

# Factsheet

Inheritance (Provision for Family & Dependents) Act 1975

Pitfalls & Benefits

## The Act

The Inheritance (Provision for Family & Dependants) Act 1975, or "1975 Act" offers individuals, associated with the deceased, the opportunity to bring about a claim against the estate where they feel they have not been 'reasonably' provided for or, left out entirely under the terms of any Will that the Deceased made or the provisions of the Rules of Intestacy, where there is no valid Will and the law prescribes who is to receive a Deceased persons estate.

The Act does not generally allow for the consideration of 'fairness' in respect to a will but rather the financial needs of the individual making the claim. The Court, therefore, is not obliged to consider the deceased's reasons for excluding an individual or make any moral judgments, but rather it considers the balance of the need of the individual making the claim against the interests of the other applicants under the Act alongside the beneficiaries of the Estate (whether that is under the terms of a Will or the Rules of Intestacy).

## What are the pitfalls & benefits of the 1975 Act?

We start by examining the types of eligible claimants, how their claims are considered by the Court and the benefits and pitfalls associated with them.

### Eligible Claimants – Pitfalls and Benefits

#### 1. Claimant was financially maintained by the Deceased:

this Claimant must show that they were receiving a substantial contribution in money/or money's worth such as housing towards from the Deceased. Essentially the aim is to put right a wrong created by the Deceased where he fails to provide for someone who relies on him for financial support.

**Benefit:** is that people who were not in a relationship/related to the Deceased still have the right to claim.

**Pitfall:** that the Court requires significant evidence to show the nature of the maintenance and the period of time in which it was provided. The 1975 Act states that they must have been being maintained 'immediately' before the Deceased died although the Courts take a pragmatic approach to this and as long as the arrangement was 'settled and enduring' it will be sufficient to mean that they are eligible to apply.

#### 2. Claimant was treated as a child of the Deceased:

this Claimant must show that they were treated the same as any biological children of the Deceased (or would have been if there were none). Their claim is assessed alongside the other applicants and beneficiaries of the estate but specifically, the Court looks at:

- whether the Deceased had maintained the applicant and for how long
- the extent to which the Deceased assumed responsibility for maintenance of the applicant
- whether the Deceased was aware that the applicant wasn't their child
- the liability of any other person towards the maintenance of the applicant (eg biological parent)

**Benefit:** in modern society there are many blended families where children are treated equally and it is irrelevant whether they are the biological child of the parent, however the Rules of Intestacy do not permit them to inherit in the same way, so this section is a great benefit to such applicants.

**Pitfall:** the applicant must be able to demonstrate that they are in need of financial provision and demonstrate that the Deceased owed them an obligation to provide. However, there is no ability to claim for an inheritance or a sentimental item to remember the Deceased by so there can often be disappointment for those people who are not provided for but are unlikely to be able to prove that they require financial provision from the estate.

### 3. Child of the Deceased:

this Claimant must be able to provide that they were a biological child of the Deceased and can include illegitimate children or children yet to be born. It does not mean that that the applicant needs to be a minor, adult children can also claim.

**Benefit:** Even estranged children of the Deceased have the right to bring a claim if they are in financial need and have a competing requirement with other applicants or beneficiaries.

**Pitfall:** Adopted children who are biologically the child of the Deceased but have gone through a formal adoption process are not entitled to claim.

In addition, although these types of claims can be very emotive, the Court will only make an award of an amount that is reasonable for the child to receive, not what they want. This can mean that there is some disconnect with their perceived entitlement vs the actual provision.

### 4. Former Spouses and Civil Partners:

this Claimant must be a former spouse (ie. Who was not married to the Deceased at the time of their death) but the eligibility of these claimants is limited. A former spouse or civil partner can bring a claim for financial maintenance, against the Deceased's estate. They must prove their entitlement for such maintenance. If matrimonial finances were resolved by the Court formally then it is likely that within that Order it is noted that the parties are prevented from bringing any subsequent 1975 Act claim for provision (on the basis that the spouses are now provided for).

If there is no such wording contained within the order, then a former Spouse is entitled to bring a 1975 Act application for reasonable maintenance.

