

## EXPLANATORY MEMORANDUM TO

### THE ADMINISTRATION OF ESTATES ACT 1925 (FIXED NET SUM) ORDER 2023

2023 No. 758

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to set a new fixed net sum, in accordance with Schedule 1A to the Administration of Estates Act 1925 (the Act), as amended by Schedule 1 to the Inheritance and Trustees' Powers Act 2014 (the 2014 Act). This sum is also known as the statutory legacy and represents the amount which a surviving spouse/civil partner is entitled from the estate when their deceased spouse/partner has died intestate (without having made a valid will) but has surviving children.

#### 3. Matters of special interest to Parliament

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

#### 5. European Convention on Human Rights

- 5.1 Since the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### 6. Legislative Context

- 6.1 The Administration of Estates Act 1925 (as amended by the 2014 Act) places a responsibility on the Lord Chancellor to specify a fixed net sum periodically by way of Order made by statutory instrument. Schedule 1A to the Act sets out the process which the Lord Chancellor should follow in determining the sum, and requirements on the frequency and circumstances under which it must be reviewed.

#### 7. Policy background

*What is being done and why?*

- 7.1 The statutory legacy (represented by the fixed net sum) was introduced in 1925 and is designed to protect the interests of the surviving spouse/civil partner, but also to balance them against the interests of the children of the deceased person.

- 7.2 The 2014 Act was introduced following the Government’s acceptance of a number of recommendations in the Law Commission’s report Intestacy and Family Provision claims on death, published in December 2011.
- 7.3 The reforms were made to modernise and simplify the law to create a fairer and more comprehensible set of rules on intestacy, and to make the process of administering an estate faster and easier for people during a difficult and emotional time.
- 7.4 The 2014 Act addressed concerns that the statutory legacy was eroded by inflation by introducing a requirement for fixed periodic reviews to take account of changes to inflation. Schedule 1A to the Act specifies options for assessing the inflation rate to be applied in calculating the setting of a new fixed net sum. The Schedule also sets the minimum period – 5 years – for a review of the level of the sum.
- 7.5 The 2014 Act also provides that if the inflation rate increases by 15% or more from the base rate at the date the statutory legacy was set (or last set) then the Government must take steps to make a Statutory Instrument to increase the statutory legacy to reflect the higher rate or set another rate determined by the Lord Chancellor. This instrument is made following a review of the options provided in the legislation for responding to an inflation increase linked trigger point.
- 7.6 This trigger point was reached in December 2022 when the Consumer Price Index including owner occupiers’ housing costs (CPIH) for November 2022 was published showing an increase of 15.0% over that for the ‘base month’ in the legislation, which in this case was the month applicable to when the fixed net sum Order was last made. That Order was made on 14 January 2020 and therefore the CPIH applicable to it was published in December 2019 reflecting inflation in November 2019. There was a breach in the duty under the legislation with remedial action not being taken within 21 days of the trigger point. While not directly relevant to the statutory duty inflation was volatile in this period – for example the figure for January 2023 (published 15 February 2023) saw a fall, albeit not below the 15% trigger threshold.
- 7.7 In accordance with the methodology set out in paragraph 7 of Schedule 1A to the Act, the Ministry calculated the change in the Consumer Price Index including owner occupiers’ housing costs (CPIH) from the ‘base month’ (when the sum was last set) to the ‘current month’ (the most recent month available, May 2023). The Act also requires rounding up of the resultant figure to the nearest multiple of £1000. As the increase was 19.0% over the specified period, after rounding up, the increase on the existing sum of £270,000 is £52,000. Accordingly, the Lord Chancellor is setting the new sum as £322,000.
- 7.8 The Government will be taking steps to communicate the position on the sum not being increased following the trigger point being reached in December 2022 and reviewing the events leading up to this measure and any further steps to be taken as a result, including any need to reform the legislation. Any action or reforms pursued will be made public.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 There has not been formal consultation in setting the new fixed net sum, as the process followed is specified in statute, and, under which, regard has been had to published inflation indexes.

## **11. Guidance**

- 11.1 The change will be drawn to the attention of solicitors and probate practitioners by correspondence addressed to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council) and to the editors of relevant legal publications; as well as by publicity undertaken by HM Courts and Tribunal Service.
- 11.2 The Government will also draw attention to the position regarding the sum not having been updated in December 2022.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is by periodic review of the rate as specified in the 1925 Act.

## **15. Contact**

- 15.1 Peter Farr, Head of Civil Law at the Ministry of Justice, email: [peter.farr@justice.gov.uk](mailto:peter.farr@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Steven Jarman, Deputy Director for Civil Justice and Law at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Bellamy KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.