



# Intestates' Estates Act 1952

## 1952 CHAPTER 64

An Act to amend the law of England and Wales about the property of persons dying intestate; to amend the Inheritance (Family Provision) Act, 1938; and for purposes connected therewith. [30th October 1952.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### AMENDMENTS OF LAW OF INTESTATE SUCCESSION

#### 1 Succession to estate of intestate leaving a surviving spouse

- (1) As respects a person dying intestate after the commencement of this Act sections forty-six, forty-seven and forty-eight of the Administration of Estates Act, 1925 (hereafter in this Part of this Act referred to as the "principal Act"), shall have effect subject to the amendments set out in this section.
- (2) For paragraph (i) of subsection (1) of the said section forty-six (which relates to the disposition of the residuary estate of an intestate leaving a surviving spouse) there shall be substituted the following paragraph—
  - “(i) If the intestate leaves a husband or wife, then in accordance with the following Table:

#### TABLE

If the intestate—

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| <p>(1) leaves—</p> <ul style="list-style-type: none"> <li>(a) no issue, and</li> <li>(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood</li> </ul> | <p>the residuary estate shall be held in trust for the surviving husband or wife absolutely.</p>   |
| <p>(2) leaves issue (whether or not persons mentioned in subparagraph (b) above also survive)</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> <ul style="list-style-type: none"> <li>(a) as to one half upon trust for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate, and</li> <li>(b) as to the other half, on the statutory trusts for the issue of the intestate.</li> </ul> |
| <p>(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</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 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—</p>  |

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- (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.”

(3) In accordance with subsection (2) of this section—

- (a) in paragraphs (iii) and (iv) of subsection (1) of the said section forty-six, after the word " leaves " there shall be inserted the words " no husband or wife and " ; and the words " subject to the interests of a surviving husband or wife " shall be omitted,
- (b) in paragraph (v) of the said subsection (1)—
  - (i) for the words " issue or " there shall be substituted the words " husband or wife and no issue and no " and
  - (ii) the words " subject to the interests of a surviving husband or wife " and the words " but if no person takes an absolutely vested interest under such trusts; then Sixthly, for the surviving husband or wife of the intestate absolutely " shall be omitted,
- (c) at the end of section forty-seven of the principal Act there shall be added the following subsections—

“(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.

(5) It is hereby declared that, where the trusts in favour of any class of relatives of the intestate, other than issue of the intestate, fail by reason of no member of that class attaining an absolutely vested interest, 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, by virtue of subsections (2) and (3) of this section, go, devolve and be held under the provisions of this Part of this Act as if the intestate had died without leaving any member of

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that class, or issue of any member of that class, living at the death of the intestate”,

- (d) in paragraph (a) of subsection (2) of section forty-eight of the principal Act, for the words "one thousand pounds " there shall be substituted the words " five thousand, or, as the case may be, twenty thousand pounds

(4) At the end of the said section forty-six there shall be added the following subsections—

“(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 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.”

## **2 Right of surviving spouse to have life interest redeemed**

As respects a person dying intestate after the commencement of this Act—

- (a) subsection (1) of section forty-eight of the principal Act (which authorises the personal representative to redeem the surviving spouse's life interest in the residuary estate with his or her consent) shall not have effect, and
- (b) Part IV of the principal Act shall have effect as if the following section were added immediately before that section:—

(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 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.

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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 shall 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—

- (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.

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In this subsection the expression " probate rules " means rules made under section one hundred of the 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."

### 3 Partial intestacies

- (1) As respects a person dying intestate after the commencement of this Act, section forty-nine of the principal Act (which contains modifications of the general rules of intestacy in cases of partial intestacy) shall have effect subject to the amendments set out in this section.
- (2) In the said section forty-nine the following paragraph shall be inserted before paragraph (a):—
- “(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”,
- and, accordingly, in paragraph (a) of the said section forty-nine after the word " requirements " there shall be inserted the words " of section forty-seven of this Act
- (3) At the end of the said section forty-nine there shall be added the following subsections:
- “(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.

