

SCHEDULES

FIRST SCHEDULE

Section 4

M1 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

M1 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

<p>If the intestate—</p> <p>(1) leaves—</p> <p>(a) no issue, and</p> <p>(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood.</p> <p>(2) leaves issue (whether or not persons mentioned in sub-paragraph (b) above also survive)</p>	<p>the residuary estate shall be held in trust for the surviving husband or wife absolutely.</p> <p>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—</p> <p>(a) as to one half upon trust for the surviving husband or wife during his or</p>
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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 ^{M2}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 ^{M3}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

M2 1910 c. 28.

M3 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) F1

Textual Amendments

F1 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 ^{M4}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 ^{M5}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

M4 1888 c. 2.

M5 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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