The Law Commission

(LAW COM. No. 187)

FAMILY LAW

DISTRIBUTION ON INTESTACY

Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the Law Commissions Act 1965

Ordered by The House of Commons *to be printed*
18 December 1989

LONDON
HER MAJESTY'S STATIONERY OFFICE

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are—
The Right Honourable Lord Justice Beldam, *Chairman*
Mr Trevor M. Aldridge
Mr Jack Beatson
Mr Richard Buxton, Q.C.
Professor Brenda Hoggett, Q.C.

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DISTRIBUTION ON INTESTACY

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Summary

In this report the Law Commission reviews the law governing the distribution of property on intestacy and makes recommendations for reform. The present rules have not kept pace with changes in the nature and ownership of property and in the age structure of the population. In particular they fail to ensure adequate provision for a surviving spouse or equal treatment for those in similar financial circumstances. It is important that the rules are certain, clear and simple: those who wish to achieve a different result can and should be encouraged to make wills. The principal recommendation is that a surviving spouse should receive the whole estate which is not disposed of by will, but that otherwise the basic structure of the present rules should remain with only minor changes. A draft Bill to give effect to these recommendations and the report of a public opinion survey conducted for the Commission are appended.

THE LAW COMMISSION

Item 6 of the Fourth Programme: Family Law

DISTRIBUTION ON INTESTACY

To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain

PART I

INTRODUCTION

1. As part of the Commission's examination of the law relating to family inheritance,[1] we have undertaken a review of the law governing the distribution of property on intestacy. In July 1988 we published a working paper[2] which examined the present state of the law relating to intestacy and put forward suggestions for reform. We received a number of helpful comments in the course of consultation and we are grateful to all those who gave us their views. Our special thanks are due to Professor J. G. Miller of the University of East Anglia, who gave us the benefit of his knowledge and understanding of the subject in the preparation of the working paper. It also appeared to us that this was a subject upon which the views and expectations of the general public were particularly relevant. Accordingly, a survey of public opinion was undertaken which took place in December 1988.

2. The law relating to the distribution of property on intestacy was last reviewed by the Morton Committee in 1951.[3] Since then there has been much social change. Of particular relevance are the changes in the nature and distribution of property. There has been a great increase in home ownership, so that more people have substantial capital to leave.[4] The value of the fixed sum received by a surviving spouse (known as the "statutory legacy") has been eroded by inflation in general but particularly in relation to house prices which vary considerably in different parts of the country. Furthermore, the whole concept of a fixed sum is called in question by the development of types of property which do not form part of a deceased's estate and thus pass to his survivors irrespective of the provisions of a will or the law of intestacy. The principal examples of this type of "new property"[5] are pensions and life insurance[6] but there has also been an increase in joint ownership, of homes and other assets, under which the deceased's share passes automatically to the survivor.

3. Such developments arise from a multitude of causes which have nothing to do with the law of inheritance[7] but which in combination with that law can produce results which appear arbitrary and unfair. Following discussions with your Department at the time when the statutory legacy was last uprated,[8] we decided that the time might be ripe for a re-examination of the whole subject. Response to an initial request for views published in the legal press[9] suggested that in several respects the present law can give rise to hardship as well as unfairness.

4. A common practice when considering reform of intestacy is to conduct a survey of

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[1] First Programme of the Law Commission (1965), Law Com. No. 1, item X; superseded by Second Programme of Law Reform (1968), Law Com. No. 14, item XIX; and now by Fourth Programme of Law Reform (1989), Law Com. No. 185, item 6.

[2] Working Paper No. 108, Distribution on Intestacy.

[3] Report of the Committee on the Law of Intestate Succession (1951) Cmd. 8310.

[4] In 1987, 64% of all households were owner-occupied compared with 29.5% in 1950 (*Social Trends 1*, 1970 and *Social Trends 19*, 1989, p. 138).

[5] See Reich, "The New Property" (1963–64) 73 Yale L.J. 731; also Glendon, *The New Family and the New Property* (1981).

[6] Currently approximately 8% of personal disposable income is used to provide these, an increase from 5.4% in 1971 (*Social Trends 18*, 1988, p. 110): no equivalent figures exist for the 1950s.

[7] The increase in joint home ownership, for example, owes much to the decision of the House of Lords in *Williams and Glyn's Bank Ltd.* v. *Boland* [1981] A.C. 487.

[8] Family Provision (Intestate Succession) Order 1987, S.I. 1987/799.

[9] Law Society's Gazette, 3 December 1986; New Law Journal, 28 December 1986; Solicitors' Journal, 5 December 1986.

wills.[10] We have therefore made a study of recent work of this nature.[11] As we explained in the working paper,[12] however, we believe that the results of such studies are of limited value in relation to intestacy. It is rarely possible to tell from the will itself what relatives the testator has, either at his death or when the will was made, or whether he has property which will pass outside his estate. Testators' dispositions may also be unreliable as a guide to the wishes of intestate persons since wills made by older people may not be appropriate for intestates who die prematurely while wills made by younger testators may not reflect their ultimate intentions. Moreover, wills are often governed by a desire to avoid or mitigate liability to tax. In our view, a much more reliable guide to the wishes of those who may die intestate is provided by the survey of public opinion conducted for us.

5. We should emphasise that we are not here examining either the granting of letters of administration or the actual administration of estates. We are concerned only with the rules governing how the property of a person who has died without disposing of it by will is to be distributed. Our survey suggests that intestacy is common. Of the total population surveyed, some 33% had already made a will, a further 40% intended to do so, but the remainder had not thought about it or thought it unnecessary. Will-making was more common amongst the older age groups and amongst those likely to have something to leave. Very few of those in the higher income groups did not intend to make a will if they had not already done so. Generally speaking, it appears that the intestacy rules provide a safety-net for those who have, or think they have, little to leave, or who have not thought about it, or who die prematurely.[13]

6. The intestacy rules inevitably cannot provide for every situation. They can only hope to provide a solution which is fair and reasonable in the general run of cases. This is not a matter of criticism, because the operation of the rules can be avoided by the simple expedient of making a will. It is important that there should be wide understanding both of the intestacy rules and of the need for those who wish to dispose of their property in other ways to make a will and to remake it should they marry or re-marry. We hope that public bodies as well as professional associations and advisers make every effort to ensure that this is generally appreciated. We understand that many solicitors advising clients on divorce already suggest making a will and we would hope that it is routine practice on divorce or following a death to advise that re-marriage will revoke a will.

7. The arrangement of this report is as follows. Part II sets out the present law and what we perceive to be its defects. Part III and Part IV set out our detailed recommendations for reform. These recommendations are summarised in Part V. A draft Bill to implement them appears in Appendix A. Appendix B contains a list of those persons and organisations who commented on our initial request for views and on Working Paper No. 108 and in Appendix C we set out the results of the public opinion survey.

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[10] See Morton Report (1951) Cmd. 8310, para. 3.

[11] See Royal Commission on the Distribution of Income and Wealth, Report No. 5 (1977) Cmnd. 6999, ch. 5; Horsman, "Inheritance in England and Wales; the evidence provided by wills", (1978) Oxford Economic Papers 409; Harmer, "Inheritance in Greater London: the evidence provided by wills" (1988) unpublished; for a Scottish study, see Munro (1988) 17 J. Soc. Policy 417.

[12] Working Paper No. 108, paras. 4.2–4.4.

[13] By far the majority of people die over retirement age. In 1988 in England and Wales 80% of deaths were of people over 65 (Population Trends 57 (1989), table 19). This proportion will increase as life expectancy increases; it is estimated that life expectancy will rise from 71.5 for men and 77.4 for women in 1985 to 75 and 80 respectively by 2011 (*Social Trends 19*, 1989, p. 116).

PART II

THE PRESENT LAW AND ITS DEFECTS

Outline of the present law

8. An intestacy arises when a person dies without having left a valid will disposing of his property. When this happens the person's estate vests temporarily in the Probate Judge[14] until letters of administration have been granted.[15] Following the grant, the deceased's property is held by the personal representatives on trust for sale[16] and then distributed according to the scheme set out in section 46 of the Administration of Estates Act 1925 as amended, principally by the Intestates' Estates Act 1952. Entitlement under the statutory scheme varies according to which relatives, if any, survive the deceased.

(a) *Where there is a surviving spouse*

9. If there are surviving issue of the deceased, the spouse will receive a statutory legacy of £75,000,[17] the deceased's personal chattels[18] and a life interest in half the residue. The remainder is held on the statutory trusts[19] for the issue who take *per stirpes*.[20] If there are no issue but parents or siblings of the whole blood (or their issue) who survive, the spouse will receive a statutory legacy of £125,000,[21] the deceased's personal chattels and half the remainder absolutely. The other half is taken by the parents or, if no parents survive, the siblings of the whole blood (or their issue). The statutory legacies are uprated from time to time by statutory instrument but no criteria are laid down for doing so. The revised figures apply only to deaths taking place after the instrument comes into force.[22] If there are no issue, parents or siblings of the whole blood (or their issue), the spouse will receive the whole estate.

10. It should be noted that the intestacy rules do not give the surviving spouse any entitlement to the matrimonial home. In many cases, of course, this does not matter as the surviving spouse is a beneficial joint tenant of the matrimonial home and will therefore receive the home automatically by virtue of the doctrine of survivorship. However, where the surviving spouse is not such a joint tenant he or she has no absolute entitlement to the matrimonial home. Instead, such a spouse may be able to rely upon the right to have it appropriated.[23] In order to be able to take advantage of this right, the intestate's estate must comprise a dwelling house in which the surviving spouse was resident at the time of the deceased's death.[24] If that pre-condition is fulfilled the surviving spouse can require the personal representatives to appropriate any interest of the deceased in the dwelling house in satisfaction of any absolute interest[25] received by the surviving spouse upon intestacy. If the value of the deceased's interest in the dwelling house is greater than the value of the property received upon intestacy, the surviving spouse can still exercise the right provided that the shortfall is made up by the spouse from his or her resources.

11. The spouse is entitled to elect to have any life interest capitalised.[26] Such an

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[14] i.e. the President of the Family Division of the High Court of Justice; see Practice Direction [1985] 1 All E.R. 832. In our Report on Title on Death (1989), Law Com. No. 184, we recommended that the Public Trustee be substituted for the President.

[15] Administration of Estates Act 1925, s.9.

[16] *Ibid.*, s.33.

[17] Family Provision (Intestate Succession) Order 1987, S.I. 1987/799, plus interest at a specified rate from the date of death; see Administration of Justice Act 1977 s.28(1) and Intestate Succession (Interest and Capitalisation) Order 1977, S.I. 1977/1491, as amended by S.I. 1983/1374.

[18] Personal chattels are defined in s.55(1)(x), Administration of Estates Act 1925.

[19] *Ibid.*, ss.46, 47(1)(i). Issue includes children and grandchildren of any children of the deceased. It is now immaterial whether the parents were married to one another or not, see Family Law Reform Act 1987, s.18, and adopted children are treated as the children of their adoptive parent, see Adoption Act 1976, s.39.

[20] i.e. if a child has already died, his children will receive the share the child would have received.

[21] Family Provision (Intestate Succession) Order 1987, S.I. 1987/799, plus interest.

[22] Family Provision Act 1966, s.1; since then the statutory legacies have been uprated in 1972, 1977, 1981 and 1987.

[23] This right is contained in the Intestates' Estates Act 1952, s.5, Schedule 2.

[24] Note that the dwelling house does not necessarily have to be the matrimonial home, although it will usually be so.

[25] This includes the capital value of a life interest which the surviving spouse has elected to have redeemed.

[26] Administration of Estates Act 1925, s.47A.

election should be made within twelve months of the date when letters of administration are taken out and the notice exercising the right must be in writing. The personal representatives can pay the capital sum out of the residuary estate or raise it on the security of the residuary estate. The method of calculating the capital value is laid down by statutory instrument.[27]

(b) *Where there is issue but no surviving spouse*

12. In this situation the issue will take the whole estate in equal shares. If the issue are minors the property will be held upon the statutory trusts[28] on the condition that the minors reach the age of majority or marry before that age. Issue are subject to a hotchpot[29] rule. This provides that issue must, subject to any contrary intention, bring into account any property which was advanced to them by the deceased or which was given to them by the deceased on the occasion of marriage. The value of this is added to the total value of the estate to be divided and the individual child's share is then reduced accordingly. If a child of the intestate has predeceased him the issue of the child take the share the child would have taken.

(c) *Where there is neither spouse nor issue*

13. Where there is neither a surviving spouse nor issue the estate passes to the parents in equal shares. If there are no parents surviving, the relatives take the estate in the order of priority set out below.[30] With the exception of grandparents, each class of relatives takes upon the statutory trusts. The classes are:

(i) siblings of the whole blood; failing these,

(ii) siblings of the half blood; failing these,

(iii) grandparents; failing these,

(iv) uncles and aunts of the whole blood; failing these,

(v) uncles and aunts of the half blood.

