

<b>Title:</b> Intestacy and Family Provision Claims on Death <b>Lead department or agency:</b> Law Commission <b>Other departments or agencies:</b> Ministry of Justice	Impact Assessment (IA)
	<b>IA No:</b> LAWCOM0012
	<b>Date:</b> 14.12.2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Joel Wolchover: 020 3334 0246

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

In 2010 there were at least 40,000 intestate estates and many more may go unrecorded. Family members and dependants usually bear the burden of distributing the estate. Therefore for every person who dies intestate, many more will be affected. It is 20 years since the intestacy rules (which set out the entitlement of relatives on intestacy) were reviewed and considerably longer since the family provision legislation (which enables certain relatives and dependants to challenge the distribution under a will or the intestacy rules) was reviewed. Some aspects of how the current law operates are outdated, disproportionately complex and are no longer in accordance with modern expectations. A number of smaller administrative issues can be dealt with as part of this reform. It is necessary for government to intervene because primary legislation is required.

### What are the policy objectives and the intended effects?

1. To ensure transfer of wealth on death better matches public expectations and current family structures.
2. To reduce the complexity of the law.
3. To reduce the administrative burden on those who have to administer the property of the deceased.
4. To update the intestacy rules so that recourse to litigation is minimised.
5. Where litigation is unavoidable, to ensure access to the court and the full range of court orders is not restricted by arbitrary legal rules.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

At consultation stage, a wide range of options were considered. In light of consultation, the option being taken forward is targeted reform.

*Option 0:* Do Nothing.

*Option 1:* Targeted reform – the preferred option. This is proportionate reform of the intestacy and family provision rules. In light of the consultative process, a package of targeted reforms has emerged. These reforms satisfy the policy objectives outlined above. There are three main strands of reform, though a number of small technical issues have also been addressed. The main reforms target three problem areas:

1. problems with the entitlement of a surviving spouse;
2. problems with family provision; and
3. legal traps for beneficiaries and administrators.

The only viable method of reform is primary legislation. Proportionate and targeted amendments to the existing legislative framework are the preferred approach as opposed to full scale repeal and new legislation.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

**What is the basis for this review?** N/A

**If applicable, set sunset clause date:** N/A

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

No

**Chair's Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Chair:

Date:

UNCLASSIFIED

# Summary: Analysis and Evidence

## Policy Option 1

**Description:** There are three main strands of reform to deal with: problems with the entitlement of a surviving spouse; problems with family provision; and legal traps for beneficiaries and administrators.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised costs by 'main affected groups'

**Other key non-monetised costs by 'main affected groups'**

Legal practitioners and court system: minor one-off familiarisation costs.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	£0		n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

**Other key non-monetised benefits by 'main affected groups'**

Beneficiaries of estates: the reform will make the distribution on intestacy fairer. The law will be more in accordance with both the expectations of the deceased and the deceased's family and dependants.

Court system, probate service and legal advisers: administration of the estate will be more efficient. A number of legal technicalities in this area will be simplified. The law of family provision will be improved by reforming arbitrary and overly technical rules which unjustifiably restrict access to the courts or to particular remedies.

Key assumptions/sensitivities/risks	Discount rate (%)
-------------------------------------	-------------------

3.5

*Assumptions:* training of legal practitioners is sufficiently small to be incorporated into the normal programme of training expected each year; all legislative change is sufficiently small to be communicated to the judiciary via the Judicial College newsletter; the number of intestate deaths with a surviving spouse, no children or other descendants but a surviving parent or full sibling (or their descendants) reflects UK-wide demographic pattern; smaller estates are more likely to be intestate and therefore around 80% of estates for which there is no grant of representation are likely to be intestate estates; the number of family provision claims in the Family Division is the same as the number in the Chancery Division and the number in the county courts is the same as in both Divisions of the High Court combined.

*Risks:* there is a low risk that the number of deceased people assumed to leave a surviving spouse, no children or other descendants but a parent or full sibling (or their descendants) diverges from the demographic pattern, but given the small numbers involved this will only give rise to a very small effect; we may have underestimated the number of family provision claims and the number of people affected by them as we do not have accurate data for all courts or for cases which settle before a claim is issued.

Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	N/A

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			Court system		
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?					
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded:		Non-traded:
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?					

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b>	Yes	18
<b>Economic impacts</b>		
Competition	No	19
Small firms	No	19
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	19
Wider environmental issues	No	19
<b>Social impacts</b>		
Health and well-being	Yes	19
Human rights	No	19
Justice system	Yes	19
Rural proofing	No	19
<b>Sustainable development</b>	No	19

<sup>1</sup> Race, disability and gender impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
	Intestacy and Family Provision Claims on Death (2009) Law Commission Consultation Paper No 191
	Intestacy and Family Provision Claims on Death (2011) Law Com No 331
	Intestacy and Family Provision Claims on Death (2011) Law Com No 331 (Analysis of Responses)
	Draft Inheritance and Trustees' Powers Bill

