

EXPLANATORY MEMORANDUM TO

THE ADMINISTRATION OF ESTATES ACT 1925 (FIXED NET SUM) ORDER 2020

2020 No. 33

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to set a new fixed net sum, in accordance with Schedule 1A to the Administration of Estates Act 1925 (the Act), as amended by Schedule 1 to the Inheritance and Trustees' Powers Act 2014 (the 2014 Act). This sum is also known as the statutory legacy and represents the amount which a surviving spouse/civil partner is entitled from the estate when their deceased spouse/partner has died intestate (without having made a valid will) but has surviving children.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Administration of Estates Act 1925 (as amended by the 2014 Act) places a responsibility on the Lord Chancellor to specify a fixed net sum periodically by way of a Statutory Instrument. Schedule 1A to the Act sets out the process which the Lord Chancellor should follow in determining the sum, and a requirement on the frequency with which it must be reviewed.

7. Policy background

What is being done and why?

- 7.1 The 2014 Act was introduced following the Government's acceptance of a number of recommendations in the Law Commission's report *Intestacy and Family Provision claims on death*, published in December 2011.
- 7.2 The reforms were made to modernise and simplify the law to create a fairer and more comprehensible set of rules on intestacy, and to make the process of administering an estate faster and easier for people during a difficult and emotional time.
- 7.3 The statutory legacy (represented by the fixed net sum) was introduced in 1925 and is designed to protect the interests of the surviving spouse/civil partner, but also to balance them against the interests of the children of the deceased person.
- 7.4 The 2014 Act addressed concerns that the statutory legacy was eroded by inflation by introducing a requirement for fixed periodic reviews to take account of changes to inflation. Schedule 1A to the Act specifies options for assessing the inflation rate to be applied in calculating the setting of a new fixed net sum. The Schedule also sets the minimum period – 5 years – for a review of the level of the sum.
- 7.5 In accordance with the methodology set out in paragraph 7 of Schedule 1A to the Act, the Ministry calculated the change in the Consumer Price Index (CPI) from the 'base month' (when the last sum was set – October 2014) to the 'current month' (the most recent CPI figure available – November 2019). The Act also requires rounding of the resultant figure to the nearest multiple of £1000. As the increase was 8.1% over the specified period, after rounding the increase on the existing sum of £250,000 is £20,000. Accordingly, the Lord Chancellor is setting the new sum as £270,000.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 There has not been formal consultation in setting the new fixed net sum, as the process followed is specified in statute, and, under which, regard has been had to published inflation indexes.

11. Guidance

- 11.1 The reforms will be drawn to the attention of solicitors and probate practitioners by correspondence addressed to members of the judiciary, to other relevant representative bodies (for example the Law Society, Bar Council) and to the editors of relevant legal publications; as well as by publicity undertaken by HM Courts and Tribunal Service.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.

- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the process followed in updating the fixed net sum is specified in statute.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is by periodic review of the rate as specified in the 2014 Act.

15. Contact

- 15.1 Peter Farr, Head of Civil Law at the Ministry of Justice, email: peter.farr@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Wendy Morton MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.