

# Intestacy: widows given more rights

## ESTATES

New rules on how the assets of someone without a will are to be divided

ADAM PALIN

New rules governing the way estates are divided when someone dies without leaving a will take effect next week, changing the balance between the claims of spouses and children.

In the absence of a valid will – a state known as “intestacy” – assets are apportioned in accordance with the law.

Almost two-thirds of UK adults have not written a will, according to research by Investec Wealth & Investment conducted this year. Of those that have, almost a third are out of date. Wills are legally revoked upon marriage, for example, unless they explicitly take account of the union.

The reforms will principally affect estates worth more than £250,000, but rising house prices mean that more estates will breach this threshold. Figures from the Office for National Statistics showed that the average UK house price was £272,000 in July. The average London property is valued at about £514,000.

The main change in the intestacy reforms, effective in England and Wales from October 1, is that surviving spouses will inherit a larger share at the expense of the claims of any children.

“Above all, the changes enhance the rights of a surviving spouse or civil partner,” said Robert Brodrick, partner at Payne Hicks Beach solicitors.

While the reforms look to update many aspects of the rules, they have been criticised for not addressing all of the perceived injustices that can arise under intestacy. In particular, the unmarried continue to have no claim to their late partner’s estate.

“On balance the proposed rules are an improvement, but inevitably they



Intestacy can add financial trauma to the loss of a loved one – Dreamstime

create a new set of winners and losers,” said Matthew Evans, partner at Hugh James solicitors.

### Married with no children

Under existing rules where there are no children, surviving spouses inherit the first £450,000 of an estate plus half of the balance. The other half of the remainder currently goes to blood relatives in an order laid out by inheritance laws. First in line are parents, then siblings, nieces and nephews, and finally more distant relatives.

From October 1, a widowed spouse will inherit all of the estate, however high its value.

### Married with children

Where there are surviving children, the widow will receive the first £250,000 of the estate plus half of the remaining assets. The other half of the

remaining assets will be shared equally among any children.

Currently, sons and daughters inherit all of the estate above the first £250,000. The widowed spouse is entitled to any income from half of the balance, but not to the assets themselves.

Nick Gartland, senior financial planning director at Investec, said that the current rules can lead to undesired outcomes for large estates, particularly those worth millions of pounds. Not only might the widow depend on the money, but the early transition of wealth to the next generation may be a concern. “In most families, I suspect it would be quite a shock to learn that most of the estate would not go to the spouse,” he said.

### Unmarried couples

The reforms will not have any effect

on the status of long-term partners, who will continue to have no entitlement where there is no will, even if they have been living with the deceased for decades or have parented children.

“The biggest misconception [with intestacy law] lies among ‘common law’ partners who are married in all but name,” said Mr Gartland. In the absence of marriage or civil partnership, bereaved partners are not entitled to the other half of shared savings or assets.

Where an unmarried person dies intestate, their entire estate will pass to their closest blood relative. First in line will be any children or grandchildren. In the absence of any living relatives, the estate goes to the Crown.

### Personal property

The belongings of the deceased –

known as “personal chattels” – will continue to pass to the surviving spouse or civil partner. However, the definition has been updated to include any assets that are not held for business or investment purposes.

Although the changes have simplified the previous “archaic definition”, Tamasin Perldins, senior associate at Charles Russell, said there remains scope for challenges in grey areas such as wine or art collections. “According to the guidance, they will probably be called chattels unless they are solely investments.”

### Adopted children and stepchildren

Existing rules gave rise to a loophole that meant children who were adopted following their parent’s death had no claim on their estate.

This anomaly has been addressed by the new rules, which also allow those treated as a child by the deceased – such as stepchildren – to claim on an estate under the Inheritance (Provision for Family and Dependents) Act 1975. Such claims were previously only allowed in the context of marriage or civil partnership.

### Do you need a will?

Mr Gartland said that while the reforms were “a step in the right direction”, by no means did they mitigate the need for individuals’ wishes to be articulated in a will.

As long as a voluntary declaration of wishes is signed and witnessed by two people who are not beneficiaries, it should be legally binding. They can even be self-written, although it is usually recommended that the services of a solicitor are sought where estates are complicated and may benefit from legal expertise. A will could be contested if the wishes are unclear.

“The default rules cannot take account of complex family situations . . . [where] there remains a need for a will,” said Mr Brodrick.



Robert Brodrick  
Partner, Private Client