

Factsheet

Spouse and Civil Partner
claims under the 1975 Act

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

What is a Spouse?

Under the laws of England and Wales, a spouse is an individual who entered into a legally binding marriage contract with a person of either the opposite or same sex. Previously only opposite sex couples could get married. This amendment came into effect in 2014 under the marriage (Same Sex Couples) Act 2013.

A spouse for the purposes of the 1975 Act is anyone legally married to the deceased at the time of the deceased's death. This includes anyone who entered into a void marriage (provided they did so in good faith) unless that marriage had been recognised as being dissolved or annulled during the lifetime of the deceased, or the person had entered into a new marriage or civil partnership.

Although often referred to, there is no such thing as a common law spouse under the laws of England and Wales.

What is a Civil Partner?

In 2004 the law changed permitting same sex couples to enter into a civil partnership in England and Wales. This change came about under the Civil Partnership Act 2004. Although there are many similarities, legally speaking a civil partnership is different to marriage.

Initially only available to same sex couples, on 2 December 2019 The Civil Partnership (Opposite-Sex Couples) Regulations 2019 came into force. This amended the wording of the Civil Partnership Act 2004 allowing opposite sex couples to enter into civil partnerships for the first time.

A civil partner for the purposes of the 1975 Act is anyone who has entered into a valid civil partnership with the deceased, and remained in that partnership at the time of the deceased's death. This includes anyone who entered into a void civil partnership (provided they did so in good faith) unless that civil partnership had been recognised as being dissolved or annulled during the lifetime of the deceased, or the person had entered into a new marriage or civil partnership.

Again there is no such thing as a common law civil partner under the laws of England and Wales.

Why is the definition important?

Those who are married or in a civil partnership with the deceased at the time of the deceased's death, who have not been adequately provided for (see below) from the deceased's estate, can bring a claim against the estate under the Inheritance (Provision for Family & Dependants) Act 1975.

Those who believe themselves to be in a common law marriage or civil partnership may be able to bring a claim under a separate heading (which will be covered in later weeks). However, the provision they can hope to achieve is calculated differently.

Equally, those who have divorced or annulled their marriage or dissolved (via a dissolution order) or annulled their civil partnership will have different applicable factors. We will be covering these such claims next week.

We've established we were legally married or civil partners, can we claim?

This will depend on whether the deceased made reasonable financial provision from their estate for the person claiming. 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.

A person who is a spouse or civil partner of the deceased will find that a 'reasonable financial provision' means such provision as it would be reasonable in all the circumstances of the case for a spouse or civil partner to receive, whether or not for their maintenance (see sections 1(2)(a) and 1(2)(aa) of the 1975 Act).

With the exception of one often overlooked example (which we will cover next week), all other persons seeking to claim a 'reasonable financial provision' will find they have a higher hurdle. This is because they are required to bring a claim based on their maintenance needs (see section 1(2)(b) of the 1975 Act). There have been a number of cases that have dealt with this issue, which will be discussed over the coming weeks.

So what is 'reasonable in all the circumstances'?

As set out within the 1975 Act, a spouse or civil partner does not need to show that they require a share in the deceased's estate specifically for their maintenance. Instead, the court will have regard to what provision a spouse or civil partner may have received had their marriage or civil partnership ended in divorce or dissolution rather than a parties' death.

In considering what a party may have received on divorce or dissolution the courts have historically looked at the principles laid down in the divorce case of *White v White* [2001] 1AC 596. The trial judge in the case concluded that the most appropriate way to assess fairness was by the 'yardstick of equality'. Essentially setting down a starting point of an equal distribution between each of the spouses on divorce.

The trial judge in *White v White* went on to confirm that there is no presumption of equal distribution. However, did confirm that this starting position should only be departed from if there is good reason.

The above was considered alongside a 1975 Act claim in the case of *Cunliffe v Fielden* [2006] 2 WLR 491. In this case the trial judge noted that there was no reason in principle why the approach in marital claims should differ from spousal 1975 Act claims. However, consideration was given to the fact that equal distribution of assets may not be as straightforward to calculate. Emphasis was also given for the need to consider the length of the marriage as well as the other statutory factors as a whole (see below).

The position was again considered in the later case of *Baker and Baker* [2008] EWHC 977 (Ch). In this case the trial judge expressed caution in the *White v White* case principle being used as the cross check in the context of 1975 Act cases. The reason, a deceased spouse is permitted testamentary freedom and can accordingly leave their estate to whoever they wish; the 1975 Act only providing a statutory obligation to make a reasonable financial provision.

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 spouse or civil partner, the court will want to see evidence of:

- the age of the applicant;
- the duration of the marriage; 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.



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.