

# TANFIELD CHAMBERS

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*Inheritance and Trustees' Powers Act 2014.*

## Intestacy

- s46 Administration of Estates Act 1925 - distribution of residuary estate of an intestate
- See Appendices to this talk for comparison of old law (Appendix 1) and new law (post 1.10.2014: Appendix 2).

## Effect of changes

- where a couple are married or in a civil partnership, assets pass on intestacy to the surviving spouse in all cases where there are no children or other descendants - other family members will no longer receive anything from the estate
- simplification of the sharing of assets on intestacy where the deceased was survived by a spouse and children or other descendants – the interest of the spouse/civil partner in half of the remainder after the statutory legacy will no longer be limited to a life interest only
- provides that children who are adopted after the death of a parent do not lose their entitlement to share in that parent's estate because of the adoption;
- statute amends the rules which currently disadvantage unmarried fathers when a child dies intestate by reversing the statutory presumption of prior death under s 18(2) Family Law Reform Act 1987 (Appendix 8) where a person is recorded as a parent (other than the mother) of the intestate in the statutory record;

## Fixed net sum – ITPA 2014 s 2

- Definition of “fixed net sum” can now be found in the new Sch 1A AEA 1925: -
  - Sum is initially in “the base month” as per s 1(1) (a) FPA 1966 (Sch 1A §(2));
  - Power to Lord Chancellor by SI to change (up or down – Sch 1A § 6, but duty to explain if down) the sum from time to time (Sch 1A §(3));
  - Such power *must* be exercised if Consumer Price Index (CPI) is >15% higher than that of 1.10.2014 (Sch 1A (4));
  - In any event it must be exercised every 5 years (Sch 1A (5));
  - Link to CPI (see Sch 1A § 7 and 8).
- Family Provision Act 1966 is repealed by s 2 (2) ITPA 2014.
- s 46 (2) H and W will continue be treated as two persons (no change)
- S 46 (2A) – where Sp or CP survived intestate but died before the end of 28 days of data of death, section has effect, *as if* intestate had not survived (no change).
- S 1A defines the interest rate – i.e. Bank of England rate which had effect at end of day on which intestate died.

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## Definition of personal chattels

- *Previously* specified in s 55 (1) AEA 1925 (x) as follows: -  
“Personal chattels” mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money”
- S 3 ITPA 2014: personal chattels means “tangible movable property, other than any such property which consists of money or securities for money, or was used at the death of the intestate solely or mainly for business purposes, or was held at the death of the intestate solely as an investment:”
- But s (3) (2): disregard the definition above for wills / codicils executed before 1.10.2014, unless contrary intention appears.
- **Key changes:** “tangible movable property”, and addition of word “mainly” before Business Purposes and modernised references to “investments”.

## Adoption and contingent interests

- s 67 (3) Adoption and Children Act 2002 states that an adopted person “(a) ... is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and (b) in any other case, is to be treated in law, subject to sub-section (4), as not being the child of any person other than the adopters or adopter”;
- s 67 (4) states “In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection 3 (b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship”
- s 67 (3) Amends s 69 Adoption and Children Act 2002 (rules of interpretation of instruments concerning property);
- Prior to 1.10.2014 s 69 (3) stated “s 67 (3) does not prejudice – (a) any qualifying interest, (\*), (b) any interest expectant (whether immediately or not) upon a qualifying interest ...”
- and now s 4 (1) (b) Adds to the list: -
  - “any contingent interest (other than a contingent interest in remainder) which the adopted person has immediately before the adoption in the estate of a deceased parent, whether testate or intestate.”
- \* “Qualifying interest” is defined as “an interest vested in possession in the adopted person before the adoption” (s 69 (4) ACA 2002).
- **Effect:** This adds interests in property of a deceased parent *prior* to the adoption.
- Section only applies to adoptions made after 1.10.2014.

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## Presumption of Prior Death

- s18 Family Law Reform Act 1987 “Succession on intestacy” (Appendix 8)
- s 18 (2): - “for the purposes of dealing with the distribution of the estate of an intestate, “a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him through his father, unless the contrary is shown”.
- The amendment brought in by s 5 ITPA 2014 introduces 2ZA which disapplies s 18 (2) where there is a record in a register of births (Births and Deaths Registration Act 1953) or “in a record of birth included in an index under s 30 (1) of that Act (indexes relating to certain other registers etc).”
- Effect: not as easy to presume a prior death of a father.