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- (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).”

#### **4      Reproduction of enactments in Administration of Estates Act, 1925, as amended**

In accordance with the provisions of the foregoing sections, sections forty-six to forty-nine of the principal Act shall have effect as respects a person dying intestate after the commencement of this Act as set out in the First Schedule to this Act.

#### **5      Rights of surviving spouse as respects the matrimonial home**

The Second Schedule to this Act shall have effect for enabling the surviving husband or wife of a person dying intestate after the commencement of this Act to acquire the matrimonial home.

#### **6      Interpretation and construction**

- (1) In this Part of this Act the expression " intestate " has the meaning assigned to it by section fifty-five of the principal Act.
- (2) The references in subsection (1) of section fifty of the principal Act (which relates to the construction of documents) to Part IV of that Act, or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made or a will coming into operation after the commencement of this Act, but not in relation to instruments inter vivos made or wills coming into operation earlier, be construed as including references to this Part of this Act and the Schedules to be read therewith.

### **PART II**

#### **AMENDMENTS OF INHERITANCE (FAMILY PROVISION) ACT, 1938**

#### **7      Amendments of Inheritance (Family Provision) Act, 1938**

As respects a person dying after the commencement of this Act, the Inheritance (Family Provision) Act, 1938, shall have effect subject to the amendments set out in the Third Schedule to this Act (being amendments for the purpose of—

- (a) extending that Act to cases where persons die intestate,
- (b) removing the restriction imposed by subsection (3) of section one of that Act as to the proportion of the income of the estate which may be disposed of by an order under that Act, and
- (c) extending the cases falling within subsection (4) of the said section one (which authorises a payment of capital instead of a payment of income)).

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## **8      Reproduction of Inheritance (Family Provision) Act, 1938, as amended**

In accordance with the foregoing provisions of this Part of this Act, the said Act of 1938 shall have effect as respects a person dying after the commencement of this Act as set out in the Fourth Schedule to this Act.

### **PART III**

#### **GENERAL**

## **9      Short title and commencement**

- (1) This Act may be cited as the Intestates' Estates Act, 1952.
- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty-three.



## SCHEDULES

## FIRST SCHEDULE

Section 4.

## 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

**“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:—
- (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>the residuary estate shall be held in trust for the surviving husband or wife absolutely.</p>
<p>(2) leaves issue (whether or not persons mentioned in sub-paragraph (b) above also survive)</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 her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate, and</p> <p>(b) as to the other half, on the statutory trusts for the issue of the intestate.</p>
<p>(3) leaves one or more of the following, that is to say, a parent, a brother or</p>	<p>the surviving husband or wife shall take the personal chattels absolutely and,</p>

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sister of the whole blood, or issue of a brother or sister of the whole blood, but leaves no issue

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.

- (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

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 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 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.

#### **47 Statutory trusts in favour of issue and other classes of relatives of intestate.**

- (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 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

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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.
- (5) It is hereby declared that, where the trusts in favour of any class of relatives of the intestate, other than issue of the intestate, fail by reason of no member of that class attaining an absolutely vested interest, 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, by virtue of subsections (2) and (3) of this section, go, devolve and be held under the provisions of this Part of this Act as if the intestate had died without leaving any member of that class, or issue of any member of that class, living at the death of the intestate.

#### **47A Right of surviving spouse to have own life interest redeemed.**

- (1) Where a surviving husband or wife is ended 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 tide

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 reinvested in the two-and-a-half per cent. consolidated stock referred to in section two of the 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—

- (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

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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 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.

#### **48 Powers of personal representative in respect of interests of surviving spouse.**

- (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 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.

#### **49 Application to cases of partial intestancy.**

- (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).”

## SECOND SCHEDULE

Section 5.