If there are siblings of the whole blood who survive the deceased then that class takes the estate in equal shares to the exclusion of all other classes. If there are no surviving siblings of the whole blood then the next surviving class of relatives takes the estate in equal shares.

14. The issue of any of these relatives can take their place within the class. Hence, if the deceased has left a nephew and a grandparent, the nephew will take the estate because he is issue of a sibling.[31]

(d) *Where there are no surviving relatives*

15. Where there are no relatives within any of the categories, the Crown[32] takes the estate as *bona vacantia*. However, under section 46 of the Administration of Estates Act 1925, the Crown has a discretion to provide for the intestate's dependants and any other person[33] for whom he might reasonably have been expected to provide. It is immaterial whether that person is related to the deceased.

(e) *Partial intestacy*

16. A partial intestacy arises either when a will vests all the deceased's property in executors but does not dispose of the beneficial interests in it or when a will disposes of only part of the estate. Where there is a partial intestacy, section 49(1) of the Administration of Estates Act 1925 is applicable to any of the deceased's property not effectively disposed of by will. This section operates as if the legislature had inserted at the end of every deceased person's will an ultimate gift of any undisposed of property in

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[27] Intestate Succession (Interest and Capitalisation) Order 1977, S.I. 1977/1491.
[28] Administration of Estates Act 1925, ss.46, 47(1)(i).
[29] *Ibid.*, s.47(1)(iii).
[30] *Ibid.*, s.46(1)(v).
[31] *Ibid.*, s.47(3).
[32] Or the Duchy of Lancaster, or the Duke of Cornwall; 1925 Act, s.46(1)(vi).
[33] The definition of person includes corporate bodies.

favour of those beneficially entitled upon intestacy. The table set out in section 46 is therefore applicable, subject to two important additional hotchpot rules. First, a surviving spouse takes the statutory legacy less the value at the date of the deceased's death of any beneficial interests received under the will.[34] If the value of the beneficial interests is greater than the statutory legacy, no lump sum is payable. However, no matter how much a spouse receives under the will, the spouse will always take the life or absolute interest (whichever is appropriate) in half the remaining intestate estate without any reduction. Secondly, issue who have acquired beneficial interests under the will of the deceased must also bring those interests into account.[35]

Defects of the present law

17. There was virtually unanimous agreement among respondents to our working paper that the present law is in need of reform.[36] Consultees also agreed that its principal defect is the failure to ensure adequate provision for a surviving spouse. There are several reasons for this.

18. First, the statutory legacy is often insufficient to ensure that the surviving spouse is able to remain in the matrimonial home, even though the estate is otherwise large enough to enable him or her to do so. House values vary considerably in different parts of the country and also rise (or fall) at different rates. A figure which is large enough to cover the price of an average home in central London would give a substantial surplus to widows living elsewhere. Secondly, even if the legacy is sufficient to retain the home, it will often leave the survivor with very little on which to live or maintain the home.

19. This basic defect is compounded by two other, more technical problems. First, even supposing that the purpose of the statutory legacy is to enable the survivor to keep the home, the present rules make no distinction according to how the home is owned or tenanted. If the home was beneficially jointly owned by the couple, the survivor acquires the deceased's interest automatically and therefore receives the whole home and a full statutory legacy. If the couple were tenants in common, perhaps because they owned in unequal shares or one had contributed to the purchase of the home in the other's name, the deceased's interest forms part of his or her estate and thus counts towards the statutory legacy. If the home was wholly owned by the deceased, of course, it will all count. The choice of tenure is sometimes deliberate, but by no means always so, particularly among elderly couples who bought their homes some time ago. Where the home is rented, no account is taken of whether the survivor will be entitled to succeed to a statutory or secure tenancy (with, in the latter case, the right to buy the freehold on favourable terms). Similarly, where there are savings or other assets apart from the home, it may be a matter of chance whether these form part of the deceased's estate or take the form of pensions or life assurance benefits passing to the survivor automatically. Such disparities in what survivors receive will often seem arbitrary and unfair.

20. Secondly, the statutory legacies must from time to time be uprated by statutory instrument. The legacy applicable is that in force at the date of death. This can lead to gross disparity in the treatment of deaths taking place on either side of the date on which the legacy changed.[37] Further, if the survivor has the house appropriated, in or towards satisfaction of the legacy, the legacy is that at the date of death, whereas the house is valued at the date of appropriation[38] which could be years later.

21. If these rules can produce results which seem arbitrary or unfair in relation to the surviving spouse, the same can be said in relation to issue or other relatives. The children's expectations will depend, not upon how well their surviving parent is provided for, but upon the nature and tenure of their deceased parent's assets.

22. A further defect of the present rules is that, in places, they are complex and expensive to administer. It must be remembered that many administrators of estates

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[34] 1925 Act, s.49(1)(aa).
[35] *Ibid.*, s.49(1)(a).
[36] Only one consultee questioned this.
[37] On 1 June 1987, for example, the legacy for those with issue changed from £40,000 to £75,000.
[38] *Re Collins, decd.* [1975] 1 W.L.R. 309.

are lay persons who have little previous knowledge and experience of the intestacy rules. Some consultees remarked that life interests are expensive and difficult to administer. The same can be said of the statutory trusts for minor issue of the deceased. Some consultees pointed out that the hotchpot provisions,[39] especially on partial intestacy, are difficult to understand. They are also unjust, in that they apply only to issue, and to spouses on partial intestacy, and not to other relatives. The absence of a survivorship clause was also singled out as a factor leading to delay and extra expense.[40]

23. In summary, the major defects in the present rules identified on consultation were the failure to ensure adequate provision for the surviving spouse; the problems arising from the statutory legacy; and the complexity and expense in administration caused by some of the additional rules. In our view, a system which was first devised in 1922 and has received only minor modifications since then is quite inappropriate to modern social and economic conditions. Increasing life expectancy means that a growing proportion of retired people require sufficient resources to maintain them in old age.[41] The effect of the present rules can be to transfer resources from the retired to the working population at just the time when the former need them most.[42] Moreover, the radical changes in the nature and distribution of property already referred to,[43] and in particular the extent of property now passing outside the deceased's estate, mean that the present rules produce very different results in families with otherwise similar standards of living and overall resources. The case for reform is overwhelming.

[39] i.e. Administration of Estates Act 1925, ss.47(1)(iii), 49(1)(a), 49(1)(aa).

[40] See para. 56 below.

[41] On current projections, persons aged 65 or over as a percentage of those aged 15 to 64 years will rise from 22% in 1985 to 30% in 2025 (*Social Trends 19*, 1989, p. 33).

[42] Eighty per cent of deaths occur at or over the age of 65; differences in life expectancy, however, mean that one member of a couple is likely to survive the other for some time; in 1985, male life expectancy at birth was 71.5 and female 77.4 (*Social Trends 19*, 1989, p. 116).

[43] Para. 2 above.

PART III

REFORM OF THE INTESTACY RULES

24. There are a number of principles upon which the rules of intestacy might be based and in our working paper we canvassed the respective merits of the presumed wishes of the deceased, the needs or deserts of the survivors, and the status of the surviving spouse.[44] The present law is based upon a combination of these, although the underlying object has been to do what the deceased himself, or herself, might have wished.[45] Our consultation produced no agreement upon the single most appropriate principle to be applied. Whatever the principles chosen, however, consultees were agreed on two fundamental points. In framing our recommendations for reform, therefore, we have had those two considerations principally in mind.

25. The first is that the intestacy rules should be certain, clear and simple both to understand and to operate. They do not lay down absolute entitlements, because the deceased is always free to make a will leaving his property as he chooses. They operate as a safety net for those who, for one reason or another, have not done this. If the rules can conform to what most people think should happen, so much the better. If they are simple and easy to understand, the more likely it is that people who want their property to go elsewhere will make a will. It is also important to enable estates to be administered quickly and cheaply. The rules should be such that an ordinary layman can easily interpret them and consequently administer them.[46] Also the rules should make it unnecessary for an administrator to have to determine complex or debatable questions of fact.[47]

26. Our second consideration, on which consultees were also agreed, is the need to ensure that the surviving spouse receives adequate provision. This should mean that, wherever possible, the spouse is entitled to remain in the matrimonial home and receive a sufficient income. A spouse who does not receive reasonable provision, which is a wider concept than what is reasonable simply for his or her maintenance, is entitled to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975. But in the great majority of cases it is wrong that he or she should have to incur the expense and delay inevitably associated with litigation in order to achieve this.[48] The same applies to, in particular, minor children of the deceased, for whom he or she also has an obligation to provide maintenance. The rules themselves should be adequate to achieve the right result for the great majority, leaving resort to the courts for that small minority where injustice is caused.

27. Any system which relies on simple and certain rules will inevitably give rise to some hard cases. It would only be possible to cater for the particular circumstances of each individual case by giving a discretion, either to the administrators of the estate or to the courts. There was no support for the concept of discretionary trusts touched on in the working paper[49] and universal resort to the courts is obviously impracticable. There are, however, two mechanisms available to deal with two different types of hard case, the one arising after and the other before the death. The first is the power of the court under the Inheritance (Provision for Family and Dependants) Act 1975 to redistribute the estate so as to provide a reasonable share for a surviving spouse and reasonable

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[44] Working Paper No. 108, Pt. IV.

[45] See Morton Report (1951) Cmd. 8310, e.g. para. 16; Sherrin and Bonehill, *The Law and Practice of Intestate Succession* (1987), pp. 14–23.

[46] The public opinion survey revealed that few respondents had a thorough understanding of the law of intestacy. Although 48% of respondents had had some experience of intestacy, usually because "someone close" had died intestate, only 9% had actually administered an estate. See Appendix C, Table 2.

[47] e.g. as to whether a couple had been living together as husband and wife or a child had become a "child of the family".

[48] See, e.g., *Rajabally* v. *Rajabally* (1987) 17 Fam. Law 314.

[49] Working Paper No. 108, para 5.2.

provision for the maintenance of certain other categories of applicant.[50] This recognises their entitlement to such provision as is reasonable in all the circumstances, even if they would not otherwise receive it under the deceased's will or the rules of intestacy. The second mechanism is the power of the Court of Protection under the Mental Health Act 1983 to make a will on behalf of a person who is incapable of making a valid will for himself.[51] This is to enable the estate to be disposed of as the testator might wish, had he or she been able to do so. Together these two mechanisms do not cater for all the people who may feel that they had expectations of the deceased, but they do represent the circumstances in which there is thought to be sufficient cause to intervene on their behalf.

Provision for the surviving spouse

28. There seem to us to be only three possible ways in which to ensure that the surviving spouse receives adequate provision: first, for the spouse to receive a greatly increased statutory legacy and a share of any residue; second, for the spouse to receive the home automatically, together with an increased statutory legacy and possibly a share of any residue; and third, for the spouse to receive the whole estate. We have concluded that the solution which will provide the right result in the great majority of cases is for the surviving spouse to receive the whole estate.

29. Although one must be wary of attaching too great weight to the views of people who have not had the opportunity of considering the issues at length, the results of our public opinion survey do give an indication of how members of the general public value the claims of a surviving spouse as against those of children and other relatives. They are also the best evidence available to us of how those who may die intestate would wish their estates to be distributed. There was very considerable support for the surviving spouse[52] receiving the whole estate. Where the surviving spouse had dependent children, 79% of the respondents favoured the spouse receiving the whole estate.[53] Even when there were independent adult children, 72% of the respondents considered that the surviving spouse should receive the whole estate.[54] Where an intestate was survived by a spouse and siblings, 87% were in favour of the surviving spouse receiving the whole estate.[55] Those who were married or widowed were slightly more likely than other groups to favour this solution. Those in the higher income groups were also slightly more likely to do so. None of the other solutions attracted any significant support.

30. Response to our working paper was more divided but this was the single most popular option of the three. Those who favoured other models agreed that the statutory legacy would have to be raised to a much higher level. If the statutory legacy is raised to a level which is sufficient to ensure adequate provision for the surviving spouse, the practical result in the vast majority of cases will be that the surviving spouse receives

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[50] The categories of applicant listed in section 1(1) are:

(a) the wife or husband of the deceased;

(b) a former wife or former husband of the deceased who has not remarried;

(c) a child of the deceased;

(d) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;

(e) any person . . . who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased.

The basis of "reasonable financial provision" defined in section 1(2) is:

(a) in the case of an application made by virtue of subsection (1)(a) above by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance;

(b) in the case of any other application made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

[51] Mental Health Act 1983, s.96(1)(e), (4)(b); this power was first introduced by the Administration of Justice Act 1969.

[52] Of a first marriage; for second marriages see para. 41 below.

[53] See Appendix C, Tables 5, 6, 15/1 and 18/1.