## Amendments to the Inheritance (Provision for Family and Dependents) Act 1975

- Amended by Schedule 2 to ITPA 2014

## Who may apply

- Effect: - affects who may apply under s 2 for an order for provision out of the deceased's estate.
- s 1 (1) (d) I(PFD)A 1975 is amended to refer to any person *not* a child of the deceased, who was treated as a child of the family in “any family in which the deceased at any time stood in the role of a parent”.
- Effect: not limited to marriages / civil partnerships, but goes to cohabittees.
- And s (1) (2A) includes family in which deceased stood as a parent and the deceased was the sole parent.

## Meaning of “being maintained”

- Guidance for court on how to determine whether a person is to be treated as being maintained by the deceased:
- Previous wording “a person shall be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person”
- New wording from 1.10.014: -  
“(3)For the purposes of subsection (1)(e) above, a person is to be treated as being maintained by the deceased (either wholly or partly, as the case may be) only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a contribution made for full valuable consideration **pursuant to an arrangement of a commercial nature.**”

(emphasis added).

- Effect = clarification of applicability of “full valuable consideration”

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## Powers of court

- Schedule 2 (4) alters the I (PFD) Act 1975.
- Existing powers in s 2 of the I(PFD)Act 1975 are as set out in the attached Appendix 3.
- To these is now added sub-section (h).  
“(h) an order varying for the applicant’s benefit the trusts on which the deceased’s estate is held (whether arising under the will, or the law relating to intestacy, or both).”
- So if property is tied up in a trust, the court has jurisdiction to enable the applicant to access such property / funds.
- A further change is that, in considering debts / liabilities (including IHT) which may be payable out of the estate, the court is now empowered to assume that they have already been paid, in order to assist in quantification of the remainder of the estate.
- S 4 (3) After subsection (3) insert –
- “(3A)In assessing for the purposes of an order under this section the extent (if any) to which the net estate is reduced by any debts or liabilities (including any inheritance tax paid or payable out of the estate), the court may assume that the order has already been made.”

## Matters to which court has regard – I(PFD)Act 1975 s 3

- The existing list, and the amendments, are set out in the attached Appendix 4: -

## Overall Effect

- To enlarge the class of people entitled to make claims under the Inheritance (Provision for Family and Dependants) Act 1975 as a child of the deceased’s family and to alter the way case law has defined “dependants” for the purposes of subsection (1)(e);

## Time limit for applications

- I(PFD)A s(4) states:  
An application for an order under section 2 of this Act shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out
- To this ITPA 2014 adds: -  
“(but nothing prevents the making of an application before such representation is first taken out)”

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6In section 4 (time-limit for applications), at the end insert “(but nothing prevents the making of an application before such representation is first taken out)”.

## Property available to the court for financial provision: joint tenancies

- s 9 (1) (property held on joint tenancy) is amended as set out in Appendix 5.

## Amendments to the Trustee Act 1925

- s 8 and 9 of ITPA 2014 make amendments to s 31 and 32 Trustee Act 1925.
- Section 31 is amended as set out in Appendix 6.
- Effect is to make an objective test subjective, and remove limitations on amount of trust fund which may be applied to income.
- Which trusts? s 10 ITPA 2014 states that s 8 only applies to: -
  - “trusts created or arising after the coming into force of [ITPA 2014]” and
  - An interest under a trust created or arising as a result of the exercise of any power by trustees
- s 32 is amended as set out in Appendix 7.
- Effect is addition of powers to transfer property, as opposed to solely money, and the cap of one-half is removed,
- Application of the law: these amendments to s 32 Trustee Act 1925 apply in relation to trusts whenever created or arising, except for the removal of the “one-half” cap, which applies only to trusts created or arising after ITPA 2014 comes into force and interests created or arising as a result of the exercise of any power.