## RIGHTS OF SURVIVING SPOUSE AS RESPECTS THE MATRIMONIAL HOME

- 1 (1) Subject to the provisions of this Schedule, where the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death, the surviving husband or wife may require the personal representative, in exercise of the power conferred by section forty-one of the principal Act (and with due regard to the requirements of that section as to valuation) to appropriate the said interest in the dwelling-house in or towards satisfaction of any absolute interest of the surviving husband or wife in the real and personal estate of the intestate.
- (2) The right conferred by this paragraph shall not be exercisable where the interest is—
  - (a) a tenancy which at the date of the death of the intestate was a tenancy which would determine within the period of two years from that date ; or
  - (b) a tenancy which the landlord by notice given after that date could determine within the remainder of that period.
- (3) Nothing in subsection (5) of section forty-one of the principal Act (which requires the personal representative, in making an appropriation to any person under that section,

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to have regard to the rights of others) shall prevent the personal representative from giving effect to the right conferred by this paragraph.

- (4) The reference in this paragraph to an absolute interest in the real and personal estate of the intestate includes a reference to the capital value of a life interest which the surviving husband or wife has under this Act elected to have redeemed.
- (5) Where part of a building was, at the date of the death of the intestate, occupied as a separate dwelling, that dwelling shall for the purposes of this Schedule be treated as a dwelling-house.
- 2       Where—
- (a) the dwelling-house forms part of a building and an interest in the whole of the building is comprised in the residuary estate ; or
  - (b) the dwelling-house is held with agricultural land and an interest in the agricultural land is comprised in the residuary estate ; or
  - (c) the whole or a part of the dwelling-house was at the time of the intestate's death used as a hotel or lodging house ; or
  - (d) a part of the dwelling-house was at the time of the intestate's death used for purposes other than domestic purposes,
- the right conferred by paragraph 1 of this Schedule shall not be exercisable unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the residuary estate (other than the said interest in the dwelling-house) or make them more difficult to dispose of, so orders.
- 3       (1) The right conferred by paragraph 1 of this Schedule—
- (a) shall not be exercisable after the expiration of twelve months from the first taking out of representation with respect to the intestate's estate ;
  - (b) shall not be exercisable after the death of the surviving husband or wife ;
  - (c) shall be exercisable, except where the surviving husband or wife is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the surviving husband or wife, all of them except the surviving husband or wife) in writing.
- (2) A notification in writing under paragraph (c) of the foregoing sub-paragraph shall not be revocable except with the consent of the personal representative ; but the surviving husband or wife may require the personal representative to have the said interest in the dwelling-house valued in accordance with section forty-one of the principal Act and to inform him or her of the result of that valuation before he or she decides whether to exercise the right.
- (3) Subsection (9) of the section forty-seven A added to the principal Act by section two of this Act shall apply for the purposes of the construction of the reference in this paragraph to the first taking out of representation, and the proviso to subsection (5) of that section shall apply for the purpose of enabling the surviving husband or wife to apply for an extension of the period of twelve months mentioned in this paragraph.
- 4       (1) During the period of twelve months mentioned in paragraph 3 of this Schedule the personal representative shall not without the written consent of the surviving husband or wife sell or otherwise dispose of the said interest in the dwelling-house except in the course of administration owing to want of other assets.
- (2) An application to the court under paragraph 2 of this Schedule may be made by the personal representative as well as by the surviving husband or wife, and if, on an application under that paragraph, the court does not order that the right conferred by



paragraph 1 of this Schedule shall be exercisable by the surviving husband or wife, the court may authorise the personal representative to dispose of the said interest in the dwelling-house within the said period of twelve months.