[54] See Appendix C, Tables 4 and 12/1.

[55] See Appendix C, Table 9.

the whole estate. Of course, there will always be a few large estates where only a fraction of the property available for distribution would be necessary to ensure adequate provision for the surviving spouse. However, such very large estates form a very small minority of all estates and it would be unfortunate and inappropriate if considerations applicable only to them were to determine the rules for all intestacies. Those who have large estates are more likely to make wills,[56] or to dispose of their property during their lives, for the purpose of providing for their families with the minimum possible liability to tax. They are likely to have the benefit of professional advice and, if they wish to achieve a different result from the intestacy rules, can reasonably be expected to do so.

31. Any alternative solution would involve retention of the statutory legacy with all its attendant problems. It would be difficult to fix on an appropriate initial figure and thereafter provision would have to be made for uprating. The current system of uprating by statutory instrument is clearly unsatisfactory. Provision could be made for automatic annual uprating but respondents who favoured retention of the legacy were unable to agree on a satisfactory index. Linking it to the Retail Prices Index would be unable to reflect the different rates of change of house prices across the country and so would be inappropriate. The lending institutions produce indices of such changes but it would be quite impracticable to have different statutory legacies in different parts of the country. Furthermore, if the legacy is also designed to produce additional income for the surviving spouse, fluctuations in interest rates will be as important as fluctuations in house and other retail prices.

32. Reliance on a statutory legacy alone would not, of course, solve the problems arising from disparities in tenure of the matrimonial home. One solution[57] to this would be for the surviving spouse to receive the matrimonial home and either a statutory legacy and a share of the residue or just a share of the residue. This would of course ensure that the surviving spouse, wherever possible, received the matrimonial home and would distinguish between very large estates and the rest. However, this proposal also has several drawbacks. Although it might be easier to find a satisfactory index for uprating the statutory legacy, there would still be problems in fixing its initial value and some disparity of treatment according to tenure. There would also be disparity between those who had a home and those who did not. In particular, the home may have been sold when the couple had to enter a residential or nursing home. When one dies the other may need all the remaining capital in order to finance his or her care. This solution, like the earlier one, would also do nothing to redress the disparities caused by other types of property passing outside the deceased's estate.

33. Given that, on any view, there would be very few intestate estates which did not all go to the surviving spouse, and that of the remainder there would be many where this was still the right result, it does not seem to us that the disadvantages entailed in the alternative solutions can be justified by any advantage. We therefore *recommend* that on intestacy a surviving spouse should receive the whole estate.

34. This recommendation has several additional advantages of a more technical nature. First, it would no longer be necessary to retain the power to appropriate the matrimonial home.[58] In the past problems have arisen in the use of the power of appropriation. This is because the value of the statutory legacy is at the date of the intestate's death. However, any appropriation of the matrimonial home, in or towards satisfaction of the surviving spouse's legacy has to be made at the value of the house at the time of appropriation.[59] In the interval between the intestate's death and the time of appropriation, house prices will often have risen quite sharply so that the statutory legacy will no longer be sufficient to enable the surviving spouse to remain in the matrimonial home.

35. Secondly, life interests will no longer be created. Although some consultees

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[56] The public opinion survey showed that those in socio-economic category AB were less likely to die intestate than other socio-economic groups. The survey also revealed that the older the person the more likely that person is to have made a will. See Appendix C, Table 1A. As those in the older age groups and socio-economic category AB usually have more property to leave, this means that it is less likely that a person who has a large estate will die intestate.

[57] See Working Paper No. 108, para. 5.5(iii),(iv).

[58] Intestates' Estates Act 1952, s.5, Schedule 2.

[59] *Re Collins, decd.* [1975] 1 W.L.R. 309.

considered that life interests serve a useful function, the majority submitted that life interests should not be created under the intestacy rules. It was commonly agreed that life interests are more expensive to administer and although we do not consider them unduly complex they undoubtedly prolong the period of administration for what can be a considerable time. The right of redemption, though useful, is a further complexity which, it appears, is rarely invoked. The absence of life interests from the intestacy rules will, therefore, make the administration of estates easier, cheaper and shorter.

36. The third benefit is that where there is a spouse and minor issue, there will no longer be any need for the statutory trusts.[60] The statutory trusts are a cumbersome and complicated way of providing for minor issue. A minor has to rely upon the discretion of the personal representatives in exercising[61] the powers of maintenance[62] and advancement[63] in order to receive any provision. These powers impose limitations on how much property can be given to a minor and for what purposes. For example, only one half of the presumptive share of a minor can be applied for the benefit of the minor. Yet it is while the children are young that the household may be most in need of the additional resources represented by their presumptive shares, for example so that they can remain in the same house, or go to the same schools, or receive proper attention to any special needs they may have.[64]

37. Our recommendation that the surviving spouse should receive the whole estate might therefore be thought open to the objection that it ignores the interests of minor children. If the role of the intestacy rules is to ensure that both the surviving spouse and the minor issue receive adequate provision, the virtue of the present law is that it at least provides that issue receive some part of the estate.[65] We agree that one of the purposes of the intestacy rules is, so far as possible, to provide minors with sufficient resources to meet their needs, and, indeed, that the needs of minor children should take precedence over the expectations of adult issue. However, we also agree with the majority of consultees who argued that the interests of minor children are normally best served by their surviving parent being adequately provided for. The public opinion survey also supports this. The children will almost always be living with the parent and sharing whatever standard of living he or she is able to enjoy. Difficulties and delays in the administration of the estate may contribute to their problems in adjusting to this drastic change in their lives. The greatest possible flexibility in the use of the available resources may be needed to cushion the blow. If their surviving parent does not look after them properly, then he or she can be ordered to make proper provision for them to be cared for elsewhere, under the ordinary laws relating to the maintenance of children.[66]

38. A second criticism of our recommendation might be that it does not promote efficient tax planning. As long as the nil rate band of inheritance tax[67] exists there is an objection to leaving the entire estate to the surviving spouse since this would "waste" the intestate's nil band and increase inheritance tax liability on the death of the surviving spouse. It would instead be more tax effective to give the issue a share of the estate. However, we believe that taxation considerations should not be taken into account in formulating the intestacy rules. The essence of the intestacy rules should be that the surviving spouse and minor issue receive adequate provision. It is not the function of those rules to attempt to minimise any potential inheritance tax liability on

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[60] See Administration of Estates Act 1925, ss.46, 47(1)(i).

[61] The power to exercise the powers of maintenance and advancement is contained in Administration of Estates Act 1925, s.47(1)(ii).

[62] Trustee Act 1925, s.31(1).

[63] Trustee Act 1925, s.32.

[64] It is significant that the shares of issue are conditional on attaining majority and that the power to advance against a merely presumptive share was seen as a radical innovation. In modern times, the claim of a disabled child who was not expected to reach majority might be thought superior to that of an able-bodied adult.

[65] Provided, of course, that the estate excluding personal chattels is worth more than £75,000.

[66] Principally under the Guardianship of Minors Act 1971, ss.11C to 12D or Children Act 1975, ss.34 to 34B; see also Children Act 1989 (which received the Royal Assent on 16 November 1989 and is expected to come into force in Autumn 1991), s.15 and Schedule 1; the position where the surviving spouse is not the children's parent is considered at para. 43 below.

[67] The nil rate is currently applicable to the first £118,000.

the estate of the surviving spouse.[68] Any person who wishes to mitigate the potential inheritance tax liability on an estate can reasonably be expected to make a will. In this view we were strongly supported by the great majority of consultees.

39. A further possible criticism is that the present rules benefit some unmeritorious spouses who should be excluded. We asked in our working paper whether a separated spouse should be disentitled from receiving a share upon intestacy.[69] It could be unjust for a separated spouse who had had no contact with the deceased suddenly to inherit the whole estate. However, most consultees were against this. The circumstances of each separation vary and it would probably be necessary to provide a minimum period, which could give rise to difficulties of proof. Spouses who wish to avoid the intestacy rules can make wills or obtain a decree of judicial separation. If separated spouses have chosen to leave their marriages intact then the intestacy rules should treat their marriages in a similar fashion to any other marriage. Most consultees were also against the suggestion that a spouse should become disentitled when a decree nisi of divorce has been pronounced and should instead rely upon a claim under the Inheritance (Provision for Family and Dependants) Act 1975.[70]

40. A further problem raised in the working paper was that of the exploitative marriage of an elderly or mentally frail person.[71] Few consultees commented on this point but some agreed that there was a danger. It would obviously complicate the operation of rules which are meant to be certain, clear and simple, if the law were to make special provision for a real but apparently very rare problem. We consider that it is better dealt with by the power to make a statutory will before the person dies[72] or by adjustment under the Inheritance (Provision for Family and Dependants) Act 1975. We should add that all these problems arise under the present law and are unlikely to be significantly increased by the recommendation that the surviving spouse should receive the whole estate.

41. The question which has given us most difficulty, however, is whether spouses of second or subsequent marriages should be treated differently under the intestacy rules in cases where the intestate leaves issue of a former marriage. The majority of the respondents in the public opinion survey took the view that such spouses should be treated differently.[73] It was considered by some consultees that the present rules were unfair in that children of former marriages could end up inheriting none of what was originally their parents' property.

42. However, we have concluded that the intestacy rules should not give issue of former marriages rights upon intestacy. There are several reasons for this. First, if issue of former marriages are to receive a share upon intestacy it would mean that in some cases the surviving spouse would not receive adequate provision. Children of former marriages are often middle aged at the death of their parents and unlikely to need financial provision.[74] By contrast, the surviving spouse will, in most cases, need to receive the whole estate in order to ensure that he or she can remain in the matrimonial home. Since one of the principal aims of the intestacy rules is that the surviving spouse should receive adequate provision, any provision for issue of former marriages would detract from the fulfilment of this goal. Of course, as we have said earlier,[75] there will always be a few cases of large estates where only a fraction of the property would suffice for the surviving spouse's needs. But in these cases we believe that it is reasonable to expect individuals to make wills if they wish to benefit issue of former marriages.

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[68] Indeed, attempts to do so may well result in the surviving spouse being inadequately provided for if he or she survives for a considerable time and the issue are unable or unwilling to volunteer assistance.

[69] Working Paper No. 108, para. 5.3(i).

[70] *Ibid.*, para. 5.3(ii).

[71] *Ibid.*, para. 5.5(v).

[72] Mental Health Act 1983, s.96(1)(e), (4)(b); see *Re Davey, decd.* [1981] 1 W.L.R. 164.

[73] Where the deceased left a second wife, a former wife and three adult children, and his estate included the matrimonial home, only 27% of all respondents favoured the surviving spouse receiving the whole estate, but a further 24% favoured her receiving the house; if there was no house, 34% favoured her receiving the whole estate. See Appendix C, Tables 7, 8, 21/1 and 24/1.

[74] The basic demographic facts relating to age at death and age of child-bearing mean that all children are likely to be grown-up when their parents die but this is even more likely for children of earlier marriages or relationships.

[75] Para. 30 above.

43. It is also true that children of a former marriage will sometimes be minors at the time of the death of their parent and therefore usually in need of maintenance. Sometimes they will have been living with the deceased and the surviving spouse and will continue to live in the same household, in which case provision for the surviving spouse will normally cater for their needs. As they are "children of the family", a surviving spouse who fails to look after them properly can be ordered to make provision for them under the ordinary law relating to the maintenance of children.[76] This provides for lump sums and property adjustment, as well as periodical payments, and may well be a better and more flexible solution than an application under the Inheritance (Provision for Family and Dependants) Act 1975,[77] although that too may be available. Where the children are not "children of the family", they will sometimes have been supported by the deceased and sometimes not. If the deceased has been maintaining his children by a former marriage, a claim under the 1975 Act would almost inevitably succeed. The surviving spouse would be most unwise to refuse a reasonable settlement as the costs would normally be borne by the estate.

44. Furthermore, it is now the policy of the law to draw no distinction in matters of inheritance between issue of marital and non-marital relationships.[78] Any special rule would therefore have to refer to all cases where the deceased left issue of a relationship other than that with his surviving spouse. Such a rule would enormously complicate the administration of all estates where there was a surviving spouse, whether of a first or a subsequent marriage, and given that adequate provision would still have to be made for the spouse, it would benefit only a very few people overall.

45. Finally, the circumstances of second (or subsequent) marriages vary so much that only discretionary provision would be able to take into account all the relevant factors. The intestacy rules simply cannot take into account the relative merits of spouses and issue. Some second marriages are short and others long. Some spouses are provided for in other ways and some are not. Some children of other relationships are self-supporting and others not. We recognise that family circumstances are now a great deal more various than once they were. But that very fact means that a system designed to provide certain, clear and simple rules which meet the great majority of cases cannot be adapted to cater for them properly. The alternatives of making a will, discretionary provision under the 1975 Act, and the ordinary law of child maintenance are much better adapted to do so.

