall include power to appropriate an interest in a dwelling-house in which the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] was resident at the time of the intestate's death partly in satisfaction of an interest of the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] in the real and personal estate of the intestate and partly in return for a payment of money by the surviving [^{F10}husband or wife][^{F10}spouse or civil partner] to the personal representative.

Textual Amendments

F10 Words in Sch. 2 substituted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 4 para. 13\(2\)](#); S.I. 2005/3175, Sch. 1

- 6 [^{F11}(1) Where the surviving spouse or civil partner lacks capacity (within the meaning of the Mental Capacity Act 2005) to make a requirement or give a consent under this Schedule, the requirement or consent may be made or given by a deputy appointed by the Court of Protection with power in that respect or, if no deputy has that power, by that court.]
- (2) A requirement or consent made or given under this Schedule by a surviving [^{F10}husband or wife][^{F10}spouse or civil partner] who is an infant shall be as valid and binding as it would be if he or she were of age; and, as respects an appropriation in

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pursuance of paragraph 1 of this Schedule, the provisions of section forty-one of the principal Act as to obtaining the consent of the infant's parent or guardian, or of the court on behalf of the infant, shall not apply.

Textual Amendments

F10 Words in Sch. 2 substituted (E.W.) (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(2), [Sch. 4 para. 13\(2\)](#); S.I. 2005/3175, Sch. 1

F11 Sch. 2 para. 6(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 8](#) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

7 (1) Except where the context otherwise requires, references in this Schedule to a dwelling-house include references to any garden or portion of ground attached to and usually occupied with the dwelling-house or otherwise required for the amenity or convenience of the dwelling-house.

(2) This Schedule shall be construed as one with Part IV of the principal Act.

F12 THIRD SCHEDULE

Textual Amendments

F12 Sch. 3 repealed by [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c. 63, SIF 116:1\)](#), s. 26(3), [Sch.](#) (with a saving in s. 26(3) in relation to any application with reference to the death of any person who died before 1.4.1976); repealed in part by [Family Provision Act 1966 \(c. 35\)](#), s. 10(2), [Sch. 2](#)

F12

F13 FOURTH SCHEDULE

Textual Amendments

F13 Sch. 4 repealed by [Family Provision Act 1966 \(c. 35\)](#), s. 10(2), [Sch. 2](#)

F13

Status:

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Changes to legislation:

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