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# EVIDENCE BASE

## 1. INTRODUCTION

### Background

1. This impact assessment accompanies the draft Inheritance and Trustees' Powers Bill and Intestacy and Family Provision Claims on Death (2011) Law Com No 331.
2. Though the law cannot help with the emotional loss which the death of someone close will bring, it can provide for appropriate and effective distribution of the property that they leave behind, often referred to as their "estate". The size of the estate will differ in each case and nothing we are recommending here will affect that. Our recommendations will however affect the way that some estates are distributed and also the rules under which certain people can ask the courts for a greater share of the estate. Our recommendations also aim to minimise inefficiency in distributing the estate.
3. The "intestacy rules" are a set of default provisions which are engaged when a person dies leaving property that is not disposed of by a valid will. The rules determine how such property should be distributed. The rules are largely contained in the Administration of Estates Act 1925 ("AEA 1925"). If a person dies without a will and with no living relatives within prescribed classes, their estate will pass to the Crown as what is called *bona vacantia* ("ownerless goods"). If, as is more often the case, the deceased had living relatives specified in the intestacy rules, the estate will be divided among them according to rules of priority. If the deceased had a spouse ("spouse" is used here to refer to a husband, wife or civil partner) and children or other descendants then the spouse will receive a set amount of the estate, also known as the fixed net sum (currently £250,000). Anything above that sum will be divided between the spouse and children or other descendants. If the deceased left a spouse but no children or other descendants, the spouse will receive a higher fixed net sum (currently £450,000) and anything above that will be shared with the deceased's parents or full siblings (or their descendants), if they are alive. If the deceased did not leave a spouse, the estate is distributed amongst other relatives according to a list of priority. There were at least 40,000 intestate deaths in 2010 but we estimate that a further 200,000 may go unrecorded.
4. If everyone in England and Wales had a valid will, the need for the intestacy rules would be greatly reduced and the problems caused by the rules failing to match public expectations and modern family forms would be lessened. It was not within the remit of the Law Commission's review to look at ways to increase the number of people who execute a will. However, there have been previous attempts to do so both by government and independent organisations.<sup>2</sup> Unfortunately, these have had limited success, making reform of the intestacy rules all the more pertinent.
5. Whether or not there is a will, certain close relatives and dependants of the deceased who feel that reasonable financial provision was not made for them can apply to court for an order that they should receive more of the deceased's property. Such an application is made under the Inheritance (Provision for Family and Dependents) Act 1975 (the "1975 Act"), and is commonly referred to as a claim for family provision. Applicants must fall within certain specified categories and relief is discretionary, based on a number of statutory factors which the court must take into account. It is estimated that 324 claims reached the courts in 2010; this does not include disputes which settled before a claim was issued.
6. It is 20 years since the intestacy rules were reviewed, and considerably longer since the family provision legislation was reviewed by the Law Commission. The law in this area must be kept under review to ensure that the distribution of estates continues to match public expectations. It is also important that the law operates in a way that is simple to comprehend and put into practice. Cost to the estate and complexity for those who administer the estate – who are usually close family members with no legal training – must be kept to a minimum.
7. The Ministry of Justice, supported by the Better Regulation Executive of the Cabinet Office, asked the Law Commission to look at this area of law as part of its 10th Programme of law reform. The project began in October 2008. In October 2009, Intestacy and Family Provision Claims on Death (2009) Law Commission Consultation Paper No 191 was published. This outlined the current law and put forward a number of options for reform.
8. More than 120 responses were received during the four month consultation period. An analysis of

---

<sup>2</sup> For example, the annual campaign run by Will Aid to encourage will-making (<http://www.willaid.org.uk>).

those responses is available on the Law Commission website ([www.lawcom.gov.uk](http://www.lawcom.gov.uk)). In addition, meetings have been held with key stakeholders throughout the project and Law Commission staff gave presentations about the project to members of the public and legal practitioners. There were a number of different areas considered in the consultation and a number of different combinations of reform which could have been taken forward. Each area was considered in light of consultees' comments, further research and policy discussions. Once a decision was made on the reforms to be taken forward, there were a number of options as to the overall approach. It was decided that, given the nature of the reforms being recommended, targeted reform was the most appropriate approach.

9. Our final recommendations are set out in our final report, Intestacy and Family Provision Claims on Death (2011) Law Com No 331. A copy of the draft Inheritance and Trustees' Powers Bill is annexed to that report. In that report we explain the basis of those recommendations. This impact assessment measures the impact of the final recommendations.

### **Problem under consideration**

10. The overarching problem is that the current law does not meet public expectations and has become out of date. This problem manifests itself in a number of different ways which are described in greater detail below. There are also a number of smaller, technical legal problems which exist in this area; in addressing the overarching problem we have taken the opportunity to solve some of these technical problems.

#### *Problems with the entitlement of the surviving spouse*

##### **Estate directed away from the surviving spouse**

11. Under the current law, in a small but significant number of cases – we estimate between 50 and 100 every year – where the deceased does not leave any children or other descendants, the spouse may have to share the estate with the deceased's parents or full siblings (or their descendants). This splits the estate and leads to a transfer of wealth away from the immediate family structure to other relatives, with the potential to leave a surviving spouse less financially secure than he or she would otherwise be. This arrangement is outdated, does not accord with modern expectations and in practice affects so few estates as to appear arbitrary.

##### **Complicated rules of entitlement for the surviving spouse**

12. In certain estates over £250,000, a life interest trust is imposed; this means that the spouse can only use the income from half of anything over this amount. It is estimated that between 800 and 1,100 life interest trusts are created every year by the intestacy rules.<sup>3</sup> This is disproportionately complex and expensive, particularly where relatively small amounts of property are held in trust. England and Wales is the only comparable legal system which imposes a life interest trust in these circumstances. These arrangements can be a source of tension between the spouse and the children, particularly the children of the deceased from a previous relationship.

##### **The statutory legacy becoming outdated**

13. Under the intestacy rules, a surviving spouse is entitled to a "fixed net sum" from the deceased's estate before anything that is left is distributed to other beneficiaries. This is often referred to as the "statutory legacy". The Lord Chancellor may fix the levels of statutory legacy but there is no statutory guidance as to when the levels of statutory legacy should be reviewed and what factors should be taken into consideration. This has led to long delays between some reviews and the most recent review required an expensive and time-consuming consultation process. This sum has often fallen out of line with inflation, particularly house price inflation. This can undermine the objective of meeting the surviving spouse's reasonable needs and even risks leaving some surviving spouses unable to remain in the family home.

#### *Problems with family provision*

14. The 1975 Act allows certain categories of people to claim against the estate of the deceased person and apply for a share or an increased share of the estate.

##### **Discrimination in the application of the concept of a "child of the family"**

15. "Child of the family" is a legal concept which describes the situation where a child has been raised within a family but is not legally the child of both "parents". Family provision claims may be brought by a person who was treated by the deceased as a child of his or her family "in relation to a marriage

---

<sup>3</sup> Ministry of Justice, *Trusts (Capital and Income) Bill: Response to Consultation* (2011) p 41.

or civil partnership". This discriminates against children who were treated by the deceased as his or her child where the deceased was not married or in a civil partnership. Such a distinction is inconsistent with the range of families in which children are now brought up. It also fails to support children who have suffered the loss of a person who had taken on the role of parent in their life.

### **Obstacles to claims by dependants of the deceased**

16. The category of "dependant" allows a person to claim for family provision if he or she was being maintained by the deceased immediately before the death. It can include somebody who is not a family member or blood relative. The current drafting of the 1975 Act and its interpretation by the courts have created two barriers to such claims. First, the "balance sheet test" requires that the deceased contributed more in financial terms to the relationship than the applicant did. Secondly, the applicant must show that the deceased assumed responsibility for maintaining him or her. These two requirements can prevent deserving applicants from making a claim, and have created complexity in the law as courts attempt to mitigate their harshness.