46. While our recommendation would make a significant change in the intestacy rules themselves, it would not make a radical break from the effect of the original rules. The Law of Property Act 1922 provided for a statutory legacy of £1,000. Analysis of intestates' estates at that time had shown that 98% of estates were worth less than £1,000. As the Solicitor-General, Sir Leslie Scott, made clear during the passage of the Bill through the House of Commons,[79] the statutory legacy was set at £1,000 to ensure that in the great majority of cases the surviving spouse received the whole estate absolutely.

Division of property where there is issue but no spouse

47. It has already been mentioned that the majority of consultees considered the hotchpot provisions complicated and difficult to administer.[80] It must be remembered that estates are often administered by lay persons who do not have previous experience of administering an estate.[81] The rule is also unjust in that it applies to issue but not to other relatives. It can easily operate to defeat the actual intentions of the deceased, as the burden of proving a contrary intention lies with the issue concerned. It would also be very difficult to provide for all possible benefits received, not only during the deceased's lifetime but also on death, in a fair way. The majority view on consultation was that the rule should be repealed and we so *recommend.*

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[76] Under the Children Act 1989 (see n.66) the orders available for the maintenance of minor children of the family are the same as those available for the respondent's own children; see s.15 and Schedule 1, para. 16(2).

[77] e.g. because leave is necessary for any application under the 1975 Act once six months have elapsed from the date on which representation is first taken out; 1975 Act, s.4.

[78] Family Law Reform Act 1987, s.18.

[79] *Hansard* (H.C.) 15 May 1922, vol. 154, col. 99.

[80] See para. 22 above.

[81] See n. 46.

48. There was little support among consultees for change in the method of distribution.[82] It was considered that the introduction of *per capita* distribution would entail extra expense and delay in the administration of estates. It was noted that there was little public call for change in the method of distribution. We agree and recommend no change.

49. Similarly, few consultees favoured a change in the definition of issue.[83] To expand the definition to include "children of the family"[84] would mean that administrators would have to make complex decisions of fact in their judgment of whether a child was a "child of the family". To include such children could lead to unfair results unless there was a complementary provision which denied the "treated" child the right to share in the estate of his or her natural parent. Such a provision would make the intestacy rules more complicated and would be contrary to our aim of keeping them simple. As we consider that the Inheritance (Provision for Family and Dependants) Act 1975 provides sufficient protection for "children of the family", we recommend no change in the definition of issue.

Division of property where there is no issue or spouse

50. A majority in the public opinion survey was in favour of an equal division of property between parents and siblings.[85] If there were no parents or siblings of the whole blood alive, the existing order of devolution would continue to operate. However, the majority of consultees argued that there should be no change to the existing order of devolution. None of the possible reforms outlined in the working paper was favoured.[86] It was considered that to extend the list of eligible relatives would lead to extra costs. It was also submitted that parents who have brought up the deceased should have a prior claim to the distribution of property on intestacy.

51. The main argument for change is that the present order of devolution does not promote effective tax planning. It would be more tax efficient if siblings were to receive property in preference to parents. Nevertheless, we have already made the point that taxation considerations should not be taken into account in formulating the intestacy rules. We do not consider that there is a sufficient case for reform of the order of devolution. We therefore recommend no change.

Division of property where there are no spouse, issue or eligible relatives

52. Some consultees considered that, in this situation, it would be more appropriate for property to go to charity rather than to the Crown as *bona vacantia*. In this view they were supported by the majority of the respondents in the public opinion survey. Sixty per cent were in favour of charity receiving the property as opposed to only 17% who favoured the existing position.[87] Several different solutions were offered in order to overcome the problem of how the charity would be chosen. It was also pointed out that the Attorney-General already possesses the sole right to represent the beneficial interest of charity where under a will a gift of residue is made to charity generally without specifying which one.

53. However, the majority of consultees were in favour of the present system. We agree and our reasons are twofold. First, the Crown has the ability to make *ex gratia* payments by virtue of section 46(1)(vi) of the Administration of Estates Act 1925. This is normally used to make payments to individuals having some moral claim on the deceased, but payments may also be made to charities having such a claim or where the deceased has tried to benefit a charity by a testamentary disposition which failed. We understand that practice is evolving all the time and could be extended if appropriate.

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[82] Working Paper No. 108, para. 5.8.

[83] *Ibid.*, para. 5.3(iv).

[84] For the definition of "child of the family", see n. 50.

[85] Sixty-three per cent of the respondents were in favour of equal division, whereas only 25% of respondents were in favour of the parents receiving all the property in preference to the siblings. See Appendix C, Table 11.

[86] The possible reforms are outlined in Working Paper No. 108, para. 5.9. They are: extending the list of relatives who can take; splitting the property equally between eligible relatives and limiting the list of relatives who can take.

[87] See Appendix C, Table 14.

54. Secondly, a number of practical difficulties would arise if the property went to charity rather than to the Crown as *bona vacantia*. The chosen charity would have to carry out the administration of the estate. If a will or the next of kin were subsequently found the charity would have to account to the beneficiaries. By contrast, the Crown is able both to administer the estate and to account to any beneficiaries should they subsequently be discovered. We therefore recommend no change.

Partial intestacy

55. Two special hotchpot provisions apply on partial intestacy.[88] The first provides that a surviving spouse who acquires any beneficial interests under the will takes the statutory legacy less the value at the date of the deceased's death of those beneficial interests. As we have recommended that the surviving spouse should receive the entire estate this rule becomes redundant. The second rule provides that issue must bring into account any beneficial interest acquired under the will of the deceased. This is subject to many of the objections to the general hotchpot provision on intestacy.[89] In particular, it can defeat the very object of the deceased in making the partial dispositions in the will. The rule is complicated and difficult for administrators to apply and its abolition would greatly simplify the administration of estates. We therefore *recommend* that both hotchpot rules be repealed.

Survivorship clause

56. In the working paper we invited comment upon whether a survivorship clause should be incorporated into the intestacy rules.[90] The majority of respondents were in favour of a provision that a surviving spouse should only inherit on intestacy if he or she survived the intestate for a certain period. It was considered that to incorporate such a clause would make the administration of estates less expensive. One District Probate Registrar gave an example of a case involving a married couple with no children, who had both died intestate in a car crash. The husband's parents were prepared to proceed on the basis that it was not known which had survived,[91] on the findings of the inquest without having evidence of a pathologist filed in the probate proceedings. However the wife's parents were not prepared to do so and therefore the Registrar had to call for expert evidence which increased the cost of probate without altering the result. If there had been a survivorship clause in the intestacy rules this would not have been necessary.

57. It was also noted that it is the current practice to incorporate a survivorship clause into wills. The object of such clauses is to stop the assets of both spouses going to the parents or relatives of the second to die in cases of not quite simultaneous death, usually in accidents. We consider that this is a practice which it would be useful for the intestacy rules to adopt. It was suggested by some consultees that to do so would be to complicate the intestacy rules. However, we believe it to be consistent with the policy of keeping them clear and simple and that it has the benefit of reducing the cost of the administration of estates. We consider that an appropriate length for such a survivorship clause is 14 days. Any longer might lead to unacceptable delays in the administration of estates. We therefore *recommend* that a spouse should only inherit on intestacy if he or she survives the other for a period of 14 days.

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[88] See para. 16 above.
[89] See para. 47 above.
[90] Working Paper No. 108, para. 5.14.
[91] Section 46(3) of the Administration of Estates Act 1925 provides in effect that in this situation neither is treated as surviving the other.

PART IV

AMENDMENT OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

58. A few consultees argued that the intestacy rules should automatically provide for cohabitants. This view was shared by the majority of the respondents in the public opinion survey.[92] However, we do not favour this approach. To include cohabitants within the intestacy rules would mean that the simplicity and clarity of the rules would be sacrificed. There would have to be very complex provisions to determine how the property should be divided between, for example, a surviving spouse and a surviving cohabitant. As well as making the rules more complex, it would also increase the costs and cause delays in the administration of estates because disputes could easily arise as to whether a particular individual was a cohabitant.

59. However, many consultees considered that cohabitants should be able to apply for discretionary provision under the Inheritance (Provision for Family and Dependants) Act 1975 without the need to show dependence. It was argued that the present intestacy rules did not give provision to cohabitants in need and that this defect should be remedied by creating a category of "cohabitant" under the 1975 Act. Consultees also expressed concern that many meritorious claims from cohabitants could not at present be pursued. In particular, the present interpretation of dependence was criticised as being too restrictive. This is because it covers those who were not giving the deceased valuable services in return for the maintenance provided, but not those who were giving full value for the money or their keep.[93] We therefore *recommend* that a new category of applicant be included in the 1975 Act. As suggested in the working paper,[94] this should cover those cohabitants who are already entitled to bring actions under the Fatal Accidents Act 1976,[95] for the financial loss suffered if the death is wrongfully caused.

60. We consider that the definition of "reasonable financial provision" should be the same as that used for all applicants other than spouses, namely "such financial provision as it would be reasonable in all the circumstances for the applicant to receive for his maintenance".[96] The claim which it is recognised that cohabitants should have is to some compensation for the contribution which the deceased was making towards the common household rather than for the, perhaps greater, share in the deceased's accumulated assets which a spouse may reasonably expect when the marriage ends by death or divorce. The factors to be taken into account in the exercise of the court's discretion, however, should include, in addition to those which are relevant to all applicants, those which are relevant to spouses, i.e. the age of the applicant, the duration of the cohabitation, and the contribution made by the applicant to the welfare of the deceased's family. In our view this represents a fair balance, in recognising the contribution which each cohabitant may make to their common household and welfare, while preserving a distinction between the respective claims of married and unmarried partners. We *recommend* accordingly.

61. We are conscious that in making recommendations which alter the Inheritance (Provision for Family and Dependants) Act 1975 we are stepping beyond the boundaries of intestacy, as the Act applies equally to testate succession. However, in considering the intestacy rules, it is impossible to ignore the inter-relationship between fixed and discretionary provision. And, if it is considered right that certain cohabitants should be able to apply for reasonable provision for their maintenance, it should make no difference whether it is the rules of intestacy or the deceased's will which deprives them.

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[92] In the situation where the intestate is survived by a cohabitant and a sibling, 83% of the respondents in the public opinion survey considered that the cohabitant should have a share in the estate. See Appendix C, Table 13.

[93] Inheritance (Provision for Family and Dependants) Act 1975, s.1(3); see, e.g. *Jelley* v. *Iliffe* [1981] Fam. 128; *Re Wilkinson, decd.* [1978] Fam. 22; *Re Beaumont, decd.* [1980] Ch. 444.

[94] See Working Paper No. 108, para. 5.3(iii).

[95] Section 1(3)(b) of that Act covers any person who:

(i) was living with the deceased in the same household immediately before the date of death; and

(ii) had been living with the deceased in the same household for at last two years before that date; and

(iii) was living during the whole of that period as the husband or wife of the deceased.

[96] Inheritance (Provision for Family and Dependants) Act 1975, s.1(2)(b); see n. 50.

PART V

SUMMARY OF RECOMMENDATIONS

62. The intestacy rules are clearly in need of reform (paragraph 23). Their basic structure, however, should remain unchanged, subject to the amendments recommended below:

(a) A surviving spouse should in all cases receive the whole estate (paragraph 33).

(b) The statutory "hotchpot" rule affecting issue should be repealed (paragraph 47).

(c) The statutory "hotchpot" rules affecting issue and spouses upon partial intestacy should be repealed (paragraph 55).

(d) A spouse should only inherit under the intestacy rules if he or she survives the intestate for 14 days (paragraph 57).

63. Cohabitants should be provided for, not under the intestacy rules, but where appropriate under the Inheritance (Provision for Family and Dependants) Act 1975:

(a) Cohabitants should be able to apply for reasonable financial provision under the Inheritance (Provision for Family and Dependants) Act 1975 without having to show dependence.

(b) The definition of cohabitant should be the same as that used in section 1(3)(b), Fatal Accidents Act 1976 (paragraph 59).

(c) The definition of "reasonable financial provision" should be what is reasonable for the applicant's maintenance but the relevant factors for the court to consider should be the same as those for spouses (paragraph 60).

(Signed) ROY BELDAM, *Chairman*
TREVOR M. ALDRIDGE
JACK BEATSON*
RICHARD BUXTON
BRENDA HOGGETT

MICHAEL COLLON, *Secretary*
27 October 1989

* The policy adopted in this report was agreed before Mr Beatson joined the Commission on 3 July 1989.

APPENDIX A

Draft

Distribution of Estates Bill

ARRANGEMENT OF CLAUSES

Clause

DRAFT

OF A

B I L L

INTITULED

An Act to amend the law relating to the distribution of the estates of deceased persons.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Intestacy and partial intestacy.
1925 c.23

1.—(1) As respects a person dying on or after 1st January 1991 the Administration of Estates Act 1925 ("the principal Act") shall have effect subject to the amendments set out in subsections (2) to (4) below.