## Rationale:

- Law Commission conducted consultations, and noted: -
  - S 69 (2) provides that the powers in the Trustee Act 1925 apply “if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.” i.e. the trust instrument may disapply the provisions of the Trustee Act 1925
  - Standard precedents (e.g. of STEP, Parker’s Modern Wills Precedents, Williams on Wills etc) have for some years disappplied aspects of the Act e.g. words “one-half of” in s 32 (1) (a), and the proviso to s 31 (1)
  - S 32 was meant to reflect existing practice in drafting wills and trusts, and that practice had now moved on
  - The reform of s 32 to include the removal of the “one-half” limitation could

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have been limited to *statutory* trusts only (e.g. created on intestacy) but in fact, following Law Commission's consultation, and to avoid confusion will apply equally to *all* trusts

- As for s 31: -
  - Using a proportionate part of income where the trustees have notice of other trusts:
    - △ may be good reasons for using funds of one trust rather than another,
    - △ there is no parallel requirement in relation to the advancement of capital (which would equally deplete a remainder beneficiary's entitlement),
    - △ if difficult to contact trustees of other trust, it is a potentially expensive additional administrative requirement to check;
  - matters to which trustees must have regard: -
    - △ could be argued that these circumstances would in any event be in the mind of the trustee considering the exercise of the power;
  - the requirement of reasonableness: -
    - △ subjective discretion improves upon the objective test
  - As to the remainder of s 31, being s 31 (2) which refers to accumulated income, the Law Commission recommended no change. i.e. a settlor may choose to delay the beneficiary's entitlement to income under s 31 (1) (ii) prolonging the trust to accumulate under s 31 (2). An "oddity" or "peculiar effect" (as per Thomas and Hudson's "The Law of Trusts" at 14.17), because it converts a beneficiary's vested interest in income into a contingent interest.

## Minor and consequential amendments

- Schedule 4, as s 11 ITPA 2014 states "makes minor and consequential amendments", to
  - Administration of Estates Act 1925 (omit s 46 (3), omit s 47A, s 48 (2) (b) (altered) and omit s 49 (4))
  - Intestates' Estates Act 1952 (Sch 2 1 (4), Sch 2 (3) (3) – (5)). N.B. This concerns the rights of a surviving spouse or civil partner regarding the home. Exceptions are enacted to enable the 12 month limitation from the taking out of representation on an application by the surviving spouse or civil partner to be extended in certain circumstances. These include a) where the will has subsequently been revoked because it was invalid, b) where the question of the interest in the estate had not been determined when representation was first taken out, and c) where there are some other circumstances affecting the administration or distribution of the estate.
  - Administration of Justice Act 1977 (omit s 28 (1))
  - Inheritance Tax Act 1984 (omit s 17 (c) and omit s 145)

## Appendix 1 – Administration of Estates Act 1925, s 46

### Pre 1 October 2014 Law

- Previous position re residuary estate (“RE”): -
  - Spouse / CP:
    - No issue + no parent or “whole blood” sibling → RE is held in trust for Spouse / CP absolutely (s 46 (1) (i) Table § (1))
    - Issue (s 46 (1) (i) Table § (2)): →
      - ▲ personal chattels absolutely to Spouse / CP; but
      - ▲ RE charged with payment of a “fixed net sum” + interest (until repaid to RE)
      - ▲ RE: one half → life interest to Spouse / CP, and then on statutory trusts for issue of the intestate;
      - ▲ other half → statutory trusts for issue of intestate
    - No issue, but one or more: parent, full sibling, full niece / nephew (s 46 (1) (i) Table § (3)): -
      - ▲ personal chattels absolutely to Spouse / CP; but
      - ▲ charged with payment of a “fixed net sum” + interest (until repaid to RE)
        - one half → in trust for Spouse / CP *absolutely*;
        - other half →
          - where one or both parents survive, in trust absolutely for the parent(s) (in equal shares if both);
          - where no parent, on statutory trusts for full siblings
  - No spouse or CP: -
    - Issue: → statutory trusts for the issue of the intestate;
    - No issue but one or both parents – in trust absolutely for the parent(s);
    - No issue, no parents → in trust for the following persons living at the death of the intestate, in the following order and manner: -
      - ▲ statutory trusts for siblings;
      - ▲ statutory trusts for half-siblings;
      - ▲ for the grandparents;
      - ▲ (whole blood) uncles and aunts;
      - ▲ (half-blood) uncles and aunts.
    - None of the above: RE → *bona vacantia* to the Crown. Crown may provide “in accordance with the existing practice” for dependents “whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision” (s 46 (1) (vi)).
- Prior to 30.9.2014, definition of “fixed net sum” could be found in s 1 Family Provision Act 1966 (i.e. for s 46 (1) (i) § (2) AEA 1925 it was £8,750, and for s 46 (1) (i) § (3) it was £30,000).
- s 46 (2) H and W will be treated as two persons.

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- s 46 (2A) – where Sp or CP survived intestate but died before the end of 28 days of date of death, section has effect, *as if* intestate had not survived.

