



Family Provision Act 1966

1966 CHAPTER 35

1 Increase of net sum payable to surviving husband or wife on intestacy

(1) In the case of a person dying after the coming into force of this section, section 46(1) of the Administration of Estates Act 1925, as amended by section 1 of the Intestates' Estates Act 1952 and set out in Schedule 1 to that Act, shall apply as if the net sums charged by paragraph (i) on the residuary estate in favour of a surviving husband or wife were as follows, that is to say.—

- (a) under paragraph (2) of the Table (which charges a net sum of £5,000 where the intestate leaves issue) a sum of £8,750 or of such larger amount as may from time to time be fixed by order of the Lord Chancellor; and
- (b) under paragraph (3) of the Table (which charges a net sum of £20,000 where the intestate leaves certain close relatives but no issue) a sum of £30,000 or of such larger amount as may from time to time be so fixed.

(2) Accordingly in relation to the estate of a person dying after the coming into force of this section sections 46, 48 and 49 (as so amended and set out) of the Administration of Estates Act 1925 shall be further amended as follows:—

- (a) in the Table in section 46(1)(i) for the words " net sum of £5,000 " in paragraph (2), and for the words " net sum of £20,000 " in paragraph (3), there shall in each case be substituted the words " fixed net sum ", and at the end of the Table there shall be added—

“The fixed net sums referred to in paragraphs (2) and (3) of this Table shall be of the amounts provided by or under section 1 of the Family Provision Act 1966”;

- (b) in sections 46(4) and 48(2)(a) for the words " the net sum of £5,000 or, as the case may be, £20,000 and in section 49(1)(aa) for the words " the net sum of £5,000 or £20,000 ", there shall in each case be substituted the words " the fixed net sum ";

and any reference in any other enactment to the said net sum of £5,000 or the said net sum of £20,000 shall have effect as a reference to the corresponding net sum of the amount fixed by or under this section.

- (3) Any order of the Lord Chancellor under this section fixing the amount of either of the said net sums shall have effect (and, so far as relates to that sum, shall supersede any previous order) in relation to the estate of any person dying after the coming into force of the order.
- (4) Any order of the Lord Chancellor under this section shall be made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament.

2 Removal of restriction on applications under Inheritance (Family Provision) Act 1938

- (1) In section 1(1) of the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, there shall be omitted the proviso (under which no application may be made under the Act where the surviving spouse has not less than two-thirds of the income of the deceased's net estate and there is no other dependant except children of the surviving spouse).
- (2) This section shall not apply to applications made with reference to the death of any person dying more than six months before the coming into force of this section, nor shall the repeal by this Act of the said proviso affect its operation in relation to any such application.

3 Periodical payments under Inheritance (Family Provision) Act 1938 or under s. 26 of Matrimonial Causes Act 1965

- (1) In section 1 of the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, there shall be omitted subsection (3) (under which the amount of the periodical payments ordered by way of maintenance out of the deceased's estate for a spouse and children are limited to the estimated income of his net estate at the date of the order).
- (2) In section 3 of the Inheritance (Family Provision) Act 1938, as so amended, there shall be inserted as a new subsection (1A): —

“(1A) Any order under this Act providing for maintenance by way of periodical payments may provide for payments of a specified amount, or for payments equal to the whole or part of the income of the net estate or of the income of any part to be set aside or appropriated under this Act of the net estate, or may provide for the amount of the payments or any of them to be determined in any other way which the court thinks fit”;

and in section 28(3) of the Matrimonial Causes Act 1965 (maintenance out of deceased's estate for former spouse) after the words " Section 3 of the Inheritance (Family Provision) Act 1938 " there shall be inserted the words " as amended by the Family Provision Act 1966 ".
- (3) This section shall come into force on the date of the passing of this Act, and orders made before that date under the Inheritance (Family Provision) Act 1938, or under any Act applying section 3 of the Inheritance (Family Provision) Act 1938, shall be deemed to have been within the powers of the Act in question if they would have been within those powers had the amendments made by this section in the Inheritance (Family Provision) Act 1938 been made by the Intestates' Estates Act 1952.