(2) For section 46(1)(i) there shall be substituted—

"(i) If the intestate leaves a husband or wife, the residuary estate shall be held in trust for the surviving husband or wife absolutely;".

(3) The following subsection shall be inserted before section 46(3)—

"(2A) Where the husband or wife of an intestate dies before the end of the period of 14 days beginning with the day on which the intestate dies, this Act shall have effect as respects the intestate as if the husband or wife had not survived the intestate.".

(4) Section 47(1)(iii) and section 49(1)(a) shall be omitted.

(5) In consequence of the amendments set out in subsections (2) to (4) above there shall be omitted, as respects a person dying intestate on or after 1st January 1991—

(a) from the principal Act—

(i) section 46(4);

(ii) section 47A;

(iii) section 48;

(iv) section 49(1)(aa);

Clause 1

1. This clause implements the recommendations in paragraphs 33, 47, 55 and 57 of the report.

Subsection 1
2. This subsection provides that our recommendations take effect on or after 1 January 1991. Any intestacy which arises before this date will be subject to the present intestacy rules.

Subsection 2
3. This subsection substitutes a new section 46(1)(i) in the Administration of Estates Act 1925. The existing section 46(1)(i) provides that the surviving spouse's share of the residuary estate (i.e. the estate after payment of expenses taxes and debts have been deducted) depends upon which relatives survive the intestate. The new section 46(1)(i) provides that in all cases the surviving spouse shall receive the whole residuary estate and hence implements the recommendation in paragraph 33.

Subsection 3
4. This subsection inserts a new section 46(2A) into the Administration of Estates Act 1925. The new subsection implements the recommendation in paragraph 57 that a spouse should only inherit under the intestacy rules if he or she survives the intestate for 14 days.

Subsection 4
5. This subsection implements the recommendations in paragraphs 47 and 55 that the hotchpot provisions on full and partial intestacy should be repealed.

Subsection 5
6. These amendments to the Administration of Estates Act 1925 and the Intestates' Estates Act 1952 are consequential upon our recommendations that the surviving spouse should receive the whole estate and that the hotchpot provision should be repealed.

(v) section 49(2) to (4); and

(vi) section 55(1)(x); and

1952 c.64. (b) from the Intestates' Estates Act 1952—

(i) section 3; and

(ii) section 5 and Schedule 2.

(6) The references in subsection (1) of section 50 of the principal Act to Part IV or to the foregoing provisions of that Part, shall in relation to an instrument inter vivos made or a will coming into operation on or after 1st January 1991, but not in relation to instruments inter vivos made or wills coming into operation earlier, be construed as including references to this section.

(7) In the Intestates' Estates Act 1952, after "commencement of this Act", where occuring—

(a) in section 1(1);

(b) in section 2;

(c) in section 3(1);

(d) in section 4;

(e) in section 5(1); and

(f) in section 6(2),

there shall be inserted "but before 1st January 1991".

(8) At the end of the heading for Schedule 1 to that Act there shall be inserted "BUT BEFORE 1ST JANUARY 1991".

Extension of Inheritance (Provision for Family and Dependants) Act 1975 to person who lived with the deceased as husband or wife. 1975 c. 63.

2.—(1) The following section shall be inserted after section 1 of the Inheritance (Provision for Family and Dependants) Act 1975—

"Application by person who lived with the deceased as husband or wife.

1A. Where on or after 1st January 1991 a person dies domiciled in England and Wales and is survived by a person who—

(a) was living with the deceased in the same household immediately before the date of the death; and

(b) had been living with the deceased in the same household for at least 2 years before that date; and

(c) was living during the whole of that period as the husband or wife of the deceased,

that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make such financial provision for the applicant as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.".

(2) The following subsection shall be inserted after section 3(2) of that Act—

Subsection 6

7. This provision sets out how instruments which come into operation on or after 1 January 1991 should be construed. Any reference to any Statutes of Distribution in an instrument should be construed as a reference to Part IV of the Administration of Estates Act 1925 as amended by, *inter alia*, this Act. Similarly, any reference to statutory next of kin should be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under Part IV of the Administration of Estates Act 1925 as amended by, *inter alia*, this Act.

Subsection 7

8. This subsection provides that the listed provisions of the Intestates' Estates Act 1952 should only apply to intestacies which occurred on or after 1 January 1953 and before 1 January 1991.

Subsection 8

9. This subsection provides that Schedule 1 of the Intestates' Estates Act 1952 should only apply to full or partial intestacies which occur on or after 1 January 1953 and before 1 January 1991.

Clause 2

1. This implements the recommendation in paragraphs 59 and 60 that cohabitants should be able to apply for reasonable financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

Subsection 1

2. This subsection inserts a new section 1A into the Inheritance (Provision for Family and Dependants) Act 1975. It provides that a cohabitant may apply to court for reasonable financial provision from the estate of a person dying on or after 1 January 1991. The definition of a cohabitant is the same as that in section 1(3)(b), Fatal Accidents Act 1976 and the definition of reasonable financial provision is the same as that in section 1(2)(b), Inheritance (Provision for Family and Dependants) Act 1975.

Subsection 2

3. This subsection inserts a new subsection (2A) into section 3 of the Inheritance (Provision for Family and Dependants) Act 1975. It sets out considerations additional to those specified in section 3(1) of the Inheritance (Provision for Family and Dependants) Act 1975, to which the court must have regard in determining (a) whether reasonable provision has been made for a cohabitant applicant by the deceased's will or the law relating to intestacy and (b) if the answer to this is negative what order should be made.

"(2A) Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1A of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a) the age of the applicant and the duration of the cohabitation;

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.".

Citation and extent.

3.—(1) This Act may be cited as the Distribution of Estates Act 1990.

(2) This Act extends to England and Wales only.

APPENDIX B

Individuals and organisations who responded to Working Paper No. 108 and to letters placed in the legal press

The following sent comments in response to letters placed in legal journals in December 1986:

Chubb, Beresford & Wyatt
Cole & Cole
Crane & Staples
Country Landowners Association
Edridges & Drummonds
Institute of Legal Executives, Law Reform Committee
The Law Society, Law Reform Department
McNeill & Rogers
Pinsent & Co.
Sparling Benham & Brough
Swatton Hughes & Co.

Mr D.M. Adam, Vanderpump & Sykes
Mr J.F. Avery-Jones, Speechly Bircham
Mr R.C. Baxter, F.E. Metcalfe & Co.
Mr J.L.J. Chapman, Benson Burdekin & Co.
Mr Cluff, Graham & Rosen
Mr N. Fixsen, Kirby Simcox
Mr C.R. Fradd, C.R. Fradd & Co.
Mr W. Healy, Darbyshire & Son
Mr C. Hodson, Rotheras
Mr R. Horne, Bennett Broke-Taylor & Wright
Mr J.D. Hueston, Lane & Co.
Mr W.T. Kermode
Mr P.A. Machin
Mrs J.C. Margrave, McNamara Ryan
Mr J.R. McKean, Wedlake Bell McKean
Mr M. O'Shea, Lemon and Partners
Mr A.R.M. Pyke, Hood Vores & Allwood
Mr A. Samuels, University of Southampton
Mr R. Shah, Wayne & Co.
R.A. Sherwood, Bruce Lance & Co.
A.C. Shuttleworth, Shuttleworth & Co.
Mr D.W. Tate, Hopkin & Sons
Mr M. Taylor
Mr J. Thurston, Trent Polytechnic
Mr C.M. Wallworth, A.H. Franklin & Sons
H.M. Ward, Hanslip Ward & Co.
Mr D. Wetherell, Simpson North & Alderson Smith
Mr J.C. Youdell, Denison Till

The following sent comments on Working Paper No. 108, Distribution on Intestacy:

Age Concern
Association of Corporate Trustees
Building Societies Association
Bliss Sons & Covell
Chancery Bar Association
Children's Legal Centre
Committee of London and Scottish Bankers
Country Landowners Association

Family Law Bar Association
Institute of Legal Executives
Justice
The Law Society
Lord Chancellor's Department
Macfarlanes
Mothers' Union
Norfolk and Norwich Incorporated Law Society
Saffron Walden and Essex Building Society
Soroptimist International
Swatton Hughes & Co.
Treasury Solicitor

Professor J. Adams, Queen Mary College, London
Mr T.G. Anderson, Counsel to the Law Reform Commission of British Columbia
Ms E. Andrews
Mr T.O. Ashton, Sparling Benham & Brough
Mr J.F. Avery-Jones and Ms E. Stary, Speechly Bircham
Mr Registrar Bertram, District Probate Registrar, Newcastle-upon-Tyne
Mr J. Chapman, Benson Burdekin
Professor S.M. Cretney, University of Bristol
Miss Registrar Farmborough, District Probate Registrar, Oxford
Mr J.D. Fitchett
Mr R.L. Harris, Isadore Goldman & Son
Mr J.M. Hutchinson
Mr W.J. James
Ms C. Jeffers, Guildford College of Law
Mr R. Kerridge, University of Bristol
Mr D. Lacey
Mrs W.J. Liquorish
Mr K.J. Lock
Mr D.A. Lush, Anstey & Thompson
Mrs J. Martin, King's College, London
Mr W.H. McBryde, Assistant Official Solicitor, The Official Solicitor to the Supreme Court
Mr J.M. McKean, Wedlake Bell McKean
Mr R. Meads
Mr L.H. Molden
Mr Registrar Moran, District Probate Registrar, Manchester
Mr A.J. Morgan, Clarke Willmott & Clarke
Mr R.B. Newns
Mrs M.P. Pilkington, University of Leeds
Dr S. Poulter, University of Southampton
Mrs J.E. Ray
Mrs E.A. Roberts
Mr A. Samuels, University of Southampton
Dr C.H. Sherrin, University of Bristol
Mrs J. Sutcliffe
Mr D.W. Tate, Hopkin & Son
Mrs J. Thomas
Mr P.K.J. Thompson
Mr Registrar Turner, Senior Registrar, Family Division
Mrs J.F. Walker
Mr C.M. Wallworth, Bird Franklin
Mr B.A. Wates, Wright Son & Pepper

APPENDIX C

THE PUBLIC OPINION SURVEY

Public Attitude Surveys Ltd (PAS) were commissioned to conduct a survey of adults living in England and Wales in order to obtain information as to (i) what is known about the current law on intestacy and (ii) what would be thought an appropriate division of an intestate's estate in a range of different circumstances. A representative sample of 1001 individuals was recruited from 99 different locations to quota controls on sex, age and social class. Face-to-face interviews were conducted in December 1988 and January 1989. Respondents were each given an introductory letter from Professor Hoggett at the Law Commission, which in the view of PAS "contributed to the careful attention paid by them to the questions asked." The interview also contained questions on the ground for divorce which will be reported on in due course. The questionnaire was developed in consultation with the Law Commission and amended in the light of 25 pilot interviews which took place in November 1988. We reproduce below the text of the PAS report on intestacy together with the relevant tables. Further information may be available on application to the Law Commission.

THE PAS REPORT

The Law on Intestacy

1. THE CURRENT LAW

Extent of potential intestacy

1.1 Only one in three people had made a will (Table 1A). This proportion was very markedly associated with age: the younger the respondent the less likely was he or she to have made a will whereas, among those aged 60 or more, six out of ten had made a will. There is also a tendency, though not so pronounced, for results to vary by class, with the ABs - who almost by definition have more to leave - being less likely to die intestate (see below).

Proportion of each group who had made a will

By age		*By class*	
18-30	8%	AB	53%
31-44	16%	C1	38%
45-49	41%	C2	26%
60 or more	60%	DE	24%

Bases - Various (see Table 1A).

1.2 Just under half of all respondents claimed to have had some acquaintance with intestacy and the situations to which it could give rise (see 1.5 below). However this factor appeared to have little relevance to their own behaviour: of those with experience of intestacy 35% had made a will, of those without 31% had done so. Current status was also associated with potential intestacy, with respondents who were single, or cohabiting, or had children, being less likely to have made a will (Table 1B).

Rationale for not making a will

1.3 Of the two thirds of respondents who had not made a will 60%

said they intended to do so, while 37% either thought it unnecessary or simply had not thought about it at all - again it was young people who showed the least concern (see Table 1A).

1.4 All the respondents who had not made a will and who did not intend to do so were asked to say, in their own words, why they felt like this. A small minority of respondents justified their action by saying that the law would take care of the position with "the spouse getting what is left automatically". Far more usual were comments implying that making a will was irrelevant to individuals whether because of their age, or their lack of financial resources or capital (see below).

Main reasons for not making a will

Nothing to leave/no property/no money	35%
Never thought about it	17%
Youthful/too young to need to	15%
Spouse will get what is left automatically	12%

Base: All not intending to make a will (251).

