

**EXPLANATORY MEMORANDUM TO**  
**THE INTESTATE SUCCESSION (INTEREST AND CAPITALISATION)**  
**(AMENDMENT) ORDER 2008**

**2008 No. 3162**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
  - 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
  - 2.1 The purpose of this instrument is to amend the Intestate Succession (Interest and Capitalisation) Order 1977 (SI 1977/1491) (“the 1977 Order”) by updating the tables used for determining the capital value of the portion of the residuary estate in which a surviving spouse or civil partner has a life interest on intestacy.
  - 2.2 The tables have not been updated since they were introduced in 1977 and they are now out of date.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 Section 47A of the Administration of Estates Act 1925 (as amended) enables the Lord Chancellor to direct, by statutory instrument, the manner in which the capital value of the life interest is to be calculated.
  - 4.2 The statutory instrument currently in force is the 1977 Order as amended by SI 1983/1374<sup>1</sup> and SI 2005/2114<sup>2</sup>. This instrument amends the 1977 Order with effect from 1 February 2009.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England and Wales. Scotland and Northern Ireland each have their own jurisdiction on succession matters.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
  - *What is being done and why*

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<sup>1</sup> The Intestate Succession (Intestate and Capitalisation) Order 1977 (Amendment) Order 1983.

<sup>2</sup> The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005.

- 7.1 Section 46 of the Administration of Estates Act 1925 (as amended) sets out rules for the distribution of a deceased person's estate on intestacy. Specifically, these rules set out who among the deceased person's family will receive what from the estate. If a person dies leaving a surviving spouse or civil partner and children or other close relatives, and the estate is of sufficient value, the spouse or civil partner will receive a fixed net sum, referred to as the statutory legacy.<sup>3</sup> Following settlement of the statutory legacy, the surviving spouse or civil partner is entitled to take a life interest in one half of the balance of the residuary estate. The other half goes absolutely to the deceased's children in equal shares.
- 7.2 The surviving spouse or civil partner will receive any income generated by the life interest in which he or she enjoys for the rest of his or her life and when he or she dies, the capital sum passes to the children. However, rather than receiving the income, the spouse or civil partner may elect to have the life interest redeemed and receive its capital value (Administration of Estates Act 1925, Section 47A). The capital value of the life interest is calculated using the tables set out in the 1977 Order. A surviving spouse or civil partner must elect for redemption within twelve months of the first general grant of representation to the intestate's estate. However, the court may extend this time period.
- 7.3 The tables in the 1977 Order take into account the sex of the surviving spouse (and from 2005 a civil partner), his or her age, and the average gross redemption yield on medium coupon fifteen-year Government stocks. Since the 1977 Order came into force, the yields on Government stocks have fallen, life expectancy has increased, and tax rates have changed. In addition, the nature of the yields on Government stocks calculated each day has changed and "medium coupon" yields are no longer produced.
- 7.4 In response to the consultation on the statutory legacy that the Department for Constitutional Affairs (whose functions in this regard subsequently passed to the Ministry of Justice) carried out in 2005,<sup>4</sup> a small minority of respondents raised concerns about the operation of the surviving spouse's or civil partner's life interest. They argued that it was out of date and unworkable for small sums of money. The operation of the life interest was not a topic in the consultation paper, but arose in response to a consultation question about whether a wider review of the intestacy rules should be undertaken and, if so, what it should consider. The Law Commission has agreed to carry out a review of the intestacy rules as part of its Tenth Programme on Law Reform. It expects to report in 2011. Any fundamental changes to the surviving spouse's or civil partner's life interest will be considered as part of that review.
- 7.5 The Ministry of Justice consulted the Government Actuary's Department and it produced revised tables in July 2008. Whilst the approach to the preparation of the tables has not been changed, the underlying mortality assumptions and the range of the yields have been updated. The yield index has also been updated.

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<sup>3</sup> Since 1993, the levels of statutory legacy have been set at £125,000 where the deceased leaves children and £200,000 in other cases. From 1 February 2009, the levels will increase to £250,000 and £450,000 respectively. The Family Provision (Intestate Succession) Order 2008, which gives effect to these increases, was laid in draft on 12 November 2008.

<sup>4</sup> The consultation paper 'Administration of Estates – Review of the Statutory Legacy' (CP 11/05) invited comments on whether the current levels of statutory legacy should be increased and, if so, to what amounts. It also invited comments on whether a wider review of the intestacy rules should be undertaken and, if so, what it should consider.

The Financial Times publishes a yield on fifteen year Government stocks and this is the new yield to be used when entering the tables. The yield index can be found on the Financial Times' website at:

<http://markets.ft.com/ft/markets/researchArchive.asp?report=FTSEG&cat=BR>

- 7.5 The changes to the tables for calculating the capital value of the surviving spouse's or civil partner's life interest can only be taken forward by way of statutory instrument.<sup>5</sup>
- 7.6 The Ministry of Justice's decision to revise the tables was announced in the Ministry of Justice's consultation response 'Administration of Estates – Review of the Statutory Legacy'. The response paper was published on 28 August 2008.<sup>6</sup>

## **8. Consultation outcome**

- 8.1 The Ministry of Justice did not carry out a consultation on amending the capitalisation tables for capitalising a surviving spouse's or civil partner's life interest on intestacy. However, the issue was raised in response to a question asked in the consultation on the statutory legacy about whether a wider review of the intestacy rules should be undertaken (see paragraph 7.4).

## **9. Guidance**

- 9.1 No guidance will be issued. The changes to the capitalisation tables do not change the way in which the capital value of the life interest is calculated.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is unlikely to lead to additional costs and savings.
- 10.2 The impact on the public sector is likely to be minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring and Review**

- 12.1 The intended outcome is that people will be able to use the tables to calculate the capital sum required to redeem life interest. No formal monitoring or reviewing arrangements are proposed. The working of the instrument will be reviewed in five years. The success of the instrument will be judged by the level of complaints about its working.

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<sup>5</sup> See paragraph 4.1 above.

<sup>6</sup> The response paper is available on the Ministry of Justice website at:  
<http://www.justice.gov.uk/publications/cp1105.htm>.

## 13 Contact

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