If there was no formal Court order resolving the matrimonial finances, then it is possible for a former spouse to apply on the basis that a current spouse would, namely that they do not have to prove their entitlement to maintenance but rather their application is based on what would be reasonable for a Spouse to be provided.

In practice the likelihood of success for a former Spouse or Civil Partner is limited as they often fail to overcome the first hurdle of their application, as to whether the provision from the Deceased was reasonable or not.

**Benefit:** Essentially the provision is in place to permit someone who has recently divorced but where the matrimonial finances have not been resolved at the date of death.

**Pitfall:** For a former spouse whose financial dealings with the Deceased have been resolved and the Court has imposed a restriction on further claims, but there is still a perception of being 'left out', there is no recourse to bring any claim. Likewise if the financial position of the former spouse has improved, there is no opportunity for betterment of the surviving former spouse's position.

## 5. Spouses and Civil Partners:

this Claimant must be in a legally binding marriage or a Civil Partnership defined within the Civil Partnership Act 2004 (and the Civil Partnership (Opposite-Sex Couples Regulations 2019). The Claimant makes their claim on the basis that they have not been properly provided for by the Deceased's Will or the Rules of Intestacy (as although a Spouse or Civil Partner will always inherit under the Rules of Intestacy, this is limited and if the Estate is large then the Claimant may argue that the statutory provisions are insufficient for their needs.

The Court assesses these claims on the basis of what would be reasonable for the Claimant to receive. Unlike other Claimants under the 1975 Act, Spouses and Civil Partners are not required to prove that they require financial maintenance. They are simply entitled to claim for a sum that would be reasonable in all the circumstances for the Claimant to receive.

These types of claims often result in the Court carrying out a hypothetical divorce so as to ascertain what the Claimant would have received had the marriage or Civil Partnership been dissolved on the date of death. This attempts to create an element of fairness in decided what ought to be awarded to the Claimant and also to balance out the needs of competing beneficiaries.

**Benefit:** As above, where there is a large estate and the Rules of Intestacy apply, the surviving Spouse or Civil Partner is able to claim to rectify the position to which they consider they are entitled to. Alternatively, if the Will does not provide adequately (perhaps the family finances have changed over the years and the Will was not updated), the Claimant can apply to rectify the position to which they consider they are entitled to.

**Pitfall:** The Claimant doesn't automatically receive 50% of the Estate, which is a common misconception. The hypothetical divorce exercise is based on jointly owned property and also the property owned by each of the Spouses in their own names. Therefore if the 'wealthier' Spouse or Civil Partner is the survivor, then they may not achieve any betterment of their position at Trial and risk an adverse costs order if they cannot prove their entitlement.

## 6. Cohabitees:

This Claimant must have been living with the Deceased as Husband, Wife or Civil Partner in the 2 years immediately before the Deceased died. Evidence will need to be provided of the living arrangements (and this can often be a very contentious issue in such disputes) and essentially, the relationship must have been public knowledge. The Courts insist that the relationship be one of permanence, hence the requirement for the cohabitation to be at least 2 years prior to the Deceased's death. However, the Court's have noted that sometimes this cohabitation can be interrupted, for example by a hospital stay.

**Benefit:** There is a common misconception about cohabitation in that it is a 'common law' marriage which automatically entitles the survivor to inherit the estate. In fact, Cohabitees are not provided for in the Rules of Intestacy so unless there is a Will, this is the only way to ensure financial provision for eligible Claimants.

**Pitfalls:** Claims by cohabitees can be contentious and where there is a dispute over the facts (for example, was the Claimant cohabiting or just in a relationship with the Deceased; and was the cohabitation for a sufficient period in which to be eligible to claim). If the cohabitation was less than 2 years, it doesn't matter how strong or permanent the relationship is, the eligibility to claim falls away. This type of claim can bring up very personal and sensitive issues and the requirement to disclose all of this evidence is often quite a hurdle to overcome for potential Claimants.

## Other Potential Pitfalls and Benefits

In addition to those specific issues that face the eligible claimants under the 1975 Act, there are also some general matters which can have a significant impact on those claims...

