



Inheritance (Provision for Family and Dependants) Act 1975

1975 CHAPTER 63

Miscellaneous and supplementary provisions

19 Effect, duration and form of orders

- (1) Where an order is made under section 2 of this Act then for all purposes, including the purposes of the enactments relating to capital transfer tax, the will or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.
- (2) Any order made under section 2 or 5 of this Act in favour of—
 - (a) an applicant who was the former husband or former wife of the deceased, or
 - (b) an applicant who was the husband or wife of the deceased in a case where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing,shall, in so far as it provides for the making of periodical payments, cease to have effect on the remarriage of the applicant, except in relation to any arrears due under the order on the date of the remarriage.
- (3) A copy of every order made under this Act shall be sent to the principal registry of the Family Division for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate or letters of administration under which the estate is being administered.

20 Provisions as to personal representatives

- (1) The provisions of this Act shall not render the personal representative of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the

estate of the deceased is first taken out, on the ground that he ought to have taken into account the possibility—

- (a) that the court might permit the making of an application for an order under section 2 of this Act after the end of that period, or
 - (b) that, where an order has been made under the said section 2, the court might exercise in relation thereto the powers conferred on it by section 6 of this Act, but this subsection shall not prejudice any power to recover, by reason of the making of an order under this Act, any part of the estate so distributed.
- (2) Where the personal representative of a deceased person pays any sum directed by an order under section 5 of this Act to be paid out of the deceased's net estate, he shall not be under any liability by reason of that estate not being sufficient to make the payment, unless at the time of making the payment he has reasonable cause to believe that the estate is not sufficient.
- (3) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if the personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Act, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out or, if during that period an application is made for an order under section 2 of this Act, until the determination of the proceedings on that application.

21 Admissibility as evidence of statements made by deceased

In any proceedings under this Act a statement made by the deceased, whether orally or in a document or otherwise, shall be admissible under section 2 of the Civil Evidence Act 1968 as evidence of any fact stated therein in like manner as if the statement were a statement falling within section 2(1) of that Act; and any reference in that Act to a statement admissible, or given or proposed to be given, in evidence under section 2 thereof or to the admissibility or the giving in evidence of a statement by virtue of that section or to any statement falling within section 2(1) of that Act shall be construed accordingly.

22 Jurisdiction of county courts

- (1) A county court shall have jurisdiction to hear and determine any application for an order under section 2 of this Act (including any application for permission to apply for such an order and any application made, in the proceedings on an application for an order under the said section 2, for an order under any other provision of this Act) where it is shown to the satisfaction of the court that the value at the date of the death of the deceased of all property included in his net estate for the purposes of this Act by virtue of paragraph (a) of the definition thereof in section 25(1) of this Act does not exceed the sum of £5,000 or such larger sum as may from time to time be fixed for this purpose by order of the Lord Chancellor.
- (2) Where a county court makes an order under section 2 of this Act, the court shall have all the jurisdiction of the High Court for the purpose of any further proceedings in relation thereto under section 6 of this Act.

- (3) Rules of court may provide for the transfer from a county court to the High Court, or from the High Court to a county court, of any proceedings for an order under section 2 of this Act.
- (4) Any order of the Lord Chancellor under subsection (1) above shall be made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament; and—
- (a) in relation to proceedings commenced in a county court after the making but before the coming into force of any such order the court may, if it thinks fit, refuse to make an order under section 66 of the County Courts Act 1959 (transfer to High Court of proceedings outside jurisdiction of county court) if the proceedings are within the jurisdiction of the county court as extended by the order of the Lord Chancellor; but
 - (b) the coming into force of any such order of the Lord Chancellor shall not be taken to affect any order previously made under the said section 66.

23 Determination of date on which representation was first taken out

In considering for the purposes of this Act when representation with respect to the estate of a deceased person 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.

24 Effect of this Act on s. 46(1)(vi) of Administration of Estates Act 1925

Section 46(1)(vi) of the Administration of Estates Act 1925, in so far as it provides for the devolution of property on the Crown, the Duchy of Lancaster or the Duke of Cornwall as bona vacantia, shall have effect subject to the provisions of this Act.

25 Interpretation

(1) In this Act—

" beneficiary ", in relation to the estate of a deceased person, means—

- (a) a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate or would be so interested if an order had not been made under this Act, and
- (b) a person who has received any sum of money or other property which by virtue of section 8(1) or 8(2) of this Act is treated as part of the net estate of the deceased or would have received that sum or other property if an order had not been made under this Act;

" child " includes an illegitimate child and a child en ventre sa mere at the death of the deceased ;

" the court " means the High Court, or where a county court has jurisdiction by virtue of section 22 of this Act, a county court;

" former wife " or " former husband " means a person whose marriage with the deceased was during the deceased's lifetime dissolved or annulled by a decree of divorce or of nullity of marriage made under the Matrimonial Causes Act 1973 ;

" net estate ", in relation to a deceased person, means:—

Status: This is the original version (as it was originally enacted).

