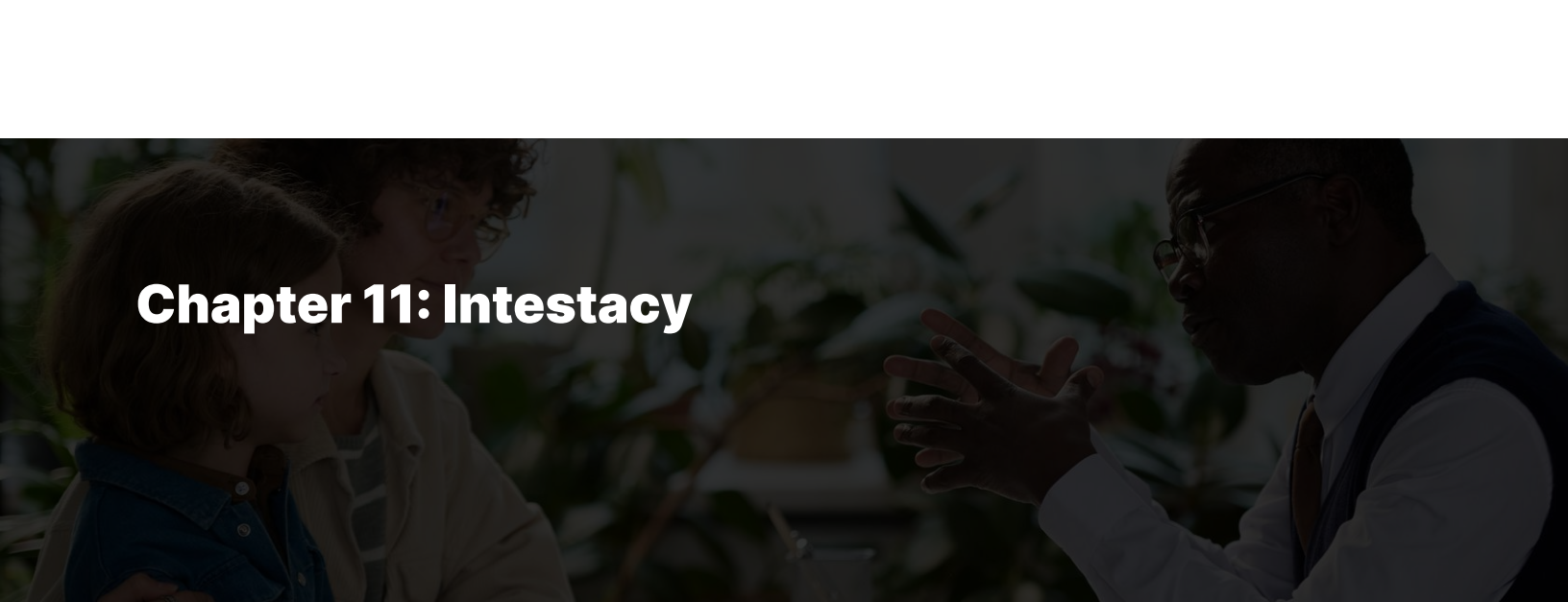




Chapter 11: Intestacy

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11.1 Introduction

Statistics suggest that up to two-thirds of the UK population could die without a will (intestate) (see [Dying without a will means strict intestacy rules kick in | This is Money](#)).

Going forward, the numbers of intestate estates may well decrease as a result of Covid-19. What is clear, however, is that a large percentage of the population will still die intestate.

There are many reasons why people do not make wills, whether a belief that their estates are too small, or simply leaving it until another day and then for whatever reason it becomes too late. Knowledge of how an estate devolves when a person dies without a will is a necessary part of all private client lawyer's toolkit. As a trainee this chapter will take you through **the legislation that affects intestate estates** and the **order of distribution**.

In England and Wales intestate estates are distributed in accordance with fixed rules.

The law dealing with intestacy (the intestacy rules) is found in the **Administration of Estates Act 1925 (AEA 1925)**, as amended, and the **Intestates' Estates Act 1952 (IEA 1952)**.

The **Inheritance and Trustees' Powers Act 2014 (ITPA 2014)**, which came into force on 1 October 2014, has made significant changes which are covered in this chapter.



CONTINUE

11.2 Intestacy and partial intestacy

Intestacy

An intestacy arises when a person dies without a will. In those circumstances there is no alternative but to administer the estate under the intestacy rules.

Partial intestacy

A partial intestacy occurs where there is a valid will but one of the following circumstances applies;

1. The will does not dispose of all of the estate, typically, where a will has no residuary clause.
2. The will contains provisions that would dispose of all of the estate but a gift of the residuary estate fails – for example, the residuary beneficiary predeceases the testator and there is no clause substituting an alternative beneficiary.

If a partial intestacy occurs, valid legacies under the will must be paid in the normal way. The property that is not disposed of under the will is then distributed under the testator's partial intestacy by applying the intestacy rules.

One consequence of a partial intestacy might be that the rules will favour a relative the testator would not have wanted to benefit, that is, someone who was not mentioned in the testator's will. In practice, a well-drafted will should always avoid the possibility of a partial intestacy arising by making additional provision if the main gifts fail for some reason.