4 Lump sum payments under Inheritance (Family Provision) Act 1938 or under s. 26 of Matrimonial Causes Act 1965

- (1) An order for maintenance under section 1 or 4 of the Inheritance (Family Provision) Act 1938 (maintenance out of deceased's estate for spouse or child), or under section 26 of the Matrimonial Causes Act 1965 (maintenance out of deceased's estate for former spouse), may in any case in which the court sees fit provide for maintenance in whole or in part by way of a lump sum payment; and accordingly—
 - (a) in the said section 1, as amended by Schedule 3 to the Intestates' Estates Act 1952, the words " Where the value of a deceased's net estate does not exceed five thousand pounds " at the beginning of subsection (4) shall be omitted, and after the word " power " in that subsection there shall be inserted the words " if it sees fit "; and
 - (b) in the said section 26 for the words " if the value of the net estate of the deceased does not exceed five thousand pounds " in subsection (3) there shall be substituted the words " if the court sees fit ".
- (2) This section shall not apply to orders made with reference to the death of any person dying before the coming into force of this section.

5 Time limit for applications under Inheritance (Family Provision) Act 1938 or under s. 25 or s. 26 of Matrimonial Causes Act 1965

- (1) With a view to extending and making uniform the period for making certain applications to the court, the amendments provided for by this section shall be made in the following enactments, that is to say—
 - (a) section 2 of the Inheritance (Family Provision) Act 1938 (applications for maintenance out of deceased's estate by spouse or child); and
 - (b) section 25 of the Matrimonial Causes Act 1965 (applications for alteration of maintenance agreements after death of one party); and
 - (c) section 26 of the Matrimonial Causes Act 1965 (applications for maintenance out of deceased's estate by former spouse).
- (2) In section 2 of the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, for subsection (1) there shall be substituted—

“(1) Except as provided by section 4 of this Act, an application under this Act shall not, without the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out”;

and accordingly subsection (1A) (which enables the time for making applications to be extended by the court, but in particular circumstances only) shall be omitted, and in subsection (1B) for the words " the possibility that the court might exercise its power to extend that period " there shall be substituted the words " the possibility that the court might permit an application under this Act after the end of that period ".
- (3) In section 25(1) and in section 26(1) of the Matrimonial Causes Act 1965 there shall be omitted paragraphs (a) and (b), and there shall be added at the end of the subsection—

“An application under this section 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 in regard to the estate of the deceased is first taken out”.

- (4) This section shall not apply to applications made with reference to the death of any person dying more than six months before the coming into force of this section, nor shall the repeal by this Act of any enactment referred to in this section affect the operation of that enactment in relation to applications so made.

6 Interim orders on applications under Inheritance (Family Provision) Act 1938 or under s. 26 of Matrimonial Causes Act 1965

- (1) After section 4 of the Inheritance (Family Provision) Act 1938 there shall be inserted a new section 4A in the terms set out in Schedule 1 to this Act
- (2) After section 28 of the Matrimonial Causes Act 1965 there shall be inserted a new section 28A in the same terms, except that—
- (a) in subsection (1) of the new section the words " under this Act " shall be replaced by the words " under section 26 of this Act ".; and
 - (b) in subsection (3) of the new section the words " section 3 of this Act " shall be replaced by the words " section 3 of the Inheritance (Family Provision) Act 1938 as applied by section 28 of this Act ";

and in section 26(6) of the Matrimonial Causes Act 1965 (which defines terms used in that and the next following section) for the words " the next following section " there shall be substituted the words " the three next following sections ".

