

# Factsheet

Former Spouse and Former Civil

Partner Claims under the 1975 Act

## **What you need to know about Former Spouses and Former Civil Partners when it comes to the Inheritance (Provision for Family & Dependants) Act 1975**

In accordance with Section 1(1)(b) of the 1975 Act, former spouses and civil partners are able to bring a claim against the deceased's estate, provided they have not remarried or entered into a further civil partnership.

### **What is a Former Spouse?**

A former spouse is defined as a person who had been married to the deceased but subsequently ended that marriage by divorce (by way of a decree absolute being issued) or annulment during the deceased's lifetime.

### **What is a Former Civil Partner?**

A former civil partner is defined as a person who had entered into a civil partnership with the deceased but subsequently ended that civil partnership on dissolution or annulment during the deceased's lifetime.

The full definition for both former spouses and former civil partners is contained in section 25(1) of the 1975 Act.

Can anyone who is a former Spouse or Civil Partner claim?

The short answer is no.

There are a number of factors that need to be considered to establish whether a former spouse or civil partner can bring a claim. In particular:

- Have they remarried or entered into a new civil partnership?
- Did the parties resolve their finances on divorce, dissolution or annulment in such a way that prevented any claim under the 1975 Act?

If the answer to the first question is yes, the person will be unable to bring a claim as a former spouse or civil partner. They may, however, be able to bring a claim under another heading (such as being maintained by the deceased'), depending on the circumstances.

If the answer to the second question is yes, then you are equally unlikely to be able to bring a claim as a former spouse or civil partner. Again, depending on the circumstances, a person may be able to bring a claim under another heading. However, a point to note in relation to this element is whether the Financial Order includes permission to apply to the Court to alter the terms of the settlement. This is likely to mean there is not an absolute bar on a claim being brought under the 1975 Act – it is vital to get a copy of any and all Financial Orders to be able to check the position.

### **Are there any other factors that may prevent a claim being made?**

The same condition applies to former spouses and civil partners as to all applicants under the 1975 Act. Namely, they can only bring their claim if the disposition of the deceased's estate, either on intestacy or under the terms of the deceased's Will (depending on the applicable circumstances) fail to adequately provide for them.

## The 1975 Act sets out clearly that a person can only claim if:

1. they are one of the listed persons set out within section 1(1) (a) – 1 (1) (e) of the 1975 Act (see our 1975 Act overview factsheet for further details); and
2. the distribution of the deceased's estate effected by the Will or the Rules of Intestacy (or a combination of both where applicable) does not make reasonable financial provision for the person claiming.

What is reasonable is considered as part of the case as a whole.

## What can we claim?

The starting point for all claims under the 1975 Act is a claim for 'reasonable financial provision'. This is defined differently by the Act depending on the type of person claiming.

As a former spouse or civil partner, the definition for what is considered 'reasonable financial provision' can be found under Section 1(2)(b) of the 1975 Act:-

"such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for their maintenance".

This means that former spouses and civil partners are required to bring a claim based on their financial maintenance needs.

The above said, there is often one overlooked exception to this position, which can be found in Sections 14 and 14A of the 1975 Act.

Section 14 states:

"Where, within twelve months from the date on which a decree of divorce or nullity of marriage has been made absolute or a decree of judicial separation has been granted, a party to the marriage dies and—

(a) an application for a financial provision order under section 23 of the Matrimonial Causes Act 1973 or a property adjustment order under section 24 of that Act has not been made by the other party to that marriage, or

(b) such an application has been made but the proceedings thereon have not been determined at the time of the death of the deceased,

then, if an application for an order under section 2 of this Act is made by that other party, the court shall, notwithstanding anything in section 1 or section 3 of this Act, have power, if it thinks it just to do so, to treat that party for the purposes of that application as if the decree of divorce or nullity of marriage had not been made absolute or the decree of judicial separation had not been granted, as the case may be."

There are the same provisions for former civil partners, contained with Section 14A of the 1975 Act.

Accordingly, if those circumstances apply, a former spouse or civil partner may (at the Court's discretion) no longer be treated as such for the purposes of the 1975 Act. Instead they may be treated in the same way as a spouse or civil partner. This is important as spouses and civil partners do not need to show that they need any financial provision for their maintenance. Instead their claim is based on what would be reasonable in all the circumstances for a spouse or civil partner to receive. For further information see our divorce hypothesis commentary, Q&As, and our Spouse and Civil Partner Factsheet.

## What Orders can the Court make?

The court has wide powers which are set out in Section 2 of the 1975 Act. Provided the court is satisfied that the Will or Rules of Intestacy (see our Intestacy Remembrall) do not make reasonable financial provision for the person claiming, they can make a number of orders. These include (but are not limited to) one or more of the following:

- An order for periodical payments;
- An order for a lump sum payment;
- The transfer of property within the estate;
- The settlement of property for the benefit of the person claiming;
- The acquisition and transfer or settlement of a property from the net estate;
- An order varying any ante-nuptial or post-nuptial settlement (including those made within a Will) on the parties to a marriage or civil partnership, where the deceased was one of the parties. This includes the power to alter any settlement for the benefit of the survivor, any child of the marriage or civil partnership, and any person treated as a child of the deceased in relation to that marriage or civil partnership;
- An order varying, for the applicant's benefit, any trusts upon which the deceased's estate is held.

In addition to the specific orders the court can make, there are a number of consequential and supplemental orders available to the court. These are to allow the court to monitor and give effect to the specific orders made.

These include, for example, ordering any person holding property which forms part of the net estate of the deceased to transfer that property as shall be required by the court.

## What are the relevant Factors?

When considering any claim under the 1975 Act the court will give due consideration to the case as a whole. To assist, the court will require the following information, which is set out in section 3 of the 1975 Act:

- the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- 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;
- 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;
- 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;
- the size and nature of the net estate of the deceased;
- 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;
- 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.

In addition, when dealing with a claim by a former spouse or civil partner, the court will want to see evidence of:

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

The court will take into account the facts known at the date of the final hearing, not at the deceased's death or after the final hearing. All relevant information and evidence will need to be gathered and presented to the court in time for the final hearing if the parties wish for the court to take it into consideration.

## Is there anything else we need to know?

There is a strict six month time limit from the date of the Grant of Probate for bringing a claim – it is therefore important that specialist advice is sought early. While it may be possible to bring a claim outside this time limit, the Court's approval is needed.

To obtain approval it is necessary for the party seeking the relief to have acted promptly. They must also set out the details of their claim to show they have good prospects of success.



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