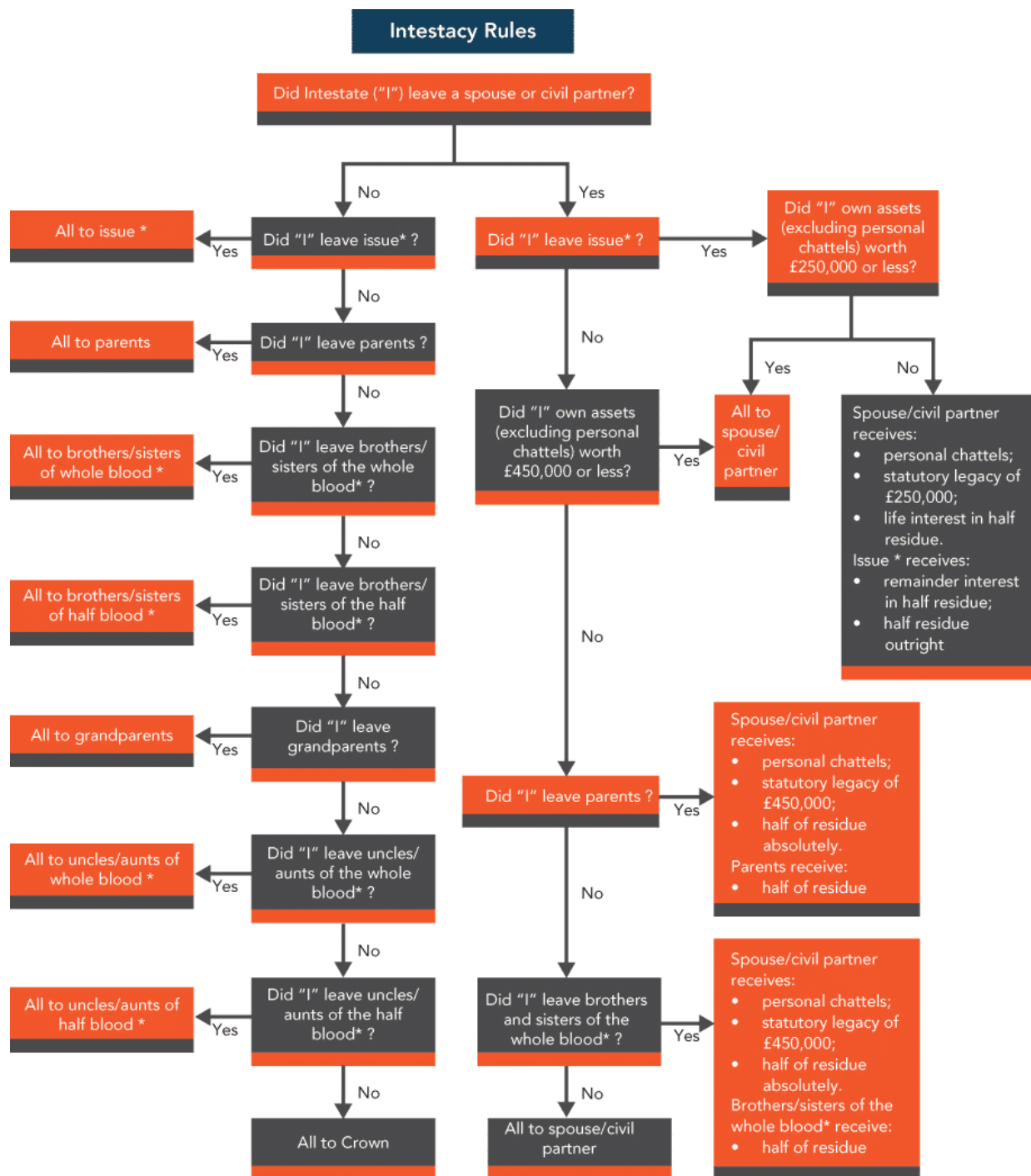
Partial intestacies can be avoided by including provision for residue together with substitution clauses to ensure that on the death of a beneficiary their share is specifically redirected to another beneficiary or beneficiaries.

CONTINUE

11.3 Inheritance and Trustee Powers Act 2014

ITPA 2014 introduced a number of changes as to how an intestate estate devolves, especially in relation to a spouse or civil partner.

Until **ITPA 2014** came into force on 1 October 2014, the rights under the intestacy rules of spouses and civil partners, in particular, were more limited. The rules which apply to deaths prior to 1 October 2014, are summarised in the following diagram:



* On statutory trusts – if predeceasing "I", their issue inherit in their place

Figure 11.3

CONTINUE

11.4 The statutory rules (devolution on intestacy)

When a person dies wholly or partially intestate, all their assets become subject to a statutory trust under **s33 AEA 1925**. The personal representatives (PRs), under **s33**, hold all of the undisposed-of estate on trust with the power to sell. The PRs are required to pay funeral expenses and debts from the intestate's cash and the proceeds of sale of other assets. They must also pay any valid legacies arising under the will in the case of a partial intestacy.

The PRs must then hold the remaining estate to be distributed under the strict order of entitlement in **s46 AEA 1925**.

NB: Do **not** confuse this **s33** statutory trust of the intestate's property with the **s47** statutory trusts also arising under **AEA 1925**, which set out how the intestate's issue and other relatives take the property when they are entitled.

CONTINUE

11.5 s47 statutory trusts

Statutory trusts is defined in **s47 AEA 1925** as including the class of relative to whom it applies together with the issue (i.e. children or other direct descendants) of the relative in question if that relative has **predeceased** the intestate (but see below for a minor exception to this rule).

For ease we will look at the workings of the statutory trusts in the context of one arising in favour of the children of the deceased. We will do this **but** keep in mind that the operation of the statutory trusts will be exactly the same where it applies to other classes of relatives, such as brothers and sisters or uncles and aunts.