Experience of intestacy

1.5 As previously mentioned, just under half of respondents had the opportunity of acquiring some first hand experience of intestacy. The most usual situation was when "someone close" had died without making a will. These circumstances would not necessarily mean that the individual who survived would learn specific details of the intestacy law; on the contrary, it is only the minority who have administered an estate, or who deal with intestacy in the course of their work, who can be counted on to have anything approaching a comprehensive understanding.

Any experience	*48%*
Someone close died intestate	39%
Relative of close friend died intestate	19%
Have administered estate of someone who died intestate	9%
Have to deal with intestacy in course of work	2%

Base: Total Sample - 1001

1.6 Respondents from the youngest age group, men, and those from the highest social classes where less likely to have had experience of intestacy than middle aged people, women, and those from the lowest social classes (Table 2B).

Knowledge of current law

1.7 Before being asked questions on this aspect, its context was explained, and its definition given, by means of this introduction, read to all respondents.

> "As part of their work on law reform, the Law Commission want to find out how the general public think a person's estate should be divided on their death, if they have not made a will.
>
> By estate, we mean all kinds of property, including a house, savings, stocks and shares, personal possessions and money".

1.8 Three quarters of all respondents said that they knew something about what would happen to their own estate were they to die intestate. Admitted ignorance was highest among single people and those co-habiting (Table 3).

1.9 Among those who did know something, the people mainly

nominated to benefit were as follows:-

If married/remarried	spouse would benefit
If divorced	children/parents/other relatives would benefit
If widowed	children and other relatives
If single	parents and other relatives would benefit
If cohabiting	children/partner/parents would benefit

4% of respondents thought their estate would go to the Treasury were they to die intestate (Table 3).

Summary

1.10 Among the total population, four out of ten had not made a will but intended to do so; one in four had not made a will but expressed no intention of doing so - either because they did not consider it necessary or simply because it was not something they had thought about. The reasons for not making a will were related to an individual's status: young people, and those with few financial assets, did not think it necessary to make a will.

1.11 Three out of four people thought they knew what would happen to their property were they to die intestate: those currently married thinking their spouse would inherit; those divorced or widowed thinking their children, parents or other relatives would benefit.

2. REACTIONS TO INTESTACY SITUATIONS

Introduction

2.1 The main part of the interview was concerned with respondents' opinions as to the appropriate divisions of the estates of people in various situations where someone died without making a will. Since the context in which this information was obtained is important, the format used is set out below.

2.2 First the interviewer gave the respondent some idea of what was to be considered, thus:-

> "I am going to tell you about a number of situations where someone dies without making a will, and then ask you for your personal view of how the estate should be divided.
>
> While we sometimes talk about a man, sometimes a woman, the law would be the same for both.
>
> There are no right or wrong answers. We are not asking what the law is, but what you think it should be".

2.3 The interviewer then both read out and showed the respondent a "situation" card, the first one reading:-

> "Suppose that a man dies without making a will. He is survived by his wife and three grown up children of their marriage".

2.4 The interviewer then showed the respondent an "action" card, listing a number of alternative dispositions for the estate and asking the respondent to choose one as being what he/she thought "should happen to his estate, which includes the house in which he and his wife lived".

2.5 A situation card, and an action card were used for each of 11 different situations. Respondents were allowed to nominate different shares, and amounts, from those given as examples on the action card and could, if

they wished, suggest some other arrangement.

2.6 On the first occasion of asking, the wording of the questionnaire gave some explanation of the implications of choosing an amount, or a share, fixed by law.

Man dies, survived by wife and three children

2.7 Three variations of this basic situation were presented to respondents:-

(i) three children were grown up, and estate included a house;
(ii) three children were young, and estate included a house;
(iii) three children were young, and estate did *not* include a house.

2.8 Looking first at the replies given by the total sample, representing the population as a whole, almost everyone said the wife should inherit something, and the majority thought she should have everything. Where the children were young the proportion saying the wife should be the sole inheritor was higher than when the children were grown up (see below).

Disposition of Estate

	Grown up children house %	*Young children house* %	*Young children no house* %
Wife to inherit (at all)	*97*	*97*	*97*
Wife to inherit all	72	79	79

Base: All respondents (1001)

2.9 Where the wife was not nominated to inherit everything, but to share the estate with her children then a fixed share - usually 75% - or the house itself was more often selected as appropriate for her portion than was a fixed amount - usually £75,000 (see below and Tables 4-6).

Disposition of Estate

	Grown up children house %	*Young children house* %	*Young children no house* %
Wife to inherit part (at all)	*25*	*18*	*18*
Fixed share	9	6	10
House	8	6	not applicable
Fixed amount	5	3	4
Some other arrangement	3	3	4

Base: All Respondents (1001)

2.10 The most usually voiced suggestions as to "another arrangement" were that the estate should be "shared" or "shared equally" - with nothing more specific, or that, where there were young children, the capital should be held in trust for them.

2.11 Full results are shown in Tables 4-6. An analysis of opinions by marital status shows some variations by different groups, which can be

summarised thus:-

* those currently married, or widowed, are slightly *more* likely to say that everything should go to the wife;

* those who are single are slightly more likely to think that the wife should share the inheritance with her children.

2.12 The youngest age group (18-30 years) were less likely to say that everything should go to the wife when asked about cases where the estate included a house (Computer Tables 12/1 and 15/1). However where there was no house, their opinions were the same as in the total sample (Computer Table 18/1). There was little difference in the opinions of men and women.

Man dies, survived by second wife, former wife and three children of his first marriage - with, and without house

2.13 The next pair of situations to be considered were more complicated and elicited less unanimity of response. Whether there was a house in the estate or not a substantial majority thought the second wife should have a share. However, when compared with the results shown in 2.8, it is clear that second wives are not recognised as being appropriate inheritors to the same extent as an individual's sole wife (see below).

Disposition of Estate

	Sole wife - all three situations	*Second wife - averaged over two situations*
	%	%
Wife to inherit (at all)	*97*	*78 (average)*
Wife to inherit everything	72 or 79 (depending on age of children)	30 (average)

Base: Total Sample (1001)

2.14 The table above also makes clear that it is in nominations as sole inheritor that the second wife is shown at most of a disadvantage as compared to a sole wife. So how did she participate on a shared basis? One in four respondents picked the alternative which gave her the house; of fixed shares and fixed amounts the former were seen as more appropriate. Minor proportions felt she should share the estate with the first wife.

Disposition of Estate

	With house	*Without*
	%	%
Second wife nominated (at all)	*76*	*80*
All to wife	27	34
House, any balance to children	24	not applicable
Fixed amount, rest to children	13	26
Fixed amount, any balance to children	6	9
Shared equally between everybody	3	6
Shared with first wife	1	2
Other	1	3

Base: Total Sample (1001)

2.15 About one in five respondents did not think the second wife should

inherit anything, or at least did not state that she should in unequivocal terms. The children, and the former wife were mentioned but, as the table below shows, there was a measurable amount of uncertainty as to what was appropriate.

Disposition of Estate

	With house	*Without*
	%	%
All to children	4	4
All to first wife	1	1
It depends on circumstances	1	1
Unclassified replies	12	6
Don't know	7	7

Base: Total Sample (1001)

2.16 Those respondents who were divorced or remarried were more likely to say that the second wife should inherit all the estate (see Tables 7 and 8).

2.17 Again the youngest age group is less likely to think the second wife should inherit everything; instead they tend to suggest an equal share out (see Computer Tables 21/1 and 24/1).

Woman dies, survived by her husband, her brother and her sister

2.18 Respondents were much more united in their reactions to this situation; almost nine out of ten selected "all to husband" as being the most appropriate destination for the estate. Small minorities thought the siblings should also benefit; 6% thinking this should be in terms of a fixed share, 3% in terms of any residue after a fixed amount had been paid to the husband. Single respondents were less likely to say that everything should go to the husband (Table 9).

Widow dies, survived by various combinations of relatives

2.19 In the first of three situations relating to widows the survivors were all blood relatives: two grown up children, and her brother. Within the total sample, just over eight out of ten respondents thought the estate should all go to the children, with the remainder thinking sharing more appropriate. Single people again show themselves as slightly more reluctant to leave the whole estate to one class of beneficiary (see below and Table 10).

Disposition of Estate

All to children	84%
Fixed share to children, rest to brother	8%
Fixed amount to children, any balance to brother	3%
Shared/equal shares	3%
Other	2%

Base: Total Sample (1001)

2.20 The second situation relating to a widow dying intestate again described her as having blood relatives: a mother, a brother and a sister. Two out of three respondents thought that the estate should be divided equally between all three; one in four thought it should all go to the mother; and 5% that it should all go to the brother and sister. Those respondents who were widowed were slightly less likely to select an equal share option (Table 11).

2.21 Finally, respondents were faced with relatives of varying status: a brother, a half sister, and a step sister. The brother was most often selected

as a beneficiary, the step sister the least often selected (see below and Table 12).

Disposition of Property

All to brother	40%
Equally between all three	34%
Half to brother, half to half sister	9%
Half to brother, quarter to each sister	5%
Other	5%
Don't know	6%

Base: Total Sample (1001)

Woman dies, survived by male co-habitee and her sister

2.22 The woman's past circumstances were described as "living with a man as his wife for more than 10 years".

2.23 Half of all respondents thought the man should get the whole estate. This proportion rose to 60% or just above among respondents who were currently co-habiting, or had remarried or were divorced (Table 13). One in ten took a diametrically opposite view, saying that everything should go to the sister. Among the 26% of respondents who selected a fixed share to the man option, equal proportions said it should be 50% or thereabouts, and 75% or more.

Woman dies, no relatives

2.24 Six out of ten respondents thought the woman's estate should to a charity, 17% that it should go to the government and 5% that it should benefit a friend who had looked after her (Table 14).

Summary

2.25 The majority opinion can be summarised thus:-

(i) if there is a sole surviving spouse, most people think he or she should have the whole of the estate;

(ii) if there are two surviving wives, the second wife is recognised as being a more appropriate beneficiary than the first wife, but is less likely than in (i) above to be nominated as the sole beneficiary;

(iii) where there is no spouse or partner, but children and a sibling then the children are nominated to receive the whole of the estate;

(iv) where there are only relatives other than a spouse or children, blood relatives tend to be mentioned more than half, or step, relatives. However an "equal share" option is frequently selected;

(v) where there is a long standing partner, and a blood relative there is a difference of opinion in that most respondents thought the partner should inherit all or part of the estate. However, one in ten thought the partner should receive nothing;

(vi) where there are no relatives, the estate should go to charity.

Table 1A INCIDENCE OF MAKING A WILL, FEELINGS ABOUT MAKING ONE, AND REASONS FOR DOING NOTHING

	Total	Age				Class			
Base: All Respondents	1001	18–30 213	31–44 251	45–59 269	60+ 268	AB 154	C1 248	C2 309	DE 290
	%	%	%	%	%	%	%	%	%
Incidence									
Yes, have made a will	33	8	16	41	60	53	38	26	24
No, have not	67	92	84	59	40	47	62	74	76
Base: All not making a will	(675)	(197)	(212)	(160)	(106)	(73)	(153)	(229)	(220)
	%	%	%	%	%	%	%	%	%
Feelings about making a will									
Intend to make one	60	47	67	71	56	79	71	61	47
Do not think it necessary	16	12	12	16	33	11	11	17	21
Have not thought about it	21	39	19	12	6	10	16	21	29
Don't Know	2	2	2	1	6	0	3	2	4
Base: All not having thought about it/not thinking it necessary	(251)	(101)	(65)	(44)	(41)	(15)	(41)	(86)	(109)
	%	%	%	%	%	**	%	%	%
Reasons									
Nothing to leave/no property/no money	35	34	40	25	44		29	30	43
Never thought about it/never occurred to me	17	18	20	25	2		22	20	16
Youthful/too young to need to make a will	15	30	11	2	0		15	13	15
Spouse will get what is left automatically	12	5	11	20	20		20	14	5
Don't want to think about death/dying	4	4	5	5	0		0	5	4
No time/cannot be bothered	2	2	3	2	0		0	3	2
Irrelevant/no point	2	1	0	5	5		2	1	3
No need because spouse has made one	2	0	2	5	2		2	2	0
No dependents	n	1	0	0	0		2	0	0
Other comments	8	4	5	9	20		5	7	10
Don't Know	2	2	3	2	0		2	2	2

* too small to serve as a base for percentaging

Table 1B INCIDENCE OF MAKING A WILL—BY SUB GROUPS

	Total	Marital Status					
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %
Yes, have made a will	33	33	11	19	40	65	31
No, have not	67	67	89	81	60	35	69

	Children		Experience of Intestacy	
	0–17 (394) %	18+ (469) %	None (213) %	Some (479) %	None (522) %
Yes, have made a will	18	46	29	35	31
No, have not	82	54	71	65	69

