



Private Client Law Bulletin

LAW COMMISSION CONSULTATION ON INTESTACY AND FAMILY PROVISION CLAIMS ON DEATH

Studies suggest that between one half to two-thirds of the population have not made a will and their estates therefore fall to be dealt with under the intestacy rules, originally introduced in 1925. Further estates will be governed by the intestacy rules as many wills are found to be invalid for a variety of reasons. The Inheritance (Provision for Family and Dependants) Act 1975 was introduced in its present form partly to allow claims where the intestacy rules had failed to make proper provision for the deceased's family or, more commonly, for cohabittees.

The thinking behind the current intestacy rules is to provide for the distribution of a deceased's estate in accordance with how the average testator would want their estate to be distributed. This depends on whether there is a surviving spouse/civil partner or not. Essentially the intestacy rules provide for a surviving spouse/civil partner to take the personal chattels, a statutory legacy, increased last year to £250,000, and a life interest in half the residue, with the children taking the other half at 18. If there are no children the legacy is increased to £450,000 and the surviving spouse/civil partner gets half of the residue outright with the other half going to the parents or siblings.

In October 2009 the Law Commission published a consultation paper on the intestacy rules and claims on death and the Inheritance (Provision for Family and Dependants) Act 1975. The aim is to reflect the reality of today's modern society where cohabitation is more common than marriage and to better manage the expectations of the bereaved. The most controversial issue in the paper is that cohabittees should be granted a legacy after 2 years cohabitation. Other issues include reviewing the entitlement of other relatives and dependants and reviewing the statutory Trusts which arise on intestacy. The consultation period ends on 28 February 2010.

It is important to note that while the law may be changed to reflect modern society, the only way a client can be certain his estate will devolve as he wishes is to have a professionally drawn up will. However well drafted, the intestacy rules will never provide an adequate substitute for this.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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**LIVERPOOL**

Horton House, Exchange Flags, Liverpool L2 3YL
0151 600 3000

MANCHESTER

55 King Street, Manchester M2 4LQ
0161 836 8800

PRESTON

7-8 Chapel Street, Preston PR1 8AN
01772 823921