### **Claims restricted by the domicile of the deceased**

17. An application for family provision can only be brought where the deceased was domiciled in England and Wales at the date of death. The problem with this rule is that the deceased may have family or dependants based in this jurisdiction who are unable to challenge the provision made for them under a will or the intestacy rules. Individuals can even engineer a change of domicile to avoid the possibility of a post-death claim against their estate. Research has found that 5.5 million British nationals live overseas permanently and a further 500,000 live abroad for part of the year.<sup>4</sup> Not all of this number will die domiciled outside England and Wales, and fewer still will leave family or dependants who wish to make a 1975 Act claim. However, a significant number of claims by family or dependants of the deceased are prevented by this condition.

### *Other problems with entitlement*

#### **Children losing their inheritance due to adoption**

18. If a child inherits, either under a will or the intestacy rules, an interest that is contingent on reaching the age of 18 or marrying or forming a civil partnership, and that child is subsequently adopted, this contingent right is lost altogether and the child will not inherit on reaching 18. For example, Andrew, a widower, has a 10-year-old son, Ben. Andrew dies in a car accident without leaving a will (intestate). Andrew's estate is worth £200,000. Under the intestacy rules, Ben is entitled to inherit the whole estate but it will be held on trust for him until he reaches the age of 18 or marries or forms a civil partnership. Ben is adopted by his Godparents Calum and Ciara and no variation is made to the trust for Ben as Calum and Ciara are not advised that any change is necessary. Once adopted, Ben will lose the contingent interest which he had in the £200,000. The inheritance will instead pass to Andrew's parents, the next in line to inherit under the intestacy rules.
19. An application can be made to the court before the adoption for an order varying the trusts under which the interest is held. There are two problems:
  - the need for a court application to vary the trusts is expensive and wasteful of court resources; and
  - if professionals are unaware of this technical legal issue and an application is not made or is not made in time, the child will lose his or her contingent interest in the inheritance which his or her parents have left.

### **Rationale for intervention**

20. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments.
21. Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (for example, waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions.
22. Government may also intervene for reasons of equity (fairness) and redistribution. Equity, or

---

<sup>4</sup> Institute of Public Policy Research, *Brits Abroad: Mapping the Scale and Nature of British Emigration – Executive summary* (2006) p 2.

fairness, may require intervention when the law is not performing its function or is causing unnecessary problems and complications. Intervention for redistributive reasons may aim to reallocate resources to those who need them most or have the greatest entitlement to them.

23. Our review and consultation have confirmed that the intestacy rules and family provision legislation – laws which affect many thousands of families every year – have become outdated and fallen out of step with public expectations. There is an intergenerational equity rationale for intervention: to ensure that transfers of wealth on death are appropriate, up to date and in line with expectations. Updating the family provision legislation will properly safeguard family members and dependants of the deceased.
24. In addition, a number of administrative issues cause unnecessary inefficiency and expense to administrators and deplete the net estate available for distribution to beneficiaries. Targeted reform of this area of law will provide fair, clear and efficient rules which can be of use to one person without the value of those rules being diminished for anyone else.
25. Primary legislation is the existing policy lever in this area; it is more efficient to use proportionate and targeted reform to achieve many of the policy objectives outlined. Existing primary legislation will need to be amended by Parliament.

### **Policy objectives**

26. The policy objectives are as follows.
  - To ensure that the transfer of wealth on death better matches public expectations and current family structures. Family structures have evolved and the law needs to keep pace with such changes in society.
  - To reduce the complexity of the law. Administrators are often family members of the deceased and may never have come into contact with this area of law before. It is important for them, for other beneficiaries and for everyone involved with the distribution of the estate that the law in this area is easy to understand and apply.
  - To reduce the administrative burden on those who have to administer the property of the deceased. Administration of the deceased's property should be fair and efficient.
  - To update the intestacy rules so that recourse to litigation is minimised. The intestacy rules set the automatic entitlement when someone has died without a will. If a family member or dependant is unhappy with the outcome they may have a claim under the family provision legislation. If the entitlement on intestacy accorded better with their expectations, there would be less need for recourse to the courts to obtain reasonable provision.
  - Where litigation is unavoidable, to ensure access to the court and that the full range of court orders is not restricted by arbitrary legal rules. If there is a genuine dispute over provision after death, it is important that those for whom reasonable provision was not made have access to the courts and that the courts have sufficient powers to achieve a fair outcome in any individual case.

### **Scale and context**

27. These areas of the law have the potential to affect many thousands of families. In 2010 more than 490,000 deaths were registered.<sup>5</sup> In the same year there were around 240,000 grants of representation (a grant of representation is obtained to allow an executor or administrator to deal with the estate). More than 40,000 of these were grants of letters of administration (the grant of representation for intestate estates),<sup>6</sup> suggesting at least 40,000 intestate estates. Each year there are only around half as many grants of representation as there are registered deaths. For those 250,000 deaths where there was no grant it is not possible to know with certainty whether or not there was a will, but it is likely that a large number – we assume around 80% – of these deaths were intestate. This assumption can be made because the estates for which there is no grant are likely to be smaller, and smaller estates are more likely to be intestate.<sup>7</sup> We therefore estimate that in 2010 around 240,000 deaths were intestate.

<sup>5</sup> Office for National Statistics, *Births and Deaths in England and Wales, 2010*, Statistical Bulletin (13 July 2011) p 1.

<sup>6</sup> Ministry of Justice, *Judicial and court statistics 2010 – full report* (July 2011) table 2.11.

<sup>7</sup> See Intestacy and Family Provision Claims on Death (2011) Law Com No 331, Appendix D.



28. In fact, the number of people affected by the law in this area is even greater, as it is those who are left behind who have to deal with the effect of the intestacy rules or make use of the family provision legislation. This area of law affects people at one of the most vulnerable times in their life, after the death of somebody close, and deals with the potentially contentious subject of the distribution of the deceased person's estate.
29. Claims under the 1975 Act have been increasing in recent years. The family provision legislation is estimated to have given rise to between 1,256 and 1,460 cases in the last four years. There is data for the number of 1975 Act claims issued in the Chancery Division of the High Court in London from 2007 to 2010.<sup>8</sup> We do not have details of the application numbers in either the Family Division of the High Court or the many county courts across the country. We assume, in the absence of relevant data, that the number of claims in the Family Division is the same as the number in the Chancery Division and the number in the county courts is the same as in both Divisions of the High Court combined.