7 Extension to county court of jurisdiction under Inheritance (Family Provision) Act 1938 and s. 26 of Matrimonial Causes Act 1965

- (1) A county court shall have all the jurisdiction of the High Court to hear and determine any proceedings for an order (or for permission to apply for an order) under section 1 of the Inheritance (Family Provision) Act 1938 or under section 26 of the Matrimonial Causes Act 1965, where it is shown to the satisfaction of the court that the value of the deceased's net estate as it is to be determined for purposes of the relief sought does not exceed the sum of £5,000 or such larger sum as may from time to time be fixed for this purpose by order of the Lord Chancellor.
- (2) Where a county court makes an order in relation to a person's estate under section 1 of the Inheritance (Family Provision) Act 1938 or under section 26 of the Matrimonial Causes Act 1965, the court shall have all the jurisdiction of the High Court for the purpose of any further proceedings under section 4 or section 27, as the case may be, of the same Act.
- (3) Where there are commenced in the High Court any such proceedings as are referred to in subsection (1) above, and it appears to the court that the value of the deceased's net estate is such as would give jurisdiction in the matter to a county court if proceedings were commenced there, the court may, if it thinks fit, whether upon the application of any party to the proceedings or otherwise, order that the proceedings be transferred to any county court which the court may deem the most convenient.
- (4) Accordingly in the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, there shall be inserted in section 5(1), in the definition of " the court ", after the word " Durham " the words " or a county court " (and in section 3(3) for the words " An office copy " there shall be substituted the words " A copy " ; and in the Matrimonial Causes Act 1965 there shall be inserted in section 26(6) as the first of the definitions there set out the definition—

“court” includes a county court in relation to cases in which a county court has jurisdiction”.

- (5) Any order of the Lord Chancellor under subsection (1) above shall be made by statutory instrument, and a draft of the statutory instrument shall be laid before Parliament; and—
- (a) in relation to proceedings commenced in a county court before the coming into force of any such order the court may, if it thinks fit, refuse to make an order under section 66 of the County Courts Act 1959 (transfer to High Court of proceedings outside jurisdiction of county court), if the proceedings are within the jurisdiction of the county court as extended by the order of the Lord Chancellor; but
 - (b) the coming into force of any such order of the Lord Chancellor shall not be taken to affect any order previously made under section 66.

8 Amendment of reference in Inheritance (Family Provision) Act 1938 to adopted children

- (1) In the Inheritance (Family Provision) Act 1938, as amended by Schedule 3 to the Intestates' Estates Act 1952, the definition in section 5(1) of the expressions "son" and "daughter" shall be amended by substituting for the words "by virtue of an order made under the provisions of the Adoption of Children Act 1926" (which have effect by virtue of later enactments and in particular the Adoption Act 1964 so that children adopted anywhere in the United Kingdom, the Isle of Man and the Channel Islands are included) the words "in pursuance of adoption proceedings taken in any part of the United Kingdom, the Isle of Man and the Channel Islands".
- (2) Accordingly in section 26(6) of the Matrimonial Causes Act 1965 (which provides, among other things, for the word "dependant" to have the same meaning as in the Inheritance (Family Provision) Act 1938) after the words "the Inheritance (Family Provision) Act 1938" there shall be inserted the words "as amended by the Family Provision Act 1966".

9 Administration of Estates Act 1925 s. 47(5) to be omitted

In section 47 of the Administration of Estates Act 1925, as amended by section 1 of the Intestates' Estates Act 1952 and set out in Schedule 1 to that Act, there shall be omitted subsection (5) (which has no operative effect, but contains a declaratory provision about the failure of certain trusts under section 46 in favour of a class of relatives of an intestate).

10 Short title, repeal, etc.

- (1) This Act may be cited as the Family Provision Act 1966.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule, subject however to any saving provided for in the foregoing sections of this Act; and in accordance with the provisions of this Act the Inheritance (Family Provision) Act 1938, as respects cases to which it applies as amended by Schedule 3 to the Intestates' Estates Act 1952 and by this Act, shall have effect as set out in Schedule 3 to this Act.
- (3) Nothing in this Act extends to Scotland or to Northern Ireland.

Status: This is the original version (as it was originally enacted).

- (4) This Act, apart from section 3, shall come into force on such date as may be appointed by order of the Lord Chancellor made by statutory instrument, and different dates may be appointed for the coming into force of different provisions.