## PITFALLS

### Domicile

Section 1 of the Act makes it clear that any application can only apply to estates where at the time of death, the Deceased was domiciled in England and Wales.

Whilst this is not a frequently argued point in such disputes, it can make or break the ability of an applicant to bring their claim. The rules focus on the domicile of origin (where the Deceased was born) but this can be replaced by the Deceased having exercised their choice to be domiciled in England and Wales but significant and compelling evidence must be provided to support this and to show that they intend to settle in England and Wales permanently and indefinitely.

A court would be unwilling to accept a replacement of the domicile of origin if, for example, the Deceased had indicated a desire to return to his domicile of origin or if there were tenuous links to the local community and other compelling indicators of a desire to replace the domicile of origin

### Limitation – Claims Must be Made Within 6 months of a Grant

Timing is everything here, a claim under the 1975 Act cannot, except with the permission of the court, be made after a period of six months from the date the Grant of Probate / Grant of Letters of Administration (“the Grant”) was obtained. This applies to all types of Claimant under the 1975 Act.

This is a short period of time particularly in cases where an individual is not involved in the administration of the estate and is not aware a Grant has already been obtained thus diminishing the time to make a claim.

For anyone considering a claim under the 1975 Act, they should complete a ‘standing search’ with the Probate Registry. This is a continuous search lasting six months and will alert the applicant should a Grant be issued during that period maximising the time in which to make a claim. If a Grant has not been obtained, an individual can lodge a ‘caveat’ preventing a Grant being obtained. (see guidance here). It is important to note that caveats should only be lodged with good reason or to enable investigations of a potential claim to be investigated.

In claims of this type, a caveat is not an appropriate step to take to simply try to stall the process. In any event, as a claim cannot be issued until after a Grant is obtained, any strategic benefit is likely to be shortlived.

If an individual wants to make a claim outside of this 6-month time limit, then an application must be made to the court at the same time of making a claim under section 4 of the 1975 Act. The Court can exercise its discretion as to granting permission, but the claimant must demonstrate that they have a substantial case for the court to justify the Court extending the time limit.

In addition, the Court will wish to know if there has been unwarranted delay on the part of the Claimant, whether they have been engaged in settlement discussions and if the estate has been distributed.

It is critical to act early as the longer a claimant leaves matters, the less likely it is that a claim will be successful given permission by the court is not routinely given.

It can be possible for the parties to agree to put a ‘Standstill’ on the limitation clock. This agreement is also useful in providing more time for parties to resolve the claim outside of the courts. It is to be noted however, this agreement has come under some criticism by the court for encouraging delay to claims being made and whilst standstill agreements can serve a useful purpose, claimants should be vigilant of the limitation periods. This reiterates the need for early legal advice is essential.

Whilst the time limit can be perceived to be short, its purpose is to ensure the swift bringing of claims so that the administration of the Estate is not tied up in litigation. It allows Personal Representatives with a clear time limit after which they can administer the Estate if no claim has been made (to do so in advance of that time limit could result in personal claims against them).

It is possible to issue ‘protective’ proceedings which if done towards the end of the 6 month limitation period, enables the individual making a claim, a further 4 months in which to formally serve their claim and so trigger the beginning of the litigation. Many practitioners do this to avoid the procedural hurdle of a Standstill Agreement but also to put pressure on the opponent to reach an early settlement.

## Suitable Directions

It is crucial that parties seek to agree suitable directions to a final hearing of a claim under the 1975 Act and in particular seek an order that, if necessary, parties may lodge witness evidence setting out their current financial position in advance of any Trial. This not only allows for further settlement discussions to take place, so as to avoid the costs of a Trial but also allows the Judge to take into account the true need of the Claimant and the up to date position of the Estate. This is a potential pitfall as without evidence a Claimant cannot prove their claim and likewise their opponent can challenge that evidence in cross-examination so it can make or break their claim.

## Death Bed Marriages

Where someone is terminally ill, they may choose to marry their partner to ensure that they receive the legal protections associated with marriage, for example providing them with an inheritance if a Will has not been made. However, it can be problematic where due consideration is not given to the impact that the marriage may have, for example if the Deceased had a Will which accurately expressed his wishes, then this would be automatically revoked by the marriage and the Rules of Intestacy would apply. If his wishes were for his relations not to inherit, then this is problematic for those who were due to inherit and if they are not eligible claimants under the 1975 Act, they have no recourse to receive their inheritance.