If the deceased has several children who are entitled under the intestacy, the property available for distribution is divided up in equal shares. Included in the definition of a child is a child unborn at the date of death but later born alive.

There are two important qualifications to the way in which the statutory trusts in **s47** work.

1. If a child has **predeceased** the intestate leaving a child of his own (i.e. intestate's grandchild), then that child will "step into his deceased parent's shoes" and inherit the parent's share of the estate. If the intestate has more than one child of their own, those children share equally their parent's share of the estate.
2. The shares due to children (or their issue) are contingent on them attaining the age of 18 years or marrying (or forming a civil partnership) earlier. So, if a child survives the intestate but dies before attaining 18 years or earlier marriage/civil partnership, their share will devolve as if they had not existed.

Finally, as was said above, there is a minor exception to the rule that the issue of a member of the class can take only if the original class member has predeceased. Ordinarily, if a potential beneficiary identified at the date of the intestate's death dies later and before attaining a vested interest (i.e. before reaching 18 or earlier marriage or civil partnership), then the estate is dealt with as though that person had never existed. There is now an exceptional case if the intestate died on or after 1 February 2012 and **s3 Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011** applies.

The position under **s3** is that if the beneficiary in question actually dies after the intestate without having attained a vested interest but leaves issue, then the beneficiary is nonetheless treated as if they had predeceased. This means that their issue can take their share under the statutory trusts in just the same way that they would have done if the beneficiary had actually predeceased the intestate.



What are the PRs required to do under the statutory trust under **s33 AEA 1925**?

CONTINUE

11.6 Statutory order

Applying the distribution rules in **s46 AEA 1925** to a particular individual's estate requires knowledge of the intestate's relatives and the approximate size and nature of their estate. It is usually helpful to draw up a family tree so that you are aware of the various relationships. It is also helpful to show the ages of individuals, particularly those under full age and also whether anyone is married or in a civil partnership.

Your tree must also show the issue (i.e. children, grandchildren, etc.) of any relative who may have predeceased the deceased.

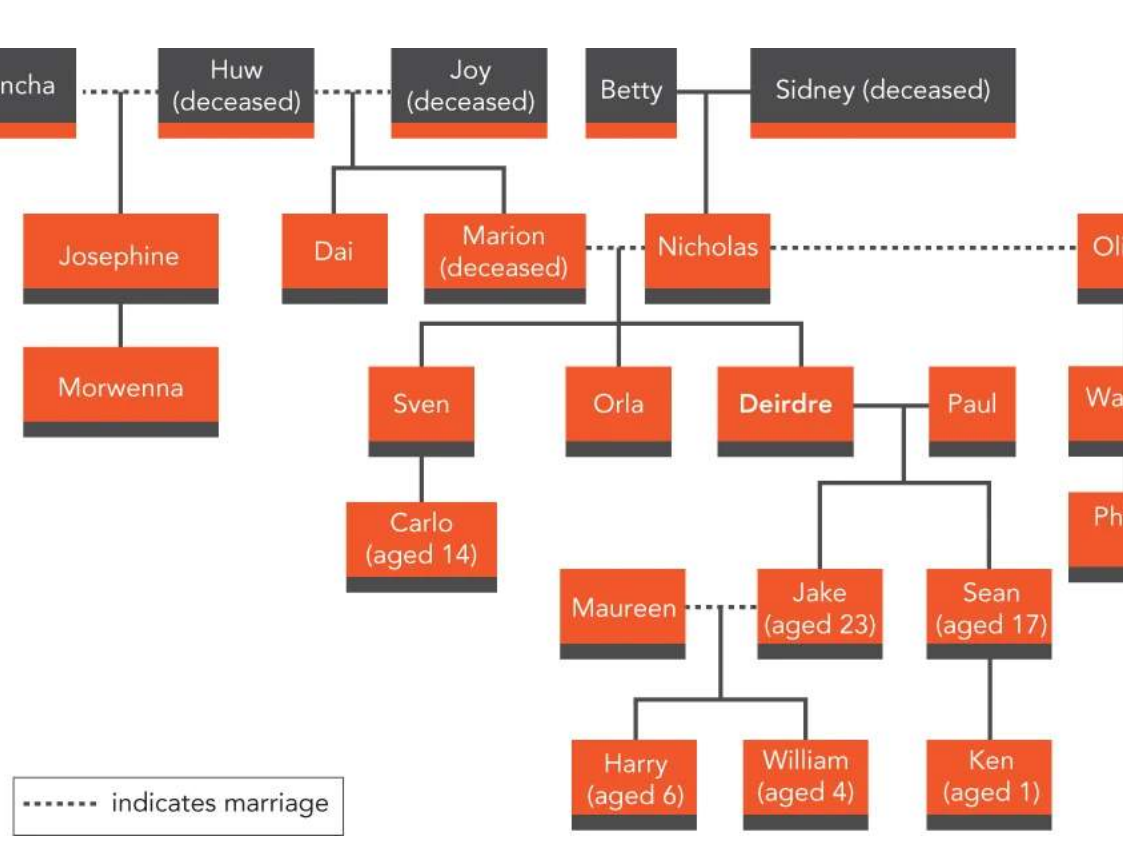
When presented with an intestacy distribution, the best approach is as follows.

1. Start by asking whether the deceased left a surviving spouse or civil partner.
2. If the answer is “**yes**”, then you also need to find out what other relatives survived because that will determine how much of the estate will be taken by the surviving spouse or civil partner. Our search for other relatives in this case need not take us beyond the deceased's children (or their issue).
3. If the answer is that there is **no** surviving spouse or civil partner, then you need to find out what other relatives survived. In this case (for reasons that will become apparent later), your enquiries may lead you to classes of more distant relatives (and ultimately to the Crown if there are none).

