

Administration of Estates – Review of the Statutory Legacy

**A review of the amount of the lump sum
payable to a surviving spouse on the
distribution of an intestate person's estate**

Consultation Paper

CP 11/05

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This consultation will end on 07 September 2005

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Department for Constitutional Affairs.**

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Executive summary

If a person dies without a valid will, leaving assets and a spouse, the law defines how much of the estate the spouse will inherit. The basic rule is that the spouse will receive the first £125,000 of the estate if there are children and the first £200,000 if there are not. This inheritance is commonly referred to as the statutory legacy. These figures were set in 1993. The amount the spouse will inherit will depend on the size of the estate. If the estate is worth more than the statutory legacy, the remainder is divided between the spouse and children or, if no children, between the spouse and parents or siblings.

The aim of this consultation is to decide whether the current levels at which the statutory legacy is set should be changed, and if so, to what.

Since these rules were first introduced, the aim has been to reflect what would probably have been the wishes of the average person dying without a will, had he or she made a will. In looking at the way the statutory legacy has been set in the past, four main principles can be seen to have characterised this hypothetical will. First, it is clear that at all times overwhelming priority has been accorded to the surviving spouse. Secondly, prominence has been given to securing the marital home for the use of the surviving spouse. Thirdly, the expectations of the children and other relatives have been acknowledged. Fourthly, it is reasonable to assume that, latterly at least, some allowance was made for future increases in value.

We consider that, in general, these four principles should continue to apply. However, whilst we consider that retention of the marital home comprises a large part of the surviving spouse's interest, we do not think that it is any longer appropriate to make a specific link with the house prices in the most expensive region when setting the statutory legacy. The disparity in house prices between regions has increased greatly since 1993, so that using a regional indicator would therefore lead to greater inconsistency in effect from region to region.

Currently, the main complaint about the size of the statutory legacy appears to be that it is not always sufficiently large to ensure the surviving spouse is able to remain in the

marital home. Each year, there could be up to 9,000 estates where the statutory legacy prevents the surviving spouse from receiving the whole estate, and of these, about 4,000 where the surviving spouse might be at risk of losing the home. However, there is a converse complaint that the statutory legacy is so large that children of the deceased receive nothing. This is of particular concern when the children are from an earlier relationship.

In terms of the options available, we do not think that reducing or retaining the current levels of the statutory legacy would either support these principles, or address the specific complaints. We consider that any proposed increase in the levels should allow the spouse to receive all or most of the estate in most cases, but with some greater opportunity for the deceased's children to receive a share of the estate than has been the case in the past. Taking these factors into account, we provisionally propose that the figures for the statutory legacy be increased to **£350,000** and **£650,000**.

Introduction

This paper sets out for consultation whether the present levels of statutory legacy in intestate succession should be changed, and if so, to what. If it is decided to alter the levels this can be achieved by an Order made by the Lord Chancellor under the Administration of Estates Act 1925. The aim of the rules for the distribution of the estate of an intestate person is to reflect the distribution that it is likely the average deceased person would have made, had he or she made a will. This consultation is therefore aimed at everyone with experience of the preparation of wills and the workings of the current intestacy rules in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 65, have been followed.

An initial Regulatory Impact Assessment does not indicate that any groups are likely to be particularly affected. The proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector, or the public sector. Consequently, this paper does not contain a Partial Regulatory Impact Assessment. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to:

Advice, Information and Mediation Services

Association of Women Barristers

British Property Federation

Chancery Bar Association

Council for Licensed Conveyancers

Council of Mortgage Lenders

Family Law Bar Association

General Council of the Bar

Institute of Legal Executives

The Law Society

London Property Support Lawyers Group

National Association of Women Solicitors

Northern Chancery Bar Association

Official Solicitor & Public Trustee

The Probate Service

Property Litigation Association

Society of Asian Lawyers

Society of Black Lawyers

Society of Legal Scholars

Society of Trust and Estate Practitioners (STEP)

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Part 1: Introduction

1. In this section we explain the statutory legacy and the reasons for this consultation.

Subject matter

2. When a person dies intestate (that is, without having made a valid will), his or her estate is distributed according to the intestacy rules specified in the Administration of Estates Act 1925. More specifically, these rules state who will receive what share of the deceased's estate. If a person dies leaving a surviving spouse and children or other close relatives, and the estate is of a sufficient value, the surviving spouse will receive a specified lump sum. This lump sum is commonly referred to as the statutory legacy. Since 1993, the statutory legacy has been set at £125,