Administration of Estates Act 1925

1925 CHAPTER 23 15 and 16 Geo 5

PART IV

DISTRIBUTION OF RESIDUARY ESTATE

46 Succession to real and personal estate on intestacy.

(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

[[F1](i) If the intestate leaves a **[**[F2]spouse or civil partner**]**, then in accordance with the following table:

[[F3]TABLE

(1) If the intestate leaves no issue:	the residuary estate shall be held in trust for the surviving spouse or civil partner absolutely.	
(2) If the intestate leaves issue:	(A)	the surviving spouse or civil partner shall take the personal chattels absolutely;
	(B)	the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a fixed net sum, free of death duties and costs, to the surviving spouse or civil partner, together with simple interest on it from the date of the death at the rate provided for by

The amount of the fixed net sum referred to in paragraph (B) of case (2) of this Table is to be determined in accordance with Schedule 1A.**]**

		subsection (1A) until paid or appropriated; and
	(C)	subject to providing for the sum and interest referred to in paragraph (B), the residuary estate (other than the personal chattels) shall be held—(a) as to one half, in trust for the surviving spouse or civil partner absolutely, and(b) as to the other half, on the statutory trusts for the issue of the intestate.

The amount of the fixed net sum referred to in paragraph (B) of case (2) of this Table is to be determined in accordance with Schedule 1A.**]**

(ii) If the intestate leaves issue but no **[**[F2]spouse or civil partner**]**, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;

(iii) If the intestate leaves **[**[F4]no **[**[F2]spouse or civil partner**]** and**]** no issue but both parents, then, [F5]..., 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 **[**[F4]no **[**[F2]spouse or civil partner**]** and**]** no issue but one parent, then, [F5]..., the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;

(v) If the intestate leaves no **[**[F6]**[**[F2]spouse or civil partner**]** and no issue and no**]** parent, then [F7]..., 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

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); [F7]...;

(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 [M1]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.

[[F8](1A) The interest rate referred to in paragraph (B) of case (2) of the Table in subsection (1)(i) is the Bank of England rate that had effect at the end of the day on which the intestate died.**]**

(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.

[F9]**[** (2A) Where the intestate's **[**[F2]spouse or civil partner**]** survived the intestate but died before the end of the period of 28 days beginning with the day on which the intestate died, this section shall have effect as respects the intestate as if the **[**[F2]spouse or civil partner**]** had not survived the intestate.**]**

[F10](3) . . . . . .

[F11]**[** (4) The interest payable on **[**[F12]the fixed net sum**]** payable to a surviving **[**[F2]spouse or civil partner**]** shall be primarily payable out of income. **]**

[F13]**[** (5) In subsection (1A) "Bank of England rate" means—

(a) the rate announced by the Monetary Policy Committee of the Bank of England as the official bank rate, or

(b) where an order under section 19 of the Bank of England Act 1998 (reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

(6) The Lord Chancellor may by order made by statutory instrument amend the definition of "Bank of England rate" in subsection (5) (but this subsection does not affect the generality of subsection (7)(b)).

(7) The Lord Chancellor may by order made by statutory instrument—

(a) amend subsection (1A) so as to substitute a different interest rate (however specified or identified) for the interest rate for the time being provided for by that subsection;

(b) make any amendments of, or repeals in, this section that may be consequential on or incidental to any amendment made by virtue of paragraph (a).

(8) A statutory instrument containing an order under subsection (6) is subject to annulment pursuant to a resolution of either House of Parliament.

(9) A statutory instrument containing an order under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.**]]**

Textual Amendments

F1 S. 46(1)(i) substituted by Intestates' Estates Act 1952 (c. 64), **s. 1(2)**

F2 Words in s. 46 substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 7**; S.I. 2005/3175, art. 2(1), Sch. 1

F3 S. 46(1)(i) Table substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), **ss. 1(2)**, 12(2) (with s. 12(4)); S.I. 2014/2039, art. 2

F4 Words inserted by Intestates' Estates Act 1952 (c. 64), **s. 1(3)(a)**

F5 Words repealed by Intestates' Estates Act 1952 (c. 64), **s. 1(3)(a)**

F6 Words substituted by Intestates' Estates Act 1952 (c. 64), **s. 1(3)(b)(i)**

F7 Words repealed by Intestates' Estates Act 1952 (c. 64), **s. 1(3)(b)(ii)**

F8 S. 46(1A) substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), **ss. 1(3)**, 12(2) (with s. 12(4)); S.I. 2014/2039, art. 2

F9 S. 46(2A) inserted (8.11.1995 with effect as respects an intestate dying on or after 1.1.1996) by 1995 c. 41, **s. 1(1)(3)**

F10 S. 46(3) omitted (1.10.2014) by virtue of Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 4 para. 1(2)** (with s. 12(4)); S.I. 2014/2039, art. 2

F11 S. 46(3)(4) added by Intestates' Estates Act 1952 (c. 64), **s. 1(4)**

F12 Words substituted by Family Provision Act 1966 (c. 35), **s. 1(2)(b)**

F13 S. 46(5)-(9) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), **ss. 1(4)**, 12(2) (with s. 12(4)); S.I. 2014/2039, art. 2

Modifications etc. (not altering text)

C1 S. 46 applied by Adoption Act 1958 (7 & 8 Eliz. 2 c. 5), **s. 17(1)**

C2 S. 46 set out as amended by Intestates' Estates Act 1952 (c. 64) in Sch. 1 to that Act

C3 S. 46(1)(vi) amended by Inheritance (Provision for Family and Dependants) Act 1975 (c. 63, SIF 116:1), **s. 24**

Marginal Citations

M1 1910 c. 28 .

Changes to legislation:
There are currently no known outstanding effects for the Administration of Estates Act 1925, Section 46.