In the section that follows we will look at a family tree to see how the rules are applied in various situations.

So, first let us have a look at Deirdre's family tree.

Deirdre's family tree



Paul	husband
Jake	son (Jake's wife, Maureen, is expecting a child in three months)
Sean	son

Harry and William	Jake's children
Ken	Sean's child
Nicholas	father
Sven	brother (of the whole blood, i.e. with the same mother and father)
Orla	sister (of the whole blood, i.e. with the same mother and father)
Wayne	brother (of the half blood, i.e. with only one parent (Nicholas) who is the same)
Philip	nephew of the half blood (Wayne's issue)
Betty	grandparent
Dai	uncle (of the whole blood, i.e. brother of the whole blood of Deirdre's mother)
Josephine	aunt (of the half blood, i.e. sister of the half blood of Deirdre's mother)

The basic order of priority in which relatives are entitled under **s46 AEA 1925** is as follows:

- spouse (this includes spouses in same-sex marriages following the **Marriage (Same Sex Couples) Act 2013**) or civil partner;
- issue (i.e. deceased's children and direct descendants) on the statutory trusts;
- parents;
- brothers and sisters of the whole blood on the statutory trusts;
- brothers and sisters of the half blood on the statutory trusts;
- grandparents;
- uncles and aunts of the whole blood on the statutory trusts;
- uncles and aunts of the half blood on the statutory trusts;
- the Crown (i.e. the state).

Apart from the spouse or civil partner, all the relationships here must be **linked by blood**, so someone who may be referred to by the family as the intestate's "Auntie Seetha", because they are married to the intestate's uncle, does not qualify to take. However, there are special rules applicable to adopted persons.

CONTINUE

11.7 Entitlement of spouses/civil partners

A surviving spouse or civil partner, where there is no issue, will inherit the entire estate. The priority given to spouses and civil partners reflects the continuing assumption by the law that most testators give priority in their wills to protecting the financial interests of their spouses or civil partners.

Divorced or judicially separated spouses and ex-civil partners where the civil partnership has been dissolved are not entitled to share in the estate.

11.7.1 28-day survivorship condition

s46(2A) AEA 1925 states that a spouse or civil partner must survive the intestate by at least 28 days before they can inherit. This statutory survivorship period mirrors the effects of the normal survivorship clause in most professionally drafted wills for couples. **Note** that this statutory survivorship period applies only to spouses and civil partners and not when other relatives inherit on intestacy.

The entitlement of the spouse/civil partner where there is issue

As discussed at 11.6, when considering spouse/civil partner's entitlement the only other family members you need to consider is whether there are any children of the deceased.

If there are children, the spouse/civil partner may not take the entire estate; it will depend on the size and nature of the it.

Below we look at how an estate is distributed if the deceased is survived by spouse or civil partner and children.

11.7.2 Lump sum

The spouse/civil partner is entitled to a statutory legacy of £250,000 for deaths up to 5 February 2020, £270,000 for deaths from 6 February 2020 to 25 July 2023 and £322,000 for deaths after 26 July 2023 plus interest at the Bank of England base rate – effective at the end of the day on which the intestate died, (at the time of writing) 5.25 per cent per annum, from the date of death until payment.

Sch 1 ITPA 2014 requires the Lord Chancellor to reset the statutory legacy every five years, starting within five years of the Act coming into force. The Lord Chancellor must increase the statutory legacy between these five-year review dates if the consumer prices index (CPI) measure of inflation rises to 15 per cent or more, in any month, over its base amount. The rate of increase at this point is at the discretion of the Lord Chancellor. When this mechanism is triggered, the five-year period is reset to begin again from that date. The **Administration of Estates Act 1925 (Fixed Net Sum) Order 2023** increased the statutory legacy to £322,000 from £270,000 for deaths from 26 July 2023 onwards.

Unless the Lord Chancellor determines otherwise, the statutory legacy will increase in line with the (index-linked) CPI.

11.7.3 Chattels

The spouse/civil partner will receive all personal chattels (personal possessions) as defined in **s55(1)(x) AEA 1925**, 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.

Usually, identifying the intestate's personal possessions is straightforward. The courts have, nonetheless, been required to consider the distinction between articles for personal use and those used for business or investment purposes. In ***Re Reynolds [1966]*** a stamp collection was held to be an article of personal use. In ***Re Crispin's Will Trusts [1974]*** the argument related to whether chattels held largely for investment purposes were personal chattels or excluded because they were for business purposes. The Court of Appeal stated that the key question was whether the articles themselves were of their very nature for personal use. The collection of watches and clocks was held to be personal chattels despite forming a very large proportion of the value of the estate.

If articles are used for mixed business and personal use, it was held in ***Re MacCulloch [1981]*** that the dominant purpose of their use must be determined. Here, a yacht was used partly for pleasure and part of the time was hired out. The dominant purpose was held to be for business and it was not a personal chattel.

11.7.4 Residue

If the estate has a value of over the statutory legacy, the spouse/civil partner will receive a half share of the residue.

The other half of the residue passes to the children of the deceased on the statutory trusts (see 11.5).

11.7.5 The family home

Often, the most pressing priority of a surviving spouse/civil partner is to ensure that he or she can continue to live in the family home. In many estates, the family home is the biggest

asset, and it may represent much of the intestate's wealth. There is often a lot of sentimental attachment to the home where the couple may have brought up their children.