- (a) all property of which the deceased had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities, including any capital transfer tax payable out of his estate on his death;
 - (b) any property in respect of which the deceased held a general power of appointment (not being a power exercisable by will) which has not been exercised;
 - (c) any sum of money or other property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of section 8(1) or (2) of this Act;
 - (d) any property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of an order made under section 9 of the Act;
 - (e) any sum of money or other property which is,, by reason of a disposition or contract made by the deceased, ordered under section 10 or 11 of this Act to be provided for the purpose of the making of financial provision under this Act;
- " property " includes any chose in action ;
- " reasonable financial provision " has the meaning assigned to it by section 1 of this Act;
- "valuable consideration " does not include marriage or a promise of marriage;
- " will " includes codicil.
- (2) For the purposes of paragraph (a) of the definition of "net estate" in subsection (1) above a person who is not of full age and capacity shall be treated as having power to dispose by will of all property of which he would have had power to dispose by will if he had been of full age and capacity.
 - (3) Any reference in this Act to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.
 - (4) For the purposes of this Act any reference to a wife or husband shall be treated as including a reference to a person who in good faith entered into a void marriage with the deceased unless either—
 - (a) the marriage of the deceased and that person was dissolved or annulled during the lifetime of the deceased and the dissolution or annulment is recognised by the law of England and Wales, or
 - (b) that person has during the lifetime of the deceased entered into a later marriage.
 - (5) Any reference in this Act to remarriage or to a person who has remarried includes a reference to a marriage which is by law void or voidable or to a person who has entered into such a marriage, as the case may be, and a marriage shall be treated for the purposes of this Act as a remarriage, in relation to any party thereto, notwithstanding that the previous marriage of that party was void or voidable.
 - (6) Any reference in this Act to an order or decree made under the Matrimonial Causes Act 1973 or under any section of that Act shall be construed as including a reference to an order or decree which is deemed to have been made under that Act or under that section thereof, as the case may be.

- (7) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

26 Consequential amendments, repeals and transitional provisions

- (1) Section 36 of the Matrimonial Causes Act 1973 (which provides for the alteration of maintenance agreements by the High Court or a county court after the death of one of the parties) shall have effect subject to the following amendments (being amendments consequential on this Act), that is to say—
- (a) in subsection (3) for the words " section 7 of the Family Provision Act 1966" there shall be substituted the words " section 22 of the Inheritance (Provision for Family and Dependants) Act 1975 "; for the words from " the Inheritance (Family Provision) Act" to " net estate " there shall be substituted the words " that Act if the value of the property mentioned in that section " and for the words " section 26 of the Matrimonial Causes Act 1965 (application for maintenance out of deceased's estate by former spouse) " there shall be substituted the words " section 2 of that Act ";
 - (b) in subsection (7) for the words from " section 7 " to " subsection (5)" there shall be substituted the words " section 22 of the Inheritance (Provision for Family and Dependants) Act 1975 (which enables rules of court to provide for the transfer from a county court to the High Court or from the High Court to a county court of proceedings for an order under section 2 of that Act) and paragraphs (a) and (b) of subsection (4) " and for the words " any such proceedings as are referred to in subsection (1) of that section " there shall be substituted the words " proceedings for an order under section 2 of that Act ".
- (2) Subject to the provisions of this section, the enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of the Schedule; and in paragraph 5(2) of Schedule 2 to the Matrimonial Causes Act 1973 for the words " that Act" there shall be substituted the words " the Matrimonial Causes Act 1965. "
- (3) The repeal of the said enactments shall not affect their operation in relation to any application made thereunder (whether before or after the commencement of this Act) with reference to the death of any person who died before the commencement of this Act.
- (4) Without prejudice to the provisions of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals) nothing in any repeal made by this Act shall affect any order made or direction given under any enactment repealed by this Act, and, subject to the provisions of this Act, every such order or direction (other than an order made under section 4A of the Inheritance Family Provision Act 1938 or section 28A of the Matrimonial Causes Act 1965) shall, if it is in force at the commencement of this Act or is made by virtue of subsection (3) above, continue in force as if it had been made under section 2(1)(a) of this Act, and for the purposes of section 6(7) of this Act the court in exercising its powers under that section in relation to an order continued in force by this subsection shall be required to have regard to any change in any of the circumstances to which the court would have been required to have regard when making that order if the order had been made with reference to the death of any person who died after the commencement of this Act.

27 Short title, commencement and extent

- (1) This Act may be cited as the Inheritance (Provision for Family and Dependants) Act 1975.
- (2) This Act does not extend to Scotland or Northern Ireland.
- (3) This Act shall come into force on 1st April 1976.