Table 1: Number of 1975 Act claims issued in the Chancery Division, Family Division and county courts, 2007 to 2010.

Year	Chancery Division	Family Division	County Courts	Total
2010	81	81	162	<b>324</b>
2009	110	110	220	<b>440</b>
2008	80	80	160	<b>320</b>
2007	43	43	86	<b>172</b>
Total	314	314	628	<b>1256</b>

Source: Ministry of Justice, *Judicial and court statistics 2010 – full report* (July 2011) table 2.11.

30. Using data provided by the Legal Services Commission, we found that for claims that received legal aid, around 59% settled before a hearing and 14% settled before proceedings were issued.<sup>9</sup> If we assume that the same proportion of all cases settle before proceedings are issued whether or not legal aid is involved, the total number of disputes from 2007 to 2010 would be closer to 1,460. This is likely to be an underestimate as there will also be claims which have settled before an application has even been made for legal aid which would not be included in this data. It also does not reflect the number of people involved as often claims will involve not only the claimant and the representative of the estate but also the wider family. The terms of the settlement are likely to be heavily influenced by the parties' perceptions of the likely outcome had the case proceeded to trial based on their understanding of the current law, often with the benefit of legal advice.
31. On average, it takes 92.33 days to administer an intestate estate.<sup>10</sup> The average cost of administering an estate in 2010 was £2,199.<sup>11</sup>
32. The intestacy rules date back to 1925 and the current family provision legislation to 1975 (the first family provision legislation was enacted in 1938).

## Stakeholders

33. The following stakeholders will be affected by these reforms.
- Family members and dependants who are disadvantaged under the current law but who will benefit under the proposed reform; and family members and dependants who benefit under the current law whose benefit will change under the proposed reform;

<sup>8</sup> Judicial and court statistics available at: <http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/index.htm> (last visited 30 November 2011).

<sup>9</sup> Based on data for the financial year 2010 to 2011.

<sup>10</sup> Written Answer, *Hansard* (HC), 19 June 2009, vol 494, col 547W.

<sup>11</sup> J Rayner, "Consumer shift in estate services" (18 November 2010) *Law Society Gazette Online*.

- Personal representatives. In intestate estates these will typically be the principal beneficiaries, who are likely to be family members;
- The court system, judiciary, Probate Service and Legal Services Commission.
- Legal advisers and representatives.

### **Options considered**

34. At consultation stage, a number of options were considered for reform and a variety of options put forward as to how that reform could be carried out. These options included: reform of the intestacy rules such that the surviving spouse inherits the whole estate in all cases; reform of the intestacy rules with a focus on succession to the family home; reform to make it easier for adult children to make a claim for family provision; reform to give full siblings and half siblings equal priority on the intestacy of a sibling; reform to change the order in which the parents and siblings of the deceased inherit on intestacy; reform to permit estates to be distributed without reserving funds to trace any unidentified beneficiaries.
35. Key stakeholders responded to that consultation, including bodies representing the judiciary and the legal profession, individual members of the Probate Service and legal profession, members of the public and academics.<sup>12</sup> In light of that consultative process, a package of final recommendations emerged and other suggestions and options mooted at consultation stage were set aside. The final recommendations were approved by the Law Commissioners in November 2011. These are explained in full in the final report.

## **2. COSTS AND BENEFITS**

36. This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

### **Description of Option 0: Do nothing**

37. This option would leave the intestacy and family provision rules in their current state and the problems we have identified would continue to exist. The current law is described below.

#### *The surviving spouse*

##### **Spouse but no children or other descendants**

38. If the deceased leaves a spouse but no children or other descendants, the spouse is entitled to the first £450,000 in the estate. Anything over this is shared with any surviving parent or full sibling (or their descendants) of the deceased.

##### **Spouse and children or other descendants**

39. If the deceased leaves a surviving spouse and children or other descendants, the surviving spouse is entitled to the first £250,000 in the estate. The children (or the children of any child who has already died) will take half of anything over that sum outright. The other half is held under a “life interest trust”; the spouse can make use of property in the trust (for example, by continuing to live in the family home or receiving the income from shares or other investments) but it then passes to the children on his or her death.

##### **The statutory legacy**

40. The “statutory legacy” is currently set at £250,000 where the deceased also left children or other descendants, and £450,000 where the deceased left no children or other descendants but was survived by at least one parent or full sibling (or their descendants). The Lord Chancellor may fix the level of statutory legacy by statutory instrument.

<sup>12</sup> See Intestacy and Family Provision Claims on Death (2011) Law Com No 331: Analysis of Responses.

## *Family provision*

### **Child of the family**

41. Under section 1(1)(d) of the 1975 Act a child of the family “in relation to a marriage or civil partnership” can apply for family provision. Someone who would satisfy the “child of the family” definition but was not treated as such “in relation to a marriage or civil partnership” cannot apply.

### **Dependants**

42. Section 1(1)(e) of the 1975 Act allows a person to apply for family provision if he or she was being maintained by the deceased immediately before the death. However, no such claim will be possible if the applicant cannot show that the deceased both contributed more to the relationship than the applicant did and assumed responsibility for that maintenance.

### **Domicile**

43. If a person dies domiciled in England and Wales, his or her estate may be subject to a family provision claim under the 1975 Act. If the deceased was not domiciled in England and Wales at the date of death but left family and dependants here, those family and dependants will not be able to make a 1975 Act even if the deceased left property that is otherwise subject to English succession law.

## *Other problems with entitlement*

### **Adoption**

44. Anything which a person under 18 inherits on intestacy is held on trust and the beneficiary only becomes fully entitled on turning 18 or marrying or entering a civil partnership under that age. Such interests are therefore said to be “contingent”. If a child with such a contingent interest in the estate of a parent is adopted (without a court application having been made to vary the trust), that child will lose the inheritance altogether. This is particularly inappropriate where the child is being adopted because of the death of one or both parents: not only is the child bereaved, but he or she also loses his or her inheritance from the deceased parent.