The first issue to consider is the beneficial ownership of the family home.

- If the home is owned by the couple as joint tenants, the survivor will take the intestate's share by survivorship, so it does not pass on intestacy anyway.
- If the property is owned by the couple as tenants in common, the intestate's share will form part of their estate and pass under the intestacy rules.
- Alternatively, the family home may have been owned by the intestate alone.

The spouse/civil partner will be anxious in these circumstances to ensure that the family home (or the intestate's share in it) is appropriated (transferred from the estate) to them.

s41 AEA 1925 gives PRs a general power to appropriate all types of asset, including houses, to individual beneficiaries instead of their cash equivalent. The PRs can therefore choose to appropriate the family home to the spouse/civil partner, but only if its value does not exceed the spouse/civil partner's entitlement under the intestacy rules.

If the PRs are uncooperative, or the value of the house is greater than the surviving spouse/civil partner's entitlement, it may be possible for the surviving spouse/civil partner to require the PRs to appropriate the family home to them under **Sch 2 Intestates' Estates Act 1952**. In order to exercise this right, the following requirements must be met.

1. The right must be exercised within 12 months of the date of the grant. During this period, the PRs may not sell the property without the written consent of the spouse/civil partner unless the sale is required to pay off debts of the estate and no other assets are available.
2. Written notice must be given to the PRs. If the spouse/civil partner is the sole PR, they must give written notice to the court, appoint a second PR, or obtain the consent of the beneficiaries if they are all adult. The importance of these additional steps was emphasised in ***Kane v Radley-Kane and Others [1998]***.

3. The family home must be valued at the date of the appropriation, not the date of death (**Re Collins [1975]**). This has important practical implications if house prices are falling – the spouse/civil partner is likely to benefit from a lower valuation if they postpone the valuation to the end of the 12-month period for election.
4. If the value of the family home exceeds the share of the estate which is due to the spouse or civil partner, they will be required to pay the difference (equality money) from their own money to the PRs so that the other beneficiaries do not lose out.

The consent of the court to the appropriation under **Sch 2** must be obtained in certain circumstances where it might diminish the value of the whole estate. These circumstances are where:

- the home forms part of a larger building, the rest of which is included in the residuary estate;
- the home forms part of agricultural land that is included in the agricultural estate;
- the home or part of it was used as a hotel or lodging house;
- part of the home was used for non-domestic purposes, for example, where an antiques business was run from the home.

Example

James Sherwood, a self-employed consultant, died two months ago. He is survived by his wife Tate, daughter Roxy (aged 19), and son Barak (aged 10). Tate made a few financial mistakes years ago and because of that the majority of the family's assets including the home are in James' sole name. James' estate is worth £1,000,000 broken down as follows:

Family home	£450,000
-------------	----------

Cash assets	£400,000
Personal chattels	£100,000 (including a family car)
Business car	£50,000 (the only asset of the business)
<i>In this scenario you can see that James' estate will pass as follows:</i>	
To Tate:	<i>£322,000 (statutory legacy together with interest – currently at 5.25%)</i> <i>£100,000 (personal chattels)</i> <i>£289,000 (half residue)</i>
<i>Tate can serve notice to the PRs within 12 months from the date of the grant to take the family home in part satisfaction of her entitlement. The family home will be valued at the date of appropriation.</i>	
Roxy:	<i>£144,500 absolutely</i>
Barak:	<i>£144,500 (on statutory trust until he reaches 18)</i>



1. Do you think the statutory order strikes the right balance between spouse and children?
2. Now consider that the children in question are from a previous relationship and not the surviving wife's, does your answer change?
3. Do you think it right that minors take absolutely at 18, regardless of the amount of inheritance?

CONTINUE

11.8 Distribution where no surviving spouse or civil partner

This is a straight application of the order in **s46 AEA 1925**. The main point to bear in mind is that those at the top of the order have priority over those lower down, and, once it is established that there is at least one member of the relevant class of relative who is entitled (that is, by obtaining a vested interest under the statutory trusts, where applicable), that excludes any possibility of any class lower down the order taking.

In other words, in an estate where there is no spouse or civil partner to take a share, it is never possible for the estate to be shared between relatives in a different class in the **s46** order – all the beneficiaries, if more than one, must come from the same class.

So, the first class to consider at the top of the order is the deceased's issue.

1

Issue

If there is no spouse or civil partner surviving, the issue will inherit the entire estate on the statutory trusts regardless of value and regardless of whether there are any other relatives.

In Deirdre's estate, Jake and Sean would inherit all of Deirdre's estate, regardless of its size, if Paul predeceased her (or failed to survive 28 days).

2

No issue, but parents

If there is no spouse/civil partner or issue surviving, the parents will inherit the entire estate in equal shares.

So, on the death of a child, who has not married or entered into a civil partnership or made a privileged will (see Chapter 4), the parents will normally inherit the entire estate (unless the child already has a child of their own).

3

No issue, no parents, but brothers and sisters of the whole blood

In these circumstances, the brothers and sisters who share both parents with the intestate, or their issue if they have predeceased, will inherit the entire estate on the statutory trusts.

4

No issue, no parents, no brothers and sisters of the whole blood or their issue, but brothers and sisters of the half blood

In these circumstances, brothers and sisters who share one parent with the intestate, or their issue, will inherit the entire estate on the statutory trusts.

In our example, Wayne is Deirdre's half brother. If Wayne had predeceased, his son, Philip (Wayne's issue), would take his entitlement under the statutory trusts.