Appendix 2 – Administration of Estates Act 1925, s 46

## New Law (post 1 October 2014)

- The new s 46 AJA 1925 states: -
  - Spouse / CP:
    - No issue → in trust for Spouse / CP absolutely (s 46 (i) Table § (1))
    - Issue (s 46 (i) Table § (2): →
      - ▲ personal chattels absolutely to Spouse / CP as before; but
      - ▲ RE charged with payment of a “fixed net sum” + interest (*as defined in s 46 (1A)*) until repaid to RE
        - one half → **absolutely** to Spouse / CP;
        - other half → statutory trusts for issue of intestate
  - ~~▪ No issue, but one or more parent, full sibling, full niece / nephew (s 46 (1) (i) Table § (3)):-~~
    - ~~▲ personal chattels absolutely to Spouse / CP; but~~
    - ~~▲ charged with payment of a “fixed net sum” + interest (until repaid to RE)~~
      - ~~◦ one half → in trust for Spouse / CP *absolutely*;~~
      - ~~◦ other half →~~
        - ~~▪ where one or both parents survive, in trust absolutely for the parent(s) (in equal shares if both);~~
        - ~~▪ where no parent, on statutory trusts for full siblings~~
  - No spouse or CP: -
    - Issue: → statutory trusts for the issue of the intestate;
    - No issue but one or both parents – in trust absolutely for the parent(s);
    - No issue, no parents → in trust for the following persons living at the death of the intestate, in the following order and manner: -
      - ▲ statutory trusts for siblings;
      - ▲ statutory trusts for half-siblings;
      - ▲ for the grandparents;
      - ▲ (whole blood) uncles and aunts;
      - ▲ (half-blood) uncles and aunts.
    - None of the above: RE *bona vacantia* to the Crown. Crown may provide “in accordance with the existing practice” for dependents “whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision” (s 46 (1) (vi)).

## S 2 Powers of Court

“the court may, if it is satisfied that the disposition of the deceased’s estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

(a) ... “such periodical payments ... for such term”;

(b)...“a lump sum of such amount as may be so specified”;

(c) “transfer ... of ... property”;

(d)...“settlement for the benefit of the applicant of such property”;

(e)... “acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit”;

(f)... “varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.”  
[*note no analogous provision made as there has been for maintenance above*]

(g) an order varying any settlement made—

(i)during the subsistence of a civil partnership formed by the deceased, or

(ii)in anticipation of the formation of a civil partnership by the deceased,

on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.

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## Appendix 4 - Changes to s 3 Inheritance (Provision for Family and Dependents) Act 1975

[N.B. Amendments in *bold and italics*, or ~~struck through~~]

- (a) the **financial resources and financial needs** which the applicant has or is likely to have in the foreseeable future;
- (b) the **financial resources and financial needs which any other applicant** for an order under section 2 of this Act has or is likely to have in the foreseeable future;
- (c) the **financial resources and financial needs which any beneficiary of the estate** of the deceased has or is likely to have in the foreseeable future;
- (d) any **obligations and responsibilities which the deceased had towards any applicant** for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
- (e) the **size and nature of the net estate** of the deceased;
- (f) any **physical or mental disability** of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
- (g) **any other matter, including the conduct of the applicant or any other person**, which in the circumstances of the case the court may consider relevant.

### (a spouse or civil partner, and former (not remarried) spouse or civil partner)

(2) This subsection applies, without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(a) or 1(1)(b) of this Act

**[N.B. 1 (1) (a) = spouse / civil partner; 1 (1) (b) = former (but un-re-married / “un-civil-partnered”) spouse / civil partner].**

The court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

- (a) the **age** of the applicant and the **duration of the marriage or civil partnership**;
- (b) the **contribution** made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family;

In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce

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- BUT that paragraph now continues, under the new legislation, as follows: -  
*but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2."*

(2) (cont'd) In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order

- And the paragraph continues, following ITPA 2014 with the words:  
*... but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2 .*

(non-spouse, non-CP, but living in same household for two years prior to death "as the husband or the wife" or "as the civil partner" of the deceased): -

(2A) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(ba) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a) the age of the applicant and the length of the period during which the applicant lived as the husband or wife of the deceased and in the same household as the deceased;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

(child / child of the family): -

(3) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 1(1)(d) the court shall also have regard—

~~(a) to whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility;~~

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~~(b) to whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child;~~

- Now superceded by: -

*(a) to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;*

*(aa) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;”;*

[and continuing as before: -]

(b) to whether in maintaining or assuming responsibility for maintaining the applicant the deceased did so knowing that the applicant was not his own child.