## **Costs and benefits of option 0: Do nothing**

### *Costs of option 0*

45. The intestacy rules are the default position when a person has failed to make a will. Both the deceased and those who are left behind will have certain expectations about how this property should be distributed. They may even have relied on these expectations. By doing nothing, the law will continue inadequately to reflect public expectations and the realities of modern families.
46. Inefficiencies in administration will continue and will still have the potential to cause significant injustice in individual cases. For example, dependants of a deceased who was domiciled abroad but had property in England and Wales will be deprived of the chance to bring a claim against the deceased’s estate even if reasonable provision has not been made for them. Those who are dependant on the deceased will be the very people most directly affected financially by the death of the deceased and will be left without a remedy in English law.
47. There is a risk that elements of the current law could face claims that they are not in accordance with human rights, as enshrined in the Human Rights Act 1998 and European Convention on Human Rights. In particular, someone who is unable to apply under the 1975 Act as a “child of the family”, because the relationship in relation to which they were treated as such is not a marriage but a cohabiting couple (or indeed there was no such relationship), may raise human rights concerns. Adopted children who have lost their inheritance due to adoption may also consider such a claim.

### *Benefits of option 0*

48. The costs of reform will not be incurred but the benefits will not be realised either.
49. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

## **Description of option 1: Targeted reform**

50. The chosen option is a targeted and proportionate reform of the intestacy and family provision rules and a selection of administrative issues. The main areas of reform are:

- reform for the surviving spouse;
- family provision; and
- solving other problems with entitlement.

### *Reform for the surviving spouse*

#### **Spouse but no children or other descendants**

51. Under the current law, if a person dies intestate and leaves a spouse but no children or other descendants, large estates will be divided between the surviving spouse and any surviving parents or full siblings (or their descendants). Under this reform the whole estate will pass to the surviving spouse.

#### **Spouse and children or other descendants**

52. If a person dies intestate and leaves a spouse and children or other descendants, the surviving spouse will receive the statutory legacy, the personal chattels of the deceased and half of the balance of the remaining estate. Any children or other descendants will share the other half of the balance. This will remove the life interest trust which arises in between 800 and 1,100 cases each year.<sup>13</sup> It will provide both spouses and children or other descendants with their entitlement sooner rather than later.

#### **The statutory legacy**

53. The statutory legacy will be automatically updated to reflect changes in the retail prices index measure of inflation at least every five years. The Lord Chancellor will retain the power to change the level of the statutory legacy by reference to other considerations.

### *Family provision*

#### **Child of the family**

54. Someone who was treated as a child of the family by the deceased will be eligible to bring a claim for family provision regardless of whether that treatment was in relation to a marriage or civil partnership or was by a cohabiting couple or an individual. There will no longer be any discrimination in the application of this concept.

#### **Dependants**

55. A person who was being maintained by the deceased immediately before the death will no longer have to show that the deceased contributed more to the relationship in financial terms than the applicant did, and that the deceased assumed responsibility for that maintenance. These factors will remain relevant to the court's overall assessment of the claim but will no longer act as automatic barriers to making one.

#### **Domicile**

56. The domicile problem will be resolved. Family and dependants of a deceased person who wish to challenge the provision made for them by a will or under the intestacy rules shall be able to bring a claim in England and Wales if the deceased left property which is subject to the succession law of England and Wales, regardless of whether the deceased was domiciled there.

### *Solving other problems with entitlement*

#### **Adoption**

57. The contingent interest which a child has in the estate of his or her deceased parent will no longer be lost if that child is adopted.

### **Costs and benefits of option 1: Targeted reform**

#### *Transfers*

58. The current intestacy rules set out how an intestate estate is to be distributed on death. These rules involve a transfer of wealth between people. The proposed reform for the surviving spouse involves a change to those transfers. This does not present any direct costs to the justice system. Those who may have benefited under the current law may no longer benefit under the reform but those who did

<sup>13</sup> Ministry of Justice, *Trusts (Capital and Income) Bill: Response to Consultation* (2011) p 41.

not benefit under the current law will benefit from the reform. These transfers are discussed in both the cost and benefit section.

### *Transitional costs*

59. Transitional costs of the reform package include the following.

- Training cost to the legal profession to update staff about our reform is minimal. We assume that training practitioners on our reform is budgeted for in legal professionals' time, through Continuing Professional Development or in-house training costs.
- The cost of training for the judiciary which will be £0. It is assumed that the recommendations are sufficiently small as to be included in the family newsletter at no additional cost. It is not anticipated that any other training by the Judicial College (formerly the Judicial Studies Board) will be required.

### *Ongoing costs*

#### **Reform for the surviving spouse**

##### Surviving spouse but no children or other descendants

60. Those who would inherit under the current law in this situation (any surviving parents or full siblings (or their descendants) where an estate is over £450,000) will no longer benefit.
61. The main impact of this reform is a transfer of wealth, rather than a cost. Parents and full siblings (or their descendants) who would have received a share if the estate was over £450,000 will no longer do so. The estate will no longer be divided up but will pass to the surviving spouse in what we estimate to be a small number of cases each year.
62. This reform will have an impact on between 50 and 100 estates each year. It is only possible to get a rough idea of how many people will no longer benefit. Any attempt at a more specific calculation would require too many assumptions to be of real value. It is estimated that of the approximately 21 million people living in England and Wales who are married or in a civil partnership, there are over 2 million people who have no children or other descendants but at least one living parent or full sibling (or a descendant of a full sibling) who would stand to inherit on intestacy if an estate over £450,000 was left.<sup>14</sup> We estimate that 9.5% of married people have no children or other descendants but parents or full siblings (or their descendants) living. Obviously this figure does not accurately represent the family situation at the point of death. Death is more likely to occur amongst the elderly and when people reach that stage in life they are less likely to have parents and full siblings (or their descendants) still alive and more likely to have their own descendants. To accommodate this risk, we assume that by death, this percentage will have almost halved to 5%.
63. In 2009, 186,030 people who died left a spouse or civil partner (approximately 38% of registered deaths).<sup>15</sup> Using the data above, we can estimate that between 9,300 and 17,500 people in this category left no children or other descendants but a parent or full sibling (or their descendants). We cannot be sure how many of those who died were intestate, especially as married people are more likely to make a will.
64. This proposal will only affect estates over £450,000. Using the data for the number of grants of representation issued in England and Wales between November 2007 and October 2008, we can ascertain that there were 1,045 intestate estates which were over £450,000.<sup>16</sup> It is not possible to know how many of those 1,045 estates belonged to spouses who left parents or full siblings (or their descendants) but no children or other descendants. We can assume that it is likely to be a small proportion – between 5% and 10% of intestate deaths – using the demographic factors set out above.
65. A possible cost is that there could be a slight increase in the number of 1975 Act claims brought by parents and full siblings. However, there is also likely to be a decrease in the number of 1975 Act claims brought by spouses, which is likely to be greater than any increase in claims by parents and

<sup>14</sup> Figure calculated using data from J Haskey, "Intestacy and Surviving Kin: Law Commission Research" [2010] *Family Law* 964.