Table 2 RESPONDENTS' EXPERIENCE OF INTESTACY—INDIVIDUAL SITUATIONS

Base: All Respondents		Total Sample 1001 %
Someone close to me died without making a will	Yes	39
	No	59
	Don't Know	2
A relative of a close friend of mine died without making a will	Yes	19
	No	68
	Don't Know	12
I have administered the estate of someone who died without making a will	Yes	9
	No	90
	Don't Know	n
I have to deal with intestacy in course of my work	Yes	2
	No	98
	Don't Know	n
Summary		
Some experience of intestacy		48
No experience of intestacy		45
Don't Know/unclassifiable		7

Table 2B EXPERIENCE OF INTESTACY—SUMMARY—BY SUB GROUPS

	Total	Age				Sex		Class			
Base: All Respondents	1001 %	18–30 213 %	31–44 251 %	45–59 269 %	60+ 268 %	Men 482 %	Women 519 %	AB 154 %	C1 248 %	C2 309 %	DE 290 %
Some experience	48	35	45	59	49	42	53	41	48	47	52
No experience	45	56	48	33	44	50	40	51	44	47	40
Don't Know/unclassifiable	7	9	7	7	7	8	7	8	9	6	7

Table 3 RESPONDENT'S KNOWLEDGE OF WHAT WOULD HAPPEN IF HE/SHE WERE TO DIE INTESTATE

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Extent of Knowledge										
Yes, know something	74	78	47	58	81	84	69	74	78	63
No, know nothing	26	22	53	42	19	16	31	26	22	37
Base: All knowing something	(741) %	(496) %	(51) %	(28) %	(34) %	(81) %	(41) %	(293) %	(367) %	(134) %
Description of Events										
Spouse mentioned first	*55*	*75*	*6*	*25*	*74*	*2*	*0*	*67*	*56*	*32*
All to spouse	47	64	2	14	62	0	0	56	49	27
Some to spouse/some to children	7	9	4	4	9	0	0	9	7	2
Other	2	1	0	0	3	2	0	1	1	3
Children mentioned first	*15*	*6*	*6*	*25*	*3*	*56*	*49*	*10*	*24*	*1*
All to children	13	5	4	21	3	53	44	9	22	1
Some to children/some to spouse	n	0	0	4	0	0	0	n	0	0
Other	2	1	2	0	0	2	5	1	1	0
Other Comments	*29*	*19*	*88*	*50*	*24*	*41*	*49*	*23*	*19*	*67*
Next of kin (non specific)	10	8	31	14	9	10	12	9	7	21
Other relatives	4	1	16	7	0	14	10	1	2	16
Probate (non specific)	4	5	0	0	0	5	5	5	4	1
State/Treasury	4	3	8	4	6	6	5	3	2	8
Parents	3	0	31	7	0	1	10	1	n	15
Finance/co habitee	1	0	0	18	0	0	0	1	n	1
Other	3	3	2	0	9	5	7	3	3	4

Table 4 INTESTACY SITUATION—MAN DIES, SURVIVED BY WIFE AND THREE ADULT CHILDREN, ESTATE INCLUDES HOUSE

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
All to wife	72	76	54	56	57	74	64	67	78	67
Fixed share to wife, rest to children	9	9	9	15	12	3	3	12	6	7
House to wife, any balance to children	8	6	16	17	10	6	12	10	6	10
Fixed amount to wife, any balance to children	5	3	9	4	10	8	10	4	4	7
All to children	n	n	0	0	0	1	2	n	n	n
Some other arrangement	6	5	9	8	2	5	8	6	5	8
All saying fixed amount	(47) %			***					***	
Amount Nominated										
Below £75000	4									
£75000	89									
£76000 or more	6									
All saying fixed share	(86) %	(59) %						(49) %		
Share Nominated										
Below 50%	2	3		***				2	***	
50%	10	10						8		
51%–74%	1	2								
75%	85	83						88		
More than 75%	0	0						0		
All saying some other arrangement	(57) %									
Arrangement Suggested										
Shared/shared equally	30									
House + some of what is left to wife, rest to children	26			***					***	
Whole/part should be held in trust for children	4									
Other suggestions	35									

*Where shown, sub bases were too small to serve as bases for percentaging

Table 5 INTESTACY SITUATION—MAN DIES, SURVIVED BY WIFE AND THREE YOUNG CHILDREN, ESTATE INCLUDES HOUSE

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
All to wife	79	80	64	81	86	85	80	77	82	77
Fixed share to wife, rest to children	6	6	10	4	5	2	3	6	5	6
House to wife, any balance to children	6	5	7	10	5	3	8	7	5	5
Fixed amount to wife, any balance to children	3	2	5	4	2	6	5	3	3	4
All to children	n	n	0	0	0	0	0	1	0	0
Some other arrangement	5	6	11	0	2	2	0	6	4	6
All saying fixed amount	(32) %				***				***	
Amount Nominated										
Below £75000	3									
£75000	88									
£76000 or more	3									
All saying fixed share	(60) %	(40) %			***				***	
Share Nominated										
Below 50%	2	3								
50%	22	18								
51%–74%	3	5								
75%	72	73								
More than 75%	0	0								
All saying some other arrangement	(51) %				***				***	
Arrangement Suggested										
Whole/part of estate should be held in trust for children	33									
Shared/shared equally	22									
Other suggestions	47									

* Where shown, sub bases were too small to serve as bases for percentaging

Table 6 INTESTACY SITUATION—MAN DIES, SURVIVED BY WIFE AND THREE YOUNG CHILDREN, ESTATE DOES NOT INCLUDE HOUSE

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
All to wife	79	82	72	67	81	81	78	77	82	79
Fixed share to wife, rest to children	10	9	13	15	5	11	7	11	9	10
Fixed amount to wife, any balance to children	4	4	4	6	7	2	7	5	4	2
All to children	1	1	0	6	0	0	2	1	n	1
Some other arrangement	5	4	8	4	7	4	7	5	4	7
All saying fixed amount	(41) %				***				***	
Amount Nominated										
Below £75000	5									
£75000	90									
£76000 or more	2									
All saying fixed share	(98) %	(57) %			***			(42) %	(41) %	***
Share Nominated										
Below 50%	4	6						6	2	
50%	22	23						19	24	
51%–74%	6	9						5	12	
75%	66	61						67	61	
More than 75%	0	0						0	0	
All saying some other arrangement	(49) %									
Arrangement Suggested										
Shared/shared equally	43				***					***
Whole/part of estate should be held in trust for children	31									
Other suggestions	29									

*Where shown, sub bases were too small to serve as bases for percentaging

Table 7 INTESTACY SITUATION—MAN DIES, SURVIVED BY SECOND WIFE, FORMER WIFE AND 3 ADULT CHILDREN ESTATE INCLUDES HOUSE LIVED IN WITH SECOND WIFE

	Total	Marital Status						Children		
Base: All Respondents	1001	Married 633	Single 109	Co-habit 48	Re-married 42	Widowed 96	Divorced 59	0–17 394	18+ 469	None 213
	%	%	%	%	%	%	%	%	%	%
Law should be										
All to second wife	27	27	17	27	38	26	44	25	31	23
House to second wife any balance to children	24	24	25	31	19	19	22	29	19	25
Fixed share to second wife, rest to children	13	14	15	8	19	9	8	14	11	16
Fixed amount to second wife, any balance to children	6	6	6	8	10	7	5	7	7	6
All to his children	4	4	6	8	0	3	0	4	4	2
All to his former wife	1	1	1	0	0	2	0	1	1	n
Some other arrangement	19	19	25	17	10	23	14	17	22	21
Don't Know	5	4	7	0	5	10	7	4	6	6
All saying fixed amount	(65)	(40)			***				***	
	%	%								
Amount Nominated										
Below £75000	0	0								
£75000	95	98								
£76000 or more	2	0								
All saying fixed share	(131)	(87)						(54)	(50)	***
	%	%						%	%	
Share Nominated										
Below 50%	5	4			***			0	8	
50%	28	29						22	34	
51%–74%	4	5						4	2	
75%	62	62						72	54	
More than 75%	1	0						0	2	

* Where shown, sub bases were too small to serve as bases for percentaging

Table 7 *(continued)*

	Total	Marital Status						Children		
		Married	Single	Co-habit	Re-married	Widowed	Divorced	0–17	18+	None
All saying some other arrangement	(194) %	(122) %						(67) %	(101) %	(44) %
Arrangement Suggested										
Shared equally between everybody	16	15			***			21	12	18
Shared between first and second wives	7	7						13	8	9
Shared between second wife and children	4	4						6	3	2
All/part to children on second wife's death	3	3						4	5	0
Other suggestions	70	69						60	61	61
Don't Know	8	7						4	10	9

* Where shown, sub bases were too small to serve as bases for percentaging

Table 8 INTESTACY SITUATION—MAN DIES, SURVIVED BY SECOND WIFE, FORMER WIFE, AND THREE ADULT CHILDREN, ESTATE DOES NOT INCLUDE HOUSE

	Total	Marital Status						Children		
Base: All Respondents	1001	Married 633	Single 109	Co-habit 48	Re-married 42	Widowed 96	Divorced 59	0–17 394	18+ 469	None 213
	%	%	%	%	%	%	%	%	%	%
Law should be										
All to second wife	34	34	25	25	48	36	42	32	36	34
Fixed share to second wife, rest to children	26	27	27	23	31	17	24	30	23	27
Fixed amount to second wife, any balance to children	9	9	8	10	12	9	8	11	9	6
All to his children	6	6	8	17	2	5	3	7	6	5
All to his former wife	1	n	1	0	0	2	2	1	1	n
Some other arrangement	16	18	24	25	7	18	15	16	19	21
Don't Know	6	5	7	0	0	13	5	4	6	7
All saying fixed amount	(91) %	(57) %			***			(43) %	(44) %	***
Amount Nominated										
Below £75000	0	0						0	0	
£75000	97	96						95	98	
£76000 or more	3	4						4	2	
All saying fixed share	(259) %	(171) %						(117) %	(107) %	(57) %
Share Nominated										
Below 50%	8	9						8	10	4
50%	27	27						26	29	28
51%–74%	3	3						2	3	7
75%	61	60						64	58	61
More than 75%	0	0						0	0	0

*Where shown, sub bases were too small to serve as bases for percentaging

Table 8 *(continued)*

	Total	Marital Status						Children		
		Married	Single	Co-habit	Re-married	Widowed	Divorced	0–17	18+	None
All saying some other arrangement	(183) %	(113) %						(65) %	(87) %	(45) %
Arrangement Suggested										
Shared equally between Everyone	32	33						37	22	40
Shared/shared equally between second wife and children	17	19						26	14	16
Shared/shared equally between wives	9	9						5	14	7
All part to children on second wife's death	2	3						2	3	0
It depends	7	4						6	7	11
Other suggestions	30	30						23	36	27
Don't Know	6	6						6	9	11

*Where shown, sub bases were too small to serve as bases for percentaging

Table 9 INTESTACY SITUATION—WOMAN DIES, SURVIVED BY HER HUSBAND HER BROTHER AND HER SISTER

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
All to husband	87	90	67	88	88	88	88	88	90	78
Fixed share to husband, rest to brother and sister	6	5	18	8	5	3	10	6	4	13
Fixed amount to husband, any balance to brother and sister	3	3	6	2	5	5	2	4	3	4
Some other arrangement	2	2	7	0	2	1	0	2	2	4
All saying fixed amount	(34) %				***				***	
Amount Nominated										
Below £75000	0									
£75000	97									
£76000 or more	0									
All saying fixed share	(65) %									
Share Nominated										
Below 50%	9									
50%	22									
51%–74%	5									
75%	62									
More than 75%	3									
All saying some other arrangement	(24) ****									

* Where shown, sub bases were too small to serve as bases for percentaging

Table 10 INTESTACY SITUATION—WIDOW DIES, SURVIVED BY TWO ADULT CHILDREN, AND HER BROTHER

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
All to children	84	88	63	75	90	82	81	86	88	72
Fixed share to children, rest to brother	8	6	20	6	7	6	15	7	6	14
Fixed amount to children, any balance to brother	3	2	5	6	2	5	3	4	3	3
Some other arrangement	5	4	10	13	0	5	0	3	3	10
All saying fixed amount	(31) %			***					***	
Amount Nominated										
Below £75000	0									
£75000	100									
More than £75000	0								***	
All saying fixed share	(84) %	(38) %		***						
Share Nominated										
Below 50%	6	6								
50%	13	13								
51%–74%	5	0								
75%	73	78								
More than 75%	4	3								
All saying some other arrangement	(47) %								***	
Arrangement Suggested				***						
Shared/shared equally	60									
Other suggestions	40									