5

No issue, no parents, no brothers and sisters of the whole blood or their issue, no brothers and sisters of the half blood or their issue, but grandparents

Here, the grandparents inherit the entire estate in equal shares.

6

No issue, no parents, no brothers and sisters of the whole blood or their issue, no brothers and sisters of the half blood or their issue, no grandparents, but uncles and aunts of the whole blood or their issue

Here, the uncles or aunts who shared the same parents as the intestate's own mother or father (or their issue) inherit the estate in equal shares on the statutory trusts. Each uncle or aunt receives an equal share regardless of whether the relationship is through the intestate's mother or father. If an intestate had three aunts who were sisters of their mother and one uncle who was a brother of their father, each aunt and the uncle would receive one-quarter of the estate.

Consider Deirdre's estate again. Dai is Deirdre's only uncle of the whole blood because his parents, Huw and Joy, were the same as Marion's who was Deirdre's mother.

7

No issue, no parents, no brothers and sisters of the whole blood or their issue, no brothers and sisters of the half blood or their issue, no grandparents, no uncles and aunts of the whole blood or their issue, but uncles and aunts of the half blood or their issue

In these circumstances, the uncles and aunts of the half blood or their issue inherit the entire estate in equal shares on the statutory trusts.

In Deirdre's estate, Josephine is Deirdre's aunt of the half blood because she shared only one parent, Huw, with Marion who was Deirdre's mother. Josephine's daughter, Morwenna (Josephine's issue), would inherit her share if Josephine had predeceased Deirdre.

8

None of the above relatives

The entire estate will pass to the Crown, unless the intestate died in Cornwall or in the Duchy of Lancaster (an area covering Lancashire and parts of Cumbria) in which cases it will pass to the Duke of Cornwall or Duchy of Lancaster, respectively. The estate is described as *bona vacantia*.

CONTINUE

11.9 Bona vacantia

s46 AEA 1925 gives the Crown (or the Duke of Cornwall or Duchy of Lancaster) in these cases a discretion to make provision for the intestate's dependants (whether related to the deceased or not) and ***for any other person for whom the intestate might reasonably have been expected to make provision.***

11.9.1 Unclaimed estates list

The *Bona Vacantia* Division (BVD) of the Treasury Solicitor's department, acting on behalf of the Crown, administers the estates of people who die without known blood relatives and without leaving a will. Note that where the deceased died in Cornwall or in the Duchy of Lancaster, Farrer & Co administer their estate on behalf of the Duchy of Cornwall or the Duchy of Lancaster (see [Bona Vacantia](#) | [Farrer & Co](#)).

The BVD publishes an updated list every working day of unclaimed estates which have been referred to it. An industry of genealogists, specialising in tracing relatives who might be entitled to such estates, has developed in light of modern technology making the tracing of ancestors easier than before. If a genealogist manages to trace a relative who is entitled, the BVD will hand over the matter to enable the estate to be administered and the property distributed, with the genealogist taking a commission.

CONTINUE

11.10 Cohabitees

The Law Commission recommended significant changes to the intestacy rules in its 2011 report *Intestacy and Family Provision: Claims on Death*. Many of the proposed changes were enacted in **ITPA 2014**.

Part 8 of the report (available at [Intestacy and family provision claims on death HC 1674, Session 2010-2012](#)) dealt with the rights of unmarried cohabitants under the intestacy rules.

Part 8 was not accepted by the government. The report included a draft **Inheritance (Cohabitants) Bill** which was introduced in the House of Lords but was not enacted.

Part 8 discussed the background to the issue and highlighted the following points.

1. Approximately 15 per cent of all couples are living as cohabitants and the percentage is expected to increase.
2. Cohabitants are less likely to have made wills than married couples (though they do tend to be younger and younger people are generally less likely to have made wills).
3. Although cohabitants can claim a share of the estate through I(PFD)A 1975, the requirement to go to court is onerous and causes unnecessary difficulties and legal costs when the underage children of the couple have to have separate representation as the defendants.
4. Many unmarried couples are unaware that they do not have any rights under the intestacy rules against each other's estates.
5. As with married couples, the finances of unmarried couples are often intertwined and interdependent.

6. Other jurisdictions in Australia, Canada and New Zealand have been able to provide for cohabitants under intestacy without significant difficulties.

A particularly controversial area is the issue of choice and commitment. The report noted the arguments that all unmarried couples had the choice as to whether or not to get married (or form a civil partnership in the case of same-sex couples). It also noted that they had the opportunity to make wills. Nonetheless, it argued that simply relying on choice could lead to injustice – **both** parties had to agree to a marriage or civil partnership and the reluctance of one party could be unfair on the other. Similarly, one party could not compel the other to make a will.

In relation to commitment, similar arguments apply. The Law Commission did not accept the argument that the value of a public commitment to each other in a marriage or civil partnership ceremony had to be reinforced through the intestacy rules.

The Law Commission proposed in its draft Bill to give unmarried cohabitants who have lived together for **five years** or more the same rights on intestacy as a spouse or civil partner.

If the couple had had a child together, the period would be reduced to **two years**.

The current situation is that cohabitees are not included in the statutory order. If a cohabitee dies intestate a cohabitee that falls within the **I(PFD)A1975** class of claimants will have the right to make a claim; however, that will be limited under the Act to provision for their maintenance.



1. Do you think it right that cohabitees are not included in the statutory order?

2. Should **s46** been changed to include cohabitees?

3. What would happen if the deceased was still married and lived with another person?

When answering, consider whether it is right that a cohabitee has to make a claim against the deceased's estate, and even if successful, the claim is limited to financial provision for the surviving cohabitee's maintenance.