<sup>15</sup> Office for National Statistics, *Mortality statistics: Deaths registered in 2009* (2010) tables 4a and 4b.

<sup>16</sup> Intestacy and Family Provision Claims on Death (2011) Law Com No 331, Appendix D table 3. This data is based on the grants of representation issued excluding duplicates and grants where the death was more than five years before the grant.

full siblings because spouses can apply for family provision as of right without having to show that they were dependent on the deceased. The net effect is likely to be small either way.

#### Surviving spouse and children or other descendants

66. Children and other descendants will face a small reduction in their entitlement.
67. This reform will not present any direct costs to the justice system. However, there will be a transfer of wealth. For example, David dies intestate leaving an estate worth £300,000, a surviving spouse who was 70 years old (Anne) and one child aged 40 (Barry). Under both the current law and the proposed reform, Anne will receive a fixed net sum (also referred to as the statutory legacy), which is currently £250,000, and David's personal chattels. Rather than a life interest in half of the remaining £50,000 which Anne would receive under the current law, under the reforms she will take half of the remainder outright, giving her a total of £275,000. As under the current law, Barry will receive £25,000 outright. However, he will lose the opportunity to inherit the capital value of Anne's life interest on Anne's death. Given the ages of Anne and Barry, this can be valued at £14,125.
68. Those who administer an intestate estate are normally close family members. In so far as these lay administrators employ professionals to advise and assist them, those professionals may lose out on any remuneration they receive for their services. It is presumed that if this area of work no longer exists, another area of work will expand to fill the space left, resulting in no overall cost to such professionals.

#### Statutory legacy

69. The statutory legacy will be updated automatically in accordance with the retail prices index (RPI) at least every five years. There will be minor costs involved in producing a statutory instrument to give effect to the automatic updates.

#### **Family provision**

##### Child of the family

70. There may be a small increase in the number of 1975 Act cases in this category.
71. There are only a handful of reported cases of people applying as a "child of the family" since the 1975 Act came into force. It is possible that there will be a slight increase the number of 1975 Act claims as this reform widens the category of potential applicants. However, a slight increase on a handful of cases over the next five to 10 years is unlikely to present anything more than minimal cost. We expect the increase in claims over the next 10 years to be small and to be outweighed by the benefit in terms of access to justice and fairness in the individual cases.
72. A successful claim as a "child of the family" will have two impacts. The first is that there will be a transfer of wealth from the other beneficiaries to the successful applicant. The second impact is the cost to the court of such a case; we assume that there will not be a large increase in the number of cases of this type and so the cost to the justice system should not change significantly.

##### Dependants

73. There may be a small increase in the number of 1975 Act claims made under this category. However, as with the reform to "child of the family", only a small number of reported cases have involved this concept. Of these, very few have resulted in an applicant being prevented from making a claim because of the obstacles which our reform addresses. We therefore expect any resulting increase to have only a minimal cost to the justice system over the next 10 years, and that it will be outweighed by greater access to justice and fairness in individual cases.

##### Domicile

74. This reform will lead to an increase in cases brought under the 1975 Act which have a foreign element. Cases with a foreign element may be more complex and so take longer. If this is the case, there will be an impact on court time and resources. This expense will often be borne by the estate in defending the claim.
75. Though the cost of a 1975 Act claim will rest on a number of factors particular to the individual case, an idea of the costs involved can be given using data from the Legal Services Commission about the legal aid costs. The average legal aid for a 1975 Act claim is around £3,200, though the largest individual cost was £27,000.<sup>17</sup>

---

<sup>17</sup> Based on data for the financial year 2010/2011. Cases did not necessarily have a foreign or domicile element.

## **Solving other problems with entitlement**

### Adoption

76. Beneficiaries who would have received an entitlement to the estate if a child had lost a contingent interest in his or her parent's estate on adoption will no longer benefit.
77. A child's contingent interest in the estate of his or her deceased parent, whether testate or intestate, would not be lost as a result of adoption but would continue to be held on trust. In 2009, there were 4,655 adoptions in England and Wales, around 60% of which were children aged between one and four.<sup>18</sup> It is not possible to know how many of these adopted children would have had an inheritance from an intestate parent, because a very specific fact pattern would have to apply; we imagine there are only a small number such cases each year. But in those cases we believe that the unfairness to the adopted person is considerable.
78. It has been suggested that when such a child attains the age of 18 or marries or forms a civil partnership under that age and is entitled to his or her interest, the dynamics of their adopted family may be negatively affected. For example it could put them in a different position to their adopted siblings or it could alert them to the fact that they are adopted if they had not already known. However, this is thought to be extremely unlikely in the context of modern adoption practice. The same outcome would also occur if those dealing with the adoption were sufficiently aware of the problem and applied to court to vary the trust prior to the adoption.
79. In terms of court applications, the cost to the justice system will be minimal. As the trust will remain intact after the adoption, there is a chance there will be some ongoing costs. These would largely be borne by the trust and would not be a cost to the justice system.

### *Ongoing benefits*

## **Reform for the surviving spouse**

### Surviving spouse but no children or other descendants

80. The surviving spouse will benefit by the same amount that other beneficiaries' entitlements will decrease under the costs section. Although the net financial gain for the surviving spouse in some cases may not be large, it will also ease the administrative burden on those administering the estate.
81. Research carried out by the Social Policy Research Unit at the University of York found that the perception of being worse off after the death of a partner was linked to symptoms of depression and anxiety for two or more years after the death, particularly among women.<sup>19</sup> This reform prevents estates being divided up, and although it will not remedy the perception or the reality of being in a worse position financially after the death of a spouse, it will go some way towards reducing it.
82. The same research also looked at the difficulties which a spouse may face from the drop in household income after the death of a partner.<sup>20</sup> This highlights the reliance which a spouse has on their partner, a financial reliance unlikely to be shared by parents or siblings. Ensuring the spouse receives the whole estate will, in some cases, ease the financial implications of the death of a spouse.
83. Between 2007 and 2008 there were 1,045 intestate estates for which a grant of administration was taken out which were over the £450,000 level of the statutory legacy. We cannot know how many of those estates had a surviving spouse, no children or other descendants but a parent or full sibling (or their descendants) as beneficiaries.
84. Up to 1,045 surviving spouses per year may therefore benefit from an increased entitlement. The increase which a surviving spouse in this situation will receive depends on the size of the estate. This reform will recognise the relationship between spouses, and will bring the law into line with general public expectations as to how property should be distributed on death. It may reduce the need for a surviving spouse to have resort to the 1975 Act, which would save both court time and resources as well as saving the surviving spouse legal fees.
85. This reform will make the law simple and easier to administer. On average, it takes 92.33 days to administer an intestate estate.<sup>21</sup> The average cost of administering an estate in 2010 was £2,199.<sup>22</sup>

<sup>18</sup> Office for National Statistics, *Adoptions in England and Wales 2009*, Statistical Bulletin (4 November 2010) p 1.