- (3) Where the court under sub-paragraph (3) of paragraph 3 of this Schedule extends the said period of twelve months, the court may direct that this paragraph shall apply in relation to the extended period as it applied in relation to the original period of twelve months.
- (4) This paragraph shall not apply where the surviving husband or wife is the sole personal representative or one of two or more personal representatives.
- (5) Nothing in this paragraph shall confer any right on the surviving husband or wife as against a purchaser from the personal representative.
- 5 (1) Where the surviving husband or wife is one of two or more personal representatives, the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving husband or wife from purchasing out of the estate of the intestate an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death.
- (2) The power of appropriation under section forty-one of the principal Act shall include power to appropriate an interest in a dwelling-house in which the surviving husband or wife was resident at the time of the intestate's death partly in satisfaction of an interest of the surviving husband or wife in the real and personal estate of the intestate and partly in return for a payment of money by the surviving husband or wife to the personal representative.
- 6 (1) Where the surviving husband or wife is a person of unsound mind or a defective, a requirement or consent under this Schedule may be made or given on his or her behalf by the committee or receiver, if any, or, where there is no committee or receiver, by the court.
- (2) A requirement or consent made or given under this Schedule by a surviving husband or wife who is an infant shall be as valid and binding as it would be if he or she were of age ; and, as respects an appropriation in pursuance of paragraph 1 of this Schedule, the provisions of section forty-one of the principal Act as to obtaining the consent of the infant's parent or guardian, or of the court on behalf of the infant, shall not apply.
- 7 (1) Except where the context otherwise requires, references in this Schedule to a dwelling-house include references to any garden or portion of ground attached to and usually occupied with the dwelling-house or otherwise required for the amenity or convenience of the dwelling-house.
- (2) This Schedule shall be construed as one with Part IV of the principal Act.

## THIRD SCHEDULE

Section 7.

## AMENDMENTS OF INHERITANCE (FAMILY PROVISION) ACT, 1938

<i>Provision amended</i>	<i>Amendment</i>
Long title	Omit the word " testamentary " .

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<i>Provision amended</i>	<i>Amendment</i>
Section 1 (1)	<p>After the word " dispositions " insert the words " of estates of deceased persons " .</p> <p>Omit the words " and leaving a will " .</p> <p>For the word " testator " where it first occurs substitute the word " deceased " .</p> <p>For the words " the will does not " substitute the words " the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to " .</p> <p>For the word " testator's " substitute the word " deceased's " .</p> <p>For the words from " testator has bequeathed " to " spouse and " substitute the words " disposition of the deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where " .</p>
Section 1 (2)	Omit the words " of income " .
Section 1 (3)	<p>Substitute the following subsection—</p> <p style="padding-left: 40px;">“(3) Periodical payments made under subsection (2) of this section to any one dependant shall not be at an annual rate which exceeds the annual income of the net estate, and, where payments are so made to more than one dependant in respect of the same period, the aggregate of the annual rates at which those payments are made shall not exceed the annual income of the net estate.”</p>
Section 1 (4)	<p>For the word " testator's " substitute the word " deceased's " .</p> <p>For the word " two " substitute the word " five " .</p> <p>Immediately before the word "payment" insert the words " lump sum " .</p> <p>Omit the words from " of capital " to the end of the subsection.</p>
Section 1 (5)	For the word " testator's" in both places substitute the word " deceased's " .
Section 1 (6)	For the word " testator " in both places substitute the word " deceased " .

<i>Provision amended</i>	<i>Amendment</i>
Section 1 (7)	<p>For the words " the beneficiaries under the will" substitute the words " persons interested in the estate of the deceased ".</p> <p>For the words " testator's " and " testator " substitute the words " deceased's " and " deceased ".</p> <p>After the word " will" insert the words " (if any), or for refraining from disposing by will of his estate or part of his estate, ".</p>
After section 1 (7)	<p>Add the following subsection:—</p> <p>“(8) The court in considering for the purposes of subsection (1) of this section whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.”</p>
Section 2(1)	<p>After the word "by" insert the words " the following provisions of this section or ".</p> <p>For the word " testator's " substitute the word " deceased's ".</p> <p>Omit the words " for general purposes ".</p>
After section 2 (1)	<p>Insert the following subsections:—</p> <p>“(1A) If it is shown to the satisfaction of the court that the limitation to the said period of six months would operate unfairly,—</p> <ul style="list-style-type: none"> <li>(a) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the deceased's estate (whether or not involving a further grant of representation), or</li> <li>(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</li> </ul>