Activity

Select three members of your family, at least one should be distant. Work out how their estate will devolve should that person die intestate. It might be helpful to create your own family tree to support your answer. Use the updated table in the summary below to assist you in your answer.





Law Explained: Intestacy

In this recording we review the different effects of vested and contingent gifts to children.



5:29

1x



Audio Transcript

In this recording we're going to look at intestacy in a little more detail. Intestacy is more important in a common law jurisdiction such as that in England and Wales than it would be in a civil law system. Where a Civil Code operates it is common for there to be a system of forced heirship, in which it is compulsory for property to pass to a deceased person's next of kin, and therefore the concept of wills is less important. In this country however where testamentary freedom remains key, there has to be a system of law in place to determine what happens where a person dies either without making a will, or in a situation where the will is not completely effective in disposing of all of the persons property.

Intestacy is governed by the Administration of Estates Act 1925, and it is interesting that there were no significant changes to the intestacy rules until 2014. It is arguable that despite the simplifications that were introduced by the Inheritance and Trustee Powers Act 2014, the intestacy rules are still outdated and do not adequately deal with the society in which we live. Apart from the spouse or civil partner, all those entitled must be related to the deceased by blood, so there is no provision for cohabitees or step children or other informal relationships, and a loved one's only option is to bring a claim under the Inheritance (Provision for Family and Dependants) Act 1975.

Don't forget when considering the distribution of an estate either by will or on intestacy that any property held as joint tenants, or in trust for another, or where the deceased only had an interest on a discretionary basis will not form part of the estate. Many couples hold much or all of their property as joint tenants and so the intestacy rules would not apply to those assets, which would pass instead by survivorship.

There are some interesting and important points to note about intestacy. The first and probably most important point is with regard to the inheritance of a spouse or civil partner, where there are also children. Since 26 July 2023, this amounts to a lump sum of £322,000,000 plus interest, all the personal chattels and half the residue. The remaining half of the residue passes to the children equally. Think about somebody you know who is married or in a civil partnership and has children. Do you think this would represent a fair and appropriate distribution of their estate?

Next, we should consider the situation where any beneficiary is under 18. Here the law imposes a contingency, so that the estate of an infant child will not inherit if the child does not survive to the age of 18. This of course means that the administrators of an intestate estate are often playing a 'wait and see' game which is not necessarily the most satisfactory, particularly where the children in question are very young at the date of the intestate's death.

Intestacy is also interesting in the way that it deals with a predeceased beneficiary. Where there is a will, section 33 of the Wills Act 1837 provides that the issue of a predeceased person is automatically entitled to the share that their parent would have had, provided that there is no contrary intention in the will. However, this only applies to gifts to the issue of the testator. Take for example a gift by will by the testator to a brother or sister, where that individual had predeceased; the property would not pass to that person's child or children. Section 47 of the Administration of Estates Act 1925 imposes a similar provision but is much wider in its operation. Effectively if any person who is entitled under the intestacy rules has predeceased the intestate, their children or remoter issue will receive the share that they would have inherited had they survived.

To provide a practical example of this distinction, let us assume that Adrian dies, having made a will leaving all his property to his Uncle Bill, with a gift over to a charity. Bill has in fact predeceased Adrian leaving a daughter, Georgina. Georgina would not be entitled to Adrian's property.

Contrast this with the situation where Adrian has not in fact made a will and dies intestate without any relatives other than Bill and Georgina. Under the intestacy rules Bill would, if he had survived, be entitled to the whole estate as an uncle of the whole blood, and section 47 would operate to pass the estate to Georgina, as Bill had predeceased.

Finally, don't forget that entitlement is determined by considering each possible class of beneficiaries, in the statutory order. If there is anyone who fits the category, they take the estate and there is no need to look any further. Suppose Callum, who was single and childless, dies intestate. His parents have predeceased him and his only living relatives are an adopted sister with whom he lost touch many years ago and six half brothers and sister with whom he was very close. His adopted sister would be entitled to the whole estate even though this is probably far from what he would have wished had he given the matter some thought. These sorts of unintended consequences provide good reasons why making even a simple will can be a sensible idea for many clients.



Law in Context

Read the following blogpost outlining how the Scottish intestacy rules work: [Intestacy in Scotland: Understanding Scottish succession rules](#)

What are the key differences from the intestacy rules in England and Wales?

CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 3 questions in this knowledge check.

Question 1 of 3

Padraig, a widower, died intestate. He was survived by his daughter Deirdre. Another daughter, Enya, died before Padraig leaving a husband, John, and her sons, Finbarr, who was aged 16 at the time of Padraig's death and Tomas, who was 17. Finbarr sadly died shortly after Padraig. Which of the following statements is correct?

- ☐ The whole of Padraig's estate would pass to Deirdre
- ☐ Padraig's estate would be divided in two. Half would pass to Deirdre and half to John
- ☐ Padraig's estate would be divided in two. Half would pass to Deirdre and half would be held on trust contingent on Tomas reaching 18



Padraig's estate would be divided in two. Half would pass to Deirdre and the other half would be divided between Tomas and Finbarr's estate, Tomas's share held until he is 18

SUBMIT



Complete the question above before moving on.

Question 2 of 3

Which of the following individuals are potentially entitled to a share of an intestate's estate?

(Select 3 correct answers)

☐

A step-child

☐

An adopted child

☐

A half-brother

☐

A grandparent

☐

A cohabitee

SUBMIT



Complete the question above before moving on.