<sup>19</sup> A Corden, M Hirst and K Nice, *Financial Implications of Death of a Partner: summary* (2009) p 3.

<sup>20</sup> A Corden, M Hirst and K Nice, *Financial Implications of Death of a Partner* (2008).

<sup>21</sup> Written Answer, *Hansard* (HC), 19 June 2009, vol 494, col 547W.

We anticipate that if the deceased leaves a surviving spouse but no children or other descendants, it will be quicker and cheaper to administer the estate under these reforms than under the current law. The estate will not need to be divided between the surviving spouse and parents or full siblings (or their descendants). The simplification which this reform provides may mean it is not necessary to seek professional advice when administering the estate, which will also decrease the cost of administration.

86. It will no longer be necessary to have a higher level statutory legacy. This will save the government some of the cost of updating and reviewing the statutory legacy. The Ministry of Justice has estimated that a review of both levels of the statutory legacy would cost around £20,000. This is a cost which the reforms would reduce.

#### Surviving spouse and children or other descendants

87. The surviving spouse's entitlement will increase by the same amount that the entitlement of the deceased's children or other descendants will decrease. The estate will no longer have to bear the cost of administering a life interest.
88. This reform will benefit between 800 and 1,100 estates every year.<sup>23</sup> The surviving spouse will have an absolute interest which will give him or her control over assets previously held in trust and control over investment. The surviving spouse may receive slightly more than under the current law. For example, in the case given above,<sup>24</sup> the surviving spouse Anne would have received an additional £14,125 from her husband's £300,000 estate at a time when it may be necessary for her to re-evaluate her finances following bereavement of her spouse. No spouse will receive less than they would have under the current law. This reform will mean that fewer surviving spouses have to sell their family home after the loss of their husband or wife or civil partner.
89. The reform will enable a clean break after the distribution of the estate as there will be no life interest trusts. This may reduce or prevent any ongoing tension between beneficiaries.
90. Removing the life interest trust will increase efficiency in the administration of estates and help maximise the net estate for beneficiaries. Those who administer the life interest trusts which arise under the current law will no longer need to do so. Administrators are normally close family members of the deceased who receive no remuneration. There will be a benefit to them in no longer having to administer these trusts.
91. It will no longer be necessary to have recourse to the "capitalisation tables" produced from time to time by the Government Actuary's Department and so these tables will no longer need to be updated. The Government Actuary's Department estimated that if a review of the capitalisation tables was necessary it would cost approximately £10,000. The cost of future updates will therefore be saved. This is a saving for Government.

#### Statutory legacy

92. The statutory legacy will be kept in line with inflation, using a measure that takes account of some housing costs. This should ensure that fewer people are required to contemplate selling the family home after the intestate death of their spouse. The Ministry of Justice has estimated a relatively small number of cases where the spouse was at risk of losing the home, fewer than 1,200 per year in 2008.<sup>25</sup> Using the method of calculation adopted by the Ministry of Justice, we estimate that the current number of spouses at risk of losing the family home is even smaller - no more than a few hundred - due to the increase in the levels of the statutory legacy in 2009.
93. Linking the statutory legacy to a regularly published index of prices will save the government the time and resources which reviewing it would require. The Ministry of Justice has estimated that the cost of consulting on this subject is around £20,000. This is a cost which would be saved by this reform.

---

<sup>22</sup> J Rayner, "Consumer shift in estate services" (18 November 2010) *Law Society Gazette Online*.

<sup>23</sup> Ministry of Justice, *Trusts (Capital and Income) Bill: Response to Consultation* (2011) p 41.

<sup>24</sup> See para 67 above.

<sup>25</sup> Ministry of Justice, *Administration of Estates – Review of the Statutory Legacy: Response to Consultation* (2008) para 23. The higher figure presented in the Department for Constitutional Affairs' 2005 consultation paper was revised in light of calculations provided by Professor Roger Kerridge: see Ministry of Justice, *Administration of Estates – Review of the Statutory Legacy: Response to Consultation* (2008) Annex B.



## Family provision

### Child of the family

94. A small number of people who meet the new conditions of this category will be able to access the courts when otherwise they would not have been able to.
95. This reform removes an arbitrary and unfair distinction in the current law and brings the concept into line with how it is applied during ancillary relief proceedings.
96. The concept of “child of the family” involves an inference that the deceased had in some way taken responsibility for the person. The factors which the court must take into account will remain the same. If the deceased has not made reasonable provision for someone for whom they had taken responsibility, it is possible that someone else or even the state would have to fulfil that responsibility. Ensuring that those for whom the deceased assumed responsibility are reasonably provided for out of their estate may be of benefit to other individuals and to the state in some cases.
97. Some potential applicants are currently being prevented from applying for family provision, curtailing their access to justice. This reform would avoid the potential for allegations that the rule was contrary to article 6 of the European Convention on Human Rights as incorporated into English law by the Human Rights Act 1998. The cost of defending even an unsuccessful claim can be high, so reforming the law such that it complies beyond doubt would have a potential saving for the government, as any case would be brought against the UK government for failing to ensure compatibility with Convention rights.
98. This reform will benefit any person who will now be able to apply, and could have wider benefits to the state or anyone else who would have had to step in and help support the potential applicant who had been unable to apply.

### Dependants

99. Persons who were being maintained by the deceased immediately before his or her death will be able to apply for family provision without having to prove any additional facts. This will remove some obstacles to potentially deserving claims and simplify the case law which courts have developed in order to mitigate the unfairness.
100. As with reform to “child of the family”, this reform may also benefit other individuals and the state by ensuring that the deceased’s dependants continue to be provided for after his or her death in appropriate cases.