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<i>Provision amended</i>	<i>Amendment</i>
	<p>representation was first taken out, or</p> <p>(c) in consequence of some other circumstances affecting the administration or distribution of the estate, the court may extend that period.</p> <p>(1B) The provisions of this Act shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might exercise its power to extend that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.</p> <p>(1C) In considering under the foregoing subsections 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.”</p>
Section 2(2)	For the word " testator " substitute the words " deceased person ".
Section 3(1)	<p>After the word " will " insert the words " or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, ".</p> <p>For the word " testator's " substitute the word " deceased's ".</p> <p>For the words " as if it had been executed with " substitute the words " subject to ".</p>
Section 3(3)	For the words from " of the will" to the end of the subsection substitute " or letters of administration under which the estate is being administered ".

<i>Provision amended</i>	<i>Amendment</i>
Section 4(1)	<p>After the words " specified in " insert the words " subsection (1) of ".</p> <p>After the words " this Act" insert the words " or, as the case may be, of that period as extended under subsection (1A) of that section ".</p> <p>For the word " testator" in both places substitute the word " deceased ".</p> <p>Omit the words " under the will ".</p> <p>After the word " property " insert the words " under the will or, as the case may be, under the law relating to intestacy ".</p>
Section 4 (2)	<p>For the word " testator " substitute the word " deceased ".</p> <p>After the word " will" add the words " or, as the case may be, under the law relating to intestacy ".</p>
Section 5(1)	<p>For the words " a testator's net estate " substitute the words " the net estate of a deceased person ".</p> <p>For the word " testator" in the first place substitute the words " deceased person " and in the three other places substitute the word " deceased ".</p>

## FOURTH SCHEDULE

Section 8.

INHERITANCE (FAMILY PROVISION) ACT, 1938, AS AMENDED BY PART II OF THIS  
ACT AS RESPECTS PERSONS DYING AFTER THE COMMENCEMENT OF THIS ACT

“An Act to amend the law relating to dispositions of estates of deceased persons, and for other purposes connected therewith.

## ARRANGEMENT OF SECTIONS

- 1 Power for court to order payment out of net estate of deceased for benefit of surviving spouse or child
- 2 Time within which application must be made
- 3 Effect and form of order
- 4 Variation of orders
- 5 Interpretation
- 6 Short title, commencement and extent

*(Formal enacting words)*

**1 Power for court to order payment out of net estate of deceased for benefit of surviving spouse or child**

- (1) Where, after the commencement of this Act, a person dies domiciled in England leaving—
- (a) a wife or husband,
  - (b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself,
  - (c) an infant son, or
  - (d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (in this Act referred to as a "dependant" of the deceased) is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant:

Provided that no application shall be made to the court by or on behalf of any person in any case where the disposition of the deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

- (2) The provision for maintenance to be made by an order shall, subject to the provisions of subsection (4) of this section, be by way of periodical payments and the order shall provide for their termination not later than—
- (a) in the case of a wife or husband, her or his re-marriage ;
  - (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later ;
  - (c) in the case of an infant son, his attaining the age of twenty one, years ;
  - (d) in the case of a son under disability, the cesser of his disability ;
- or, in any case, his or her earlier death.
- (3) Periodical payments made under subsection (2) of this section to any one dependant shall not be at an annual rate which exceeds the annual income of the net estate, and, where payments are so made to more than one dependant in respect of the same period, the aggregate of the annual rates at which those payments are made shall not exceed the annual income of the net estate.
- (4) Where the value of a deceased's net estate does not exceed five thousand pounds, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.
- (5) in determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard

to the interests of the deceased's dependants and of the person who, apart from the order, would be entitled to that property.