Question 3 of 3

Which of the following paragraphs correctly describes the legal concept of **partial** and **total intestacy**?

☐

A **partial** intestacy arises where the testator's will fails to **dispose** of all of their property. This can occur, for example, where the will does not include a **residue** clause, or where a **named**, or the sole, residuary **beneficiary** predeceases the testator. **Total** intestacy can occur where the testator has not made a will, or where the will is **invalid** because of lack of capacity or **intention**, or because the **necessary** formalities have not been complied with.

☐

A **total** intestacy arises where the testator's will fails to **dispose** of all of their property. This can occur, for example, where the will does not include a **residue** clause, or where a **named**, or the sole, residuary **beneficiary** predeceases the testator. **Partial** intestacy can occur where the testator has not made a will, or where the will is **invalid** because of lack of capacity or **purpose**, or because the **essential** formalities have not been complied with.



A **partial** intestacy arises where the testator's will fails to **assign** all of their property. This can occur, for example, where the will does not include a **final** clause, or where a **designated**, or the sole, residuary **beneficiary** predeceases the testator. **Total** intestacy can occur where the testator has not made a will, or where the will is **invalid** because of lack of capacity or **desire**, or because the **required** formalities have not been complied with.

SUBMIT



Complete the question above before moving on.

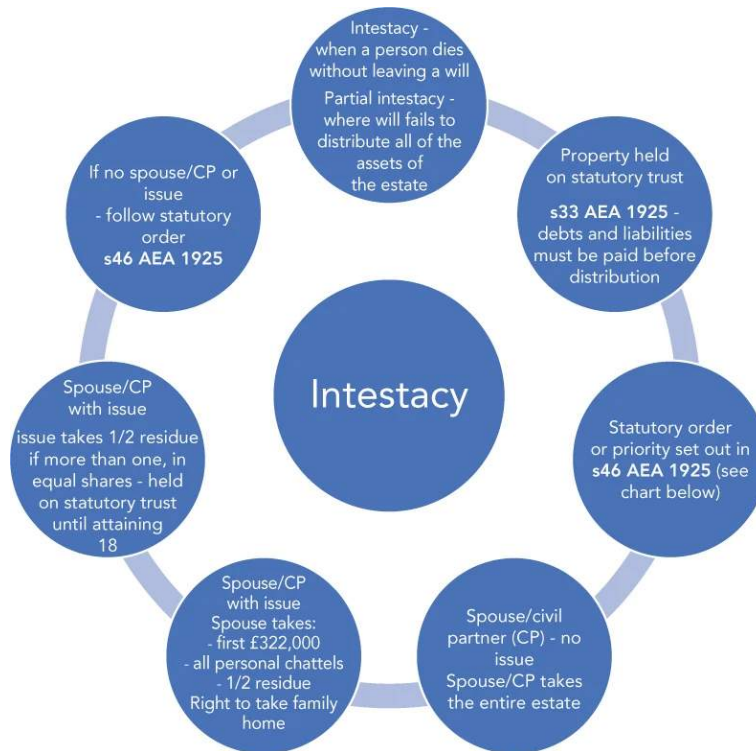
11.11 Summary

Intestacy

- Intestacy: when a person dies without leaving a will
- Partial intestacy: where will fails to distribute all of the assets of the estate
- Property held on statutory trust: s33 AEA 1925 – debts and liabilities must be paid before distribution
- Statutory order or priority set out in s46 AEA 1925 (see chart below)
- Spouse/civil partner (CP) – no issue: Spouse/CP takes the entire estate
- Spouse/CP with issue: Spouse takes:
 - first £322,000
 - all personal chattels
 - 1/2 residue
 - Right to take family home
- Spouse/CP with issue:
 - Issue takes 1/2 residue if more than one, in equal shares – held on statutory trust until attaining 18

- If no spouse/CP or issue – follow statutory order s46 AEA 1925

Figure 11.11a

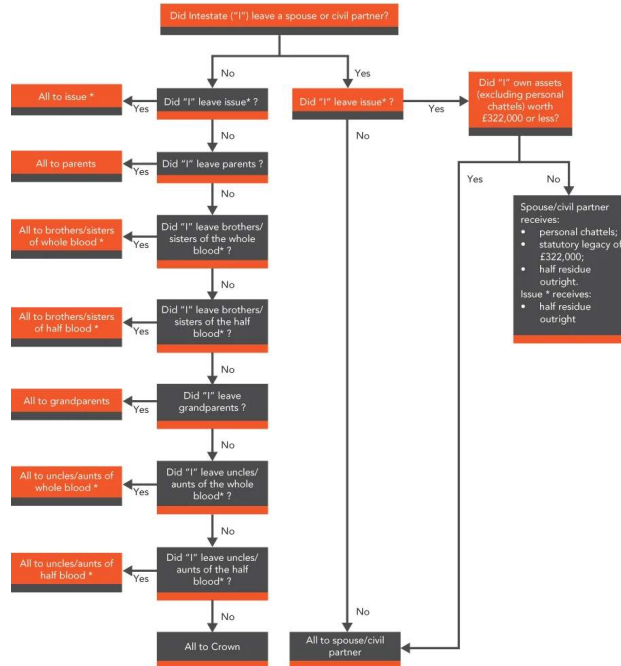


Intestacy rules - deaths from 26 July 2023 onwards

The following flowchart summarises the intestacy rules applying from 26 July 2023.

Figure 11.11b

Intestacy Rules – deaths from 26 July 2023 onwards



You have completed Chapter 11.

EXIT