### Domicile

101. Family and dependants of someone who died domiciled abroad will have access to the courts, allowing reasonable financial provision to be made for them in appropriate cases.
102. This will relieve the burden on those persons’ own resources and on the state or other individuals who are left to support them in the absence of the deceased. It will remove a potential injustice to family members and dependants who may have been prevented from claiming due to a decision of the deceased’s which they may not have known about, may have been for other reasons (such as tax reasons) or may have been a deliberate attempt to avoid the responsibility which the deceased took on while alive.
103. A good example of the problem which will be solved is the case of *Cyganik v Agulian*.<sup>26</sup> The deceased was born in Cyprus but had lived in England for a more or less continuous period of 43 years prior to his death. He had assets of around £6.5 million in England and an English will. Nevertheless, the Court of Appeal held that the deceased died domiciled in Cyprus. Because of this finding, the deceased’s partner could not bring a claim under the 1975 Act challenging the provision made for her in the will.
104. This reform could lead to a decrease in court costs, as often the issue of domicile is a time-consuming and costly preliminary issue. If that issue is removed where there is property covered by English succession law, cases will be able to move more swiftly to the substantive issues and reach a swifter conclusion. This could also remove a potential obstacle to cases settling. Parties may currently wish to argue the domicile point in the hope of avoiding the application proceeding to a hearing of the substantive issue of whether the distribution of the deceased’s estate made reasonable financial provision for the applicant. Removing this additional hurdle would force parties

---

<sup>26</sup> [2006] EWCA Civ 129, [2006] 1 FCR 406.

to address the substance of the case and consider settling.

### **Solving other problems with entitlement**

#### Adoption

105. A small but vulnerable group have the potential to benefit significantly. There were 4,655 adoptions in 2009.<sup>27</sup> It is difficult to ascertain in how many cases a child will have been adopted at a point when he or she had a contingent interest in the estate of a deceased parent.
106. This will resolve a serious injustice in the law. The benefit to this group will be 100% of their beneficial entitlement as otherwise they would have lost it completely. Children affected would, at the age of 18, be in a much better position and would have access to their entitlement at a time when they need it – as they start out in life. It would bring the law more in line with the wishes of deceased parents and for those involved in adoptions it would avoid the risk of liability for failure to spot the point.
107. There would be a saving to the court system and the estate as there would no longer be any need to vary the statutory trusts if the point is appreciated pre-adoption.
108. This reform would avoid any possible claim that the law is incompatible with the European Convention on Human Rights as incorporated into English law by the Human Rights Act 1998. Any such claim has the potential to be expensive and lengthy to defend. Reforming the law such that it complies beyond doubt would have a potential saving for the government, as any case would be brought against the UK government for failing to ensure compatibility with Convention rights.

### **Risks and assumptions**

109. We make the following assumptions.
  - Training of legal practitioners is sufficiently small to be incorporated into the normal programme of training expected each year.
  - All legislative change is sufficiently small to be communicated to the judiciary via the Judicial College newsletter.
  - The number of intestate deaths with a surviving spouse, no children or other descendants but a surviving parent or full sibling (or their descendants) reflects the UK-wide demographic pattern.
  - Smaller estates are more likely to be intestate and therefore around 80% of estates for which there is no grant of representation are likely to be intestate estates.
  - We assume, in the absence of relevant data, that the number of claims in the Family Division is the same as the number in the Chancery Division and the number in the county courts is the same as in both Divisions of the High Court combined.
110. Our assumptions carry the following risks.
  - There is a small risk that the number of intestate deaths with a surviving spouse, no children or other descendants but a parent or full sibling (or their descendants) diverges from the demographic pattern, but given the small numbers involved this will only give rise to a very small effect.
  - The method of recording 1975 Act claims in the Chancery Division changed between 2009 and 2010. As a result, the statistics for 2010 are not directly comparable. There is a risk that there is a degree of inaccuracy with the estimated numbers of 1975 Act claims.

## **3. SPECIFIC IMPACT TESTS**

### **Equality impact assessment**

111. The equality impact assessment initial screening questions have been considered. There is potentially a positive impact on women as they have a longer life expectancy than men and are more likely to be widowed. They are therefore more likely than men to benefit from the proposed reforms to the entitlement of a surviving spouse on intestacy. This is a result of life expectancy and not as a result of any of the reforms proposed. The screening questions did not indicate the need for a full impact assessment as there is no negative impact on any group suggested as a result of the

---

<sup>27</sup> Office for National Statistics, *Adoptions in England and Wales 2009*, Statistical Bulletin (4 November 2010) p 1.

proposed reform.

### **Competition assessment**

112. The proposed reforms are not expected to affect the balance of activities offered by firms, and will therefore have no impact on competition.

### **Small firms**

113. Small firms are often represented this sector in providing a will writing service but the proposed reform is not expected to have an impact on these firms.

### **Greenhouse gas effect**

114. The proposed reforms are not considered to have any impact on the greenhouse gas effect. The reforms will not affect emissions levels.

### **Wider environmental**

115. The proposed reforms are not considered to have wider environmental effects. The reforms concern transfers of wealth; any current environmental impact will not be affected by reform of these transfers.

### **Health and well-being**

116. Having considered the screening questions indicated in the health impact assessment it will not be necessary to carry out a full health impact assessment. Any effects arising from proposed reform are expected to be generally positive and of a very small magnitude.
117. The proposed reform may have a small positive effect on the income of a surviving spouse when the deceased leaves a spouse, no children or other descendants but a parent or full sibling (or their descendants). There may also be a slight improvement in relieving stress at home through removing the need to pursue cases through the justice system as the law better reflects modern society and provides a fair outcome.

### **Human rights**

118. The human rights impact of the reform package has been considered throughout the impact assessment. The proposed reforms will address the risk of a human rights claim in certain situations. For example some potential applicants are currently being prevented from even applying, curtailing their access to justice. This reform would avoid the potential for allegations that the rule was contrary to article 6 of the European Convention on Human Rights as incorporated into English law by the Human Rights Act 1998. This is a positive human rights impact.

### **Justice impact test**

119. The impact on the justice system has been considered throughout the costs and benefits section of this impact assessment.

### **Rural proofing**

120. The proposed reforms are not expected to have a disproportionate impact on the rural community as they are generally applicable.

### **Sustainable development**

121. The impact of the reform will fall on future generations as it will affect the rules for inheritance on intestacy. However, this impact is not in the context of sustainable development.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];
<b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
<b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
<b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]
<b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
<b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]
<b>Reasons for not planning a review:</b> The Law Commission does not implement policy but provides law reform recommendations acting on behalf of a lead department.