*Where shown, sub bases were too small to serve as bases for percentaging

Table 11 INTESTACY SITUATION—WIDOW DIES, SURVIVED BY HER MOTHER, HER BROTHER AND HER SISTER

	Total	Marital Status						Children		
Base: All Respondents	1001 %	Married 633 %	Single 109 %	Co-habit 48 %	Re-married 42 %	Widowed 96 %	Divorced 59 %	0–17 394 %	18+ 469 %	None 213 %
Law should be										
Equally between mother brother and sister	63	65	67	67	64	52	56	68	58	53
All to mother	25	24	19	25	21	34	36	22	29	23
All to brother and sister	5	4	7	4	5	8	7	5	4	7
Some other arrangement	4	5	3	2	6	2	2	3	4	4
Don't Know	3	2	4	2	5	3	0	1	3	3

Table 12 INTESTACY SITUATION—WIDOW DIES, SURVIVED BY HER BROTHER, HER HALF SISTER, AND HER STEP SISTER

Base: All Respondents	Total 1001 %	Widowed 96 %
Law should be		
All to brother	40	43
Equally between brother, half-sister and step sister	34	28
Half to brother, half to half-sister	9	11
Some other arrangement		
Half to brother—quarter to each sister	5	5
Larger share to brother—both sisters left something	1	1
Larger share to brother—smaller share for half sister, nothing to step sister	1	1
Other suggestions	3	1
Don't Know	6	9

Table 13 INTESTACY SITUATION—WOMAN DIES, SURVIVED BY CO-HABITEE AND HER SISTER

	Total	Marital Status						Children		
Base: All Respondents	1001	Married 633	Single 109	Co-habit 48	Re-married 42	Widowed 96	Divorced 59	0–17 394	18+ 469	None 213
	%	%	%	%	%	%	%	%	%	%
Law should be										
All to man	49	49	38	65	60	50	59	49	52	47
Fixed share to man, rest to sister	26	28	27	15	29	18	20	26	25	24
All to sister	10	10	13	2	5	13	8	9	11	12
Fixed amount to man, any balance to sister	8	8	13	15	5	7	3	10	6	10
Some other arrangement	5	4	6	4	2	6	8	5	5	5
Don't Know	2	1	4	0	0	6	0	1	2	2
All saying fixed amount	(84) %	(50) %			***				***	
Amount Nominated										
Below £75000	3	6								
£75000	94	92								
£76000 or more	1	2								
All saying fixed share	(257) %	(176) %						(104) %	(117) %	(51) %
Share Nominated										
Below 50%	2	3						1	3	6
50%	44	47						40	47	45
51%–74%	3	3						3	4	0
75%	48	45						55	44	47
More than 75%	2	2						0	3	2
All saying some other arrangement	(49) %				***				***	
Arrangement Suggested										
Dependent on circumstances	10									
Other	88									

*Where shown, sub bases were too small to serve as bases for percentaging

Table 14 INTESTACY SITUATION—WOMAN DIES, NO RELATIVES

Base: All Respondents	Total Sample 1001 %
Law should be	
Estate should go to charity	60
Estate should go to government/state	17
To a friend/someone who looked after her	5
Other suggestions	9
Don't Know	8

THE LAW OF INTESTACY IN ENGLAND AND WALES—SURVEY OF PUBLIC ATTITUDES—PAS 12096 **Table 12/1**

Q.6 MAN DIES, SURVIVED BY WIFE AND 3 ADULT CHILDREN, ESTATE INCLUDES HOUSE
Base: All respondents

		Age				Sex		Class				Area		
Total	Total 1001	18–30 213	31–44 251	45–59 269	60 or more 268	Men 482	Women 519	AB 154	C1 248	C2 309	DE 290	North 292	Mid-lands 245	South 464
Law should be:														
All to wife	717 72%	126 59%	176 70%	207 77%	208 78%	346 72%	371 71%	120 78%	182 73%	226 73%	189 65%	211 72%	181 74%	325 70%
Fixed share to wife, rest to children	86 9%	26 12%	22 9%	24 9%	14 5%	35 7%	51 10%	11 7%	22 9%	30 10%	23 8%	23 8%	15 6%	48 10%
House to wife, any balance to children	84 8%	34 16%	21 8%	18 7%	11 4%	41 9%	43 8%	7 5%	21 8%	22 7%	34 12%	20 7%	19 8%	45 10%
Fixed amount to wife, any balance to children	47 5%	11 5%	15 6%	7 3%	14 5%	21 4%	26 5%	6 4%	9 4%	12 4%	20 7%	19 7%	9 4%	19 4%
All to children	4 *%	— —%	1 *%	2 1%	1 *%	3 1%	1 *%	— —%	— —%	1 *%	3 1%	1 *%	— —%	3 1%
Some other arrangement	57 6%	15 7%	15 6%	11 4%	16 6%	34 7%	23 4%	10 6%	12 5%	16 5%	19 7%	17 6%	20 8%	20 4%
Don't know	6 1%	1 *%	1 *%	— —%	4 1%	2 *%	4 1%	— —%	2 1%	2 1%	2 1%	1 *%	1 *%	4 1%
Not answered	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%

Table 15/1

THE LAW OF INTESTACY IN ENGLAND AND WALES—SURVEY OF PUBLIC ATTITUDES—PAS 12096
Q.7A MAN DIES, SURVIVED BY WIFE AND 3 YOUNG CHILDREN, ESTATE INCLUDES HOUSE
Base: All respondents

		Age				Sex		Class				Area		
Total	Total 1001	18–30 213	31–44 251	45–59 269	60 or more 268	Men 482	Women 519	AB 154	C1 248	C2 309	DE 290	North 292	Mid-lands 245	South 464
Law should be:														
All to wife	790 79%	150 70%	203 81%	217 81%	220 82%	373 77%	417 80%	137 89%	191 77%	248 80%	214 74%	231 79%	196 80%	363 78%
Fixed share to wife, rest to children	60 6%	17 8%	11 4%	18 7%	14 5%	32 7%	28 5%	8 5%	20 8%	13 4%	19 7%	21 7%	12 5%	27 6%
House to wife, any balance to children	57 6%	20 9%	14 6%	15 6%	8 3%	28 6%	29 6%	2 1%	8 3%	22 7%	25 9%	16 5%	12 5%	29 6%
Fixed amount to wife, any balance to children	32 3%	7 3%	8 3%	4 1%	13 5%	15 3%	17 3%	2 1%	10 4%	10 3%	10 3%	8 3%	7 3%	17 4%
All to children	2 *%	— —%	1 *%	1 *%	— —%	1 *%	1 *%	— —%	— —%	— —%	2 1%	1 *%	— —%	1 *%
Some other arrangement	51 5%	17 8%	12 5%	14 5%	8 3%	29 6%	22 4%	5 3%	15 6%	15 5%	16 6%	12 4%	16 7%	23 5%
Don't know	9 1%	2 1%	2 1%	— —%	5 2%	4 1%	5 1%	— —%	4 2%	1 *%	4 1%	3 1%	2 1%	4 1%
Not answered	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%

THE LAW OF INTESTACY IN ENGLAND AND WALES—SURVEY OF PUBLIC ATTITUDES—PAS 12096 **Table 18/1**

Q.7B MAN DIES, SURVIVED BY WIFE AND 3 YOUNG CHILDREN, ESTATE DOES NOT INCLUDE HOUSE

Base: All respondents

		Age				Sex		Class				Area		
Total	Total 1001	18–30 213	31–44 251	45–59 269	60 or more 268	Men 482	Women 519	AB 154	C1 248	C2 309	DE 290	North 292	Mid-lands 245	South 464
Law should be:														
All to wife	795 79%	156 73%	197 78%	222 83%	220 82%	371 77%	424 82%	133 86%	196 79%	248 80%	218 75%	227 78%	194 79%	374 81%
Fixed share to wife, rest to children	98 10%	22 10%	26 10%	29 11%	21 8%	50 10%	48 9%	11 7%	27 11%	28 9%	32 11%	29 10%	27 11%	42 9%
Fixed amount to wife, any balance to children	41 4%	13 6%	9 4%	6 2%	13 5%	20 4%	21 4%	5 3%	6 2%	12 4%	18 6%	14 5%	10 4%	17 4%
All to children	8 1%	1 *%	4 2%	3 1%	— —%	5 1%	3 1%	1 1%	1 *%	2 1%	4 1%	3 1%	1 *%	4 1%
Some other arrangement	49 5%	18 8%	14 6%	8 3%	9 3%	29 6%	20 4%	4 3%	12 5%	19 6%	14 5%	16 5%	11 4%	22 5%
Don't know	10 1%	3 1%	1 *%	1 *%	5 2%	7 1%	3 1%	— —%	6 2%	— —%	4 1%	3 1%	2 1%	5 1%
Not answered	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%

Table 21/1

THE LAW OF INTESTACY IN ENGLAND AND WALES—SURVEY OF PUBLIC ATTITUDES—PAS 12096

Q.8A MAN DIES, SURVIVED BY SECOND WIFE, FORMER WIFE AND 3 ADULT CHILDREN, HOUSE LIVED IN WITH SECOND WIFE
Base: All respondents

		Age				Sex		Class				Area		
Total	Total 1001	18–30 213	31–44 251	45–59 269	60 or more 268	Men 482	Women 519	AB 154	C1 248	C2 309	DE 290	North 292	Mid-lands 245	South 464
Law should be:														
All to second wife	273 27%	38 18%	76 30%	76 28%	83 31%	143 30%	130 25%	47 31%	74 30%	75 24%	77 27%	79 27%	61 25%	133 29%
House to second wife, any balance to children	238 24%	64 30%	71 28%	62 23%	41 15%	99 21%	139 27%	35 23%	52 21%	88 28%	63 22%	71 24%	63 26%	104 22%
Fixed share to second wife, rest to children	131 13%	35 16%	30 12%	34 13%	32 12%	64 13%	67 13%	18 12%	27 11%	38 12%	48 17%	43 15%	31 13%	57 12%
Fixed amount to second wife, any balance to children	65 6%	11 5%	14 6%	17 6%	23 9%	29 6%	36 7%	11 7%	18 7%	20 6%	16 6%	15 5%	13 5%	37 8%
All to his children	39 4%	11 5%	5 2%	14 5%	9 3%	22 5%	17 3%	2 1%	4 2%	18 6%	15 5%	12 4%	10 4%	17 4%
All to his former wife	8 1%	3 1%	2 1%	— —%	3 1%	3 1%	5 1%	1 1%	2 1%	4 1%	1 *%	— —%	2 1%	6 1%
Some other arrangement	194 19%	44 21%	43 17%	54 20%	53 20%	99 21%	95 18%	32 21%	55 22%	57 18%	50 17%	57 20%	51 21%	86 19%
Don't know	53 5%	7 3%	10 4%	12 4%	24 9%	23 5%	30 6%	8 5%	16 6%	9 3%	20 7%	15 5%	14 6%	24 5%
Not answered	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%

THE LAW OF INTESTACY IN ENGLAND AND WALES—SURVEY OF PUBLIC ATTITUDES—PAS 12096 **Table 24/1**

Q.8B MAN DIES, SURVIVED BY SECOND WIFE, FORMER WIFE AND 3 ADULT CHILDREN, ESTATE DOES NOT INCLUDE HOUSE
Base: All respondents:

		Age				Sex		Class				Area		
Total	Total 1001	18–30 213	31–44 251	45–59 269	60 or more 268	Men 482	Women 519	AB 154	C1 248	C2 309	DE 290	North 292	Mid-lands 245	South 464
Law should be:														
All to second wife	341 34%	49 23%	92 37%	98 36%	102 38%	172 36%	169 33%	60 39%	87 35%	97 31%	97 33%	94 32%	77 31%	170 37%
Fixed share to second wife, rest to children	259 26%	62 29%	74 29%	68 25%	55 21%	106 22%	153 29%	38 25%	67 27%	77 25%	77 27%	84 29%	67 27%	108 23%
Fixed amount to second wife, any balance to children	91 9%	20 9%	24 10%	29 11%	18 7%	39 8%	52 10%	11 7%	25 10%	29 9%	26 9%	28 10%	18 7%	45 10%
All to his children	64 6%	20 9%	11 4%	19 7%	14 5%	37 8%	27 5%	6 4%	8 3%	30 10%	20 7%	19 7%	19 8%	26 6%
All to his former wife	7 1%	3 1%	2 1%	— —%	2 1%	3 1%	4 1%	1 1%	1 *%	4 1%	1 *%	— —%	1 *%	6 1%
Some other arrangement	183 18%	51 24%	37 15%	43 16%	52 19%	100 21%	83 16%	29 19%	48 19%	59 19%	47 16%	52 18%	47 19%	84 18%
Don't know	56 6%	8 4%	11 4%	12 4%	25 9%	25 5%	31 6%	9 6%	12 5%	13 4%	22 8%	15 5%	16 7%	25 5%
Not answered	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%	— —%

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