Equally there have been cases where a death bed marriage has been challenged as the Deceased lacked capacity at the time, but a lack of capacity only makes the marriage capable of being void (on the application to Court to nullify it) so if that step has not been taken the Will remains revoked by the marriage.

There have also been instances of deathbed marriages where the supposedly terminal ill Spouse recovers and regrets the decision but is forced at that point to go through a costly divorce which ultimately has an impact on the value of the estate he wishes to leave to others.

## Benefits

### Circumstances change

A benefit to the 1975 Act is that it accounts for circumstances changing from the time of preparing a will to the of death of the testator. For example, an individual has been purposely left out of a will and latterly the reason for this exclusion no longer exists nor applies at the time of death, the 1975 Act allows for an individual to raise an argument that they should receive a reasonable financial provision from the estate. Conversely, circumstances changing may also be considered a pitfall since estates are open to onerous claims from those individuals who the testator intended to omit from their will

### Interim application for immediate financial assistance

A benefit for potential claimants and only where a claim is; considered to have merit; is likely to be successful and, where the applicant is in immediate need of financial assistance, an application can be made to the court for an interim payment from the Deceased's net estate where agreement between parties cannot be secured. The payment will then need to be ordered by the court and the court can impose conditions and restrictions should it chose to do so. The interim payment will be deducted from the applicant's final provision from the estate and is not required to be repaid should their claim be unsuccessful.

The court will consider the urgency of the applicant's need and whether there is or can be funds available within the net estate to meet the immediate needs of the applicant.

The court can order a lump sum or periodical payments, payable at such intervals as the court deems reasonable. The payments can continue for as long as the court orders. However, they must end either when the court makes its final order under section 2 of the 1975 Act (or when the court declines to do so).

### Taxation of Awards made under the 1975 Act

An Order made by the Court under section 2 of the 1975 Act will have the same effect on the taxation of the Estate as if it had formed part of the Deceased's Will or was a disposition under the Rules of Intestacy. However, this does not extend to the liability of the Estate for Capital Gains Tax unless there is a Deed of Variation drawn up (which must be done within 2 years of the date of death and is more commonly drawn up as part of a negotiated settlement before Trial).

### What element of the Estate is available to a Claimant

Essentially Claimants are entitled to claim for provision from the Net Estate but more usually, awards are made from the Residue of the Estate which is to say, what is left after all of the debts, funeral and testamentary expenses and specific (pecuniary) legacies have been paid out.

- **Section 9:** Jointly Owned Property – Such property owned as a beneficial joint tenant by the Deceased would ordinarily pass to the surviving co-owner automatically and therefore fall outside of the Estate. The Court has the power under this section to claw back the Deceased's interest in that property in order to meet a claim on his Estate. The Court values the Deceased's share as if there had been a severance of that joint tenancy immediately before his death.
- **Section 10:** Dispositions Intended to Defeat Applications for Financial Provision – if there is evidence to suggest that the Deceased disposed of assets during his lifetime with the intention to defeat an application under the 1975 Act, then the Court can claw these back if made within 6 years of the Deceased's death.
- **Section 11:** Contracts to Leave Property by Will – in this instance the Court will look to see whether there was any valuable consideration paid the survivor to the contract (eg the Deceased entered into a loan agreement that he would leave his house to the lender in his Will, but the loan was never actually made to the Deceased). That way, even though the gift is specific in the Will it can be clawed back to meet any claim under the 1975 Act.

### Finally... A procedural point to remember:

If there has been an Order made by the Court under the 1975 Act then a copy of that Order must be submitted to the Principal Registry of the Family Division to be endorsed or permanently annexed to any Grant so as to indicate the basis upon which the Estate is being administered.





Fact sheets, commentaries, case studies and the IDR Law Almanack a central record of all of our enquiries can be found on the [IDR Network](#).

Inheritance  
Dispute  
Resolution  
**It's all we do.**