(c) to the liability of any other person to maintain the applicant

## (Person being maintained): -

(4) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard ~~to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant and to the length of time for which the deceased discharged that responsibility.~~

- Now superceded by: -

*(a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;*

*(b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.”*

[original text continues: -]

(5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

commencement of this Act.

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## Appendix 5 – s 9 Inheritance (Provision for Family and Dependants) Act 1975

S 9 (1) Where a deceased person was immediately before his death beneficially entitled to a joint tenancy of any property, then, if, ~~before the end of the period of six months from the date on which representation with respect to the estate of the deceased was first taken out,~~ an application is made for an order under section 2 of this Act, the court for the purpose of facilitating the making of financial provision for the applicant under this Act may order that the deceased's severable share of that property, ~~at the value thereof immediately before his death,~~ shall, to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Act as part of the net estate of the deceased.

- The following additional sub-section is added: -

“9 (1A) Where an order is made under subsection (1) the value of the deceased's severable share of the property concerned is taken for the purposes of this Act to be the value that the share would have had at the date of the hearing of the application for an order under section 2 had the share been severed immediately before the deceased's death, unless the court orders that the share is to be valued at a different date.”

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## Appendix 6 – Trustee Act 1925

[N.B. Amendments in *bold and italics*, or ~~struck through~~]

### **31.— Power to apply income for maintenance and to accumulate surplus income during a minority.**

(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property —

(i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property *as the trustees may think fit* ~~as may, in all the circumstances, be reasonable, whether or not there is—~~

(a) any other fund applicable to the same purpose; or

(b) any person bound by law to provide for his maintenance or education; and

(ii) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

~~Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.~~

[N.B. Amendments in *bold and italics*, or ~~struck through~~]

## 32.— Power of advancement.

(1) Trustees may at any time or times pay or apply any capital money subject to a trust ~~[or transfer or apply any other property forming part of the capital of the trust property]~~, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment ~~[, transfer]~~ or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs:

Provided that—

(a) ~~the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount~~ *[property (including any money) so paid, transferred or applied for the advancement or benefit of any person must not, altogether, represent more than]* ~~one-half of the presumptive or vested share or interest of that person in the trust property; and~~

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money ~~[or other property]~~ so paid ~~[, transferred]~~ or applied shall be brought into account as part of such share; and

(c) no such payment ~~[, transfer]~~ or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money ~~[or other property]~~ paid ~~[, transferred]~~ or applied unless such person is in existence and of full age and consents in writing to such payment or application.

*(1A) In exercise of the foregoing power trustees may pay, transfer or apply money or other property on the basis (express or implied) that it shall be treated as a proportionate part of the capital out of which it was paid, transferred or applied, for the purpose of bringing it into account in accordance with proviso (b) to subsection (1) of this section.*

(2) This section does not apply to capital money arising under the Settled Land Act 1925.

(3) This section does not apply to trusts constituted or created before the commencement of this Act

## 18.— Succession on intestacy.

(1) In Part IV of the Administration of Estates Act 1925 (which deals with the distribution of the estate of an intestate), references (however expressed) to any relationship between two persons shall be construed in accordance with section 1 above.

(2) For the purposes of subsection (1) above and that Part of that Act, a person whose father and mother were not married to each other at the time of his birth shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

*(2ZA) Subsection (2) does not apply if a person is recorded as the intestate's father, or as a parent (other than the mother) of the intestate—*

*(a) in a register of births kept (or having effect as if kept) under the Births and Deaths Registration Act 1953, or*

*(b) in a record of a birth included in an index kept under section 30(1) of that Act (indexes relating to certain other registers etc).*

(2A) In the case of a person who has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 (treatment provided to woman who agrees that second woman to be parent), the second and third references in subsection (2) to the person's father are to be read as references to the woman who is a parent of the person by virtue of that section.

(3) In [section 50(1) of the Administration of Estates Act 1925] 3 (which relates to the construction of documents), the reference to Part IV of that Act, or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made, or a will or codicil coming into operation, after the coming into force of this section (but not in relation to instruments inter vivos made or wills or codicils coming into operation earlier) be construed as including references to this section.

(4) This section does not affect any rights under the intestacy of a person dying before the coming into force of this section.