- (6) The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to persons interested in the estate of the deceased, or otherwise.
- (7) The court shall also, on any such application, have regard to the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.
- (8) The court in considering for the purposes of subsection (1) of this section whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.

## **2 Time within which application must be made**

- (1) Except as provided by the following provisions of this section or section four of this Act, an order under this Act shall not be made save on an application made within six months from the date on which representation in regard to the deceased's estate is first taken out.
- (1A) If it is shown to the satisfaction of the court that the limitation to the said period of six months would operate unfairly,—
  - (a) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the deceased's estate (whether or not involving a further grant of representation) 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 that period.
- (1B) The provisions of this Act shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might exercise its power to extend that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.
- (1C) In considering under the foregoing subsections the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of

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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.

- (2) For the purpose of subsection (1) of section one hundred and sixty-two of the Supreme Court of Judicature (Consolidation) Act, 1925, (which relates to the discretion of the court as to the persons to whom administration is to be granted), a dependant of a deceased person by whom or on whose behalf an application under this Act is proposed to be made shall be deemed to be a person interested in his estate.

### **3 Effect and form of order**

- (1) Where an order is made under this Act, then for all purposes, including the purposes of the enactments relating to death ' duties, 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 shall be deemed to have had effect as from the deceased's death, subject to such variations, as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.
- (2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.
- (3) An office copy of every order made under this Act shall be sent to the principal probate registry 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.

### **4 Variation of orders**

- (1) On an application made at a date after the expiration of the period specified in subsection (1) of section two of this Act, or, as the case may be, of that period as extended under subsection (1A) of that, section, the court may make such an order as is hereinafter mentioned, but only as respects property the income of which is at that date applicable for the maintenance of a dependant of the deceased, that is to say,
- (a) an order for varying the previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependant or of a person beneficially interested in the property under the will or, as the case may be, under the law relating to intestacy, or
- (b) an order for making provision for the maintenance of another dependant of the deceased.
- (2) An application to the court for an order under paragraph (a) of the preceding subsection may be made by or on behalf of a dependant of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested therein under the will or, as the case may be, under the law relating to intestacy.

### **5 Interpretation**

- (1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—



" annual income " means in relation to the net estate of a deceased person, the income that the net estate might be expected at the date of the order, when realised, to yield in a year ;

" the court " means the High Court and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham where those courts respectively have jurisdiction ;

" death duties " means estate duty and every other duty leviable or payable on death ;

" net estate " means all the property of which a deceased person 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 and estate duty payable out of his estate on his death ;

" will " includes codicil;

" son " and " daughter ", respectively, include a male or female child adopted by the deceased by virtue of an order made under the provisions of the Adoption of Children Act, 1926, and also the son or daughter of the deceased en ventre sa mere at the date of the death of the deceased.

- (2) References in this Act to any enactment or any provision of any enactment shall, unless the context otherwise requires be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.

## 6 Short title, commencement and extent

- (1) This Act may be cited as the Inheritance (Family Provision) Act. 1938.

- (3) This Act shall not extend to Scotland or to Northern Ireland.”

### TABLE OF STATUTES REFERRED TO IN THIS ACT

Short Title	Session and Chapter
National Debt (Conversion) Act, 1888	51 & 52 Vict. c. 2.
Civil List Act, 1910	10 Edw. 7. & 1 Geo. 5. c. 28.
Law of Property Act, 1925	15 & 16 Geo. 5. c. 20.
Administration of Estates Act, 1925	15 & 16 Geo. 5. c. 23.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Adoption of Children Act, 1926	16 & 17 Geo. 5. c. 29.
Inheritance (Family Provision) Act, 1938	1 & 2 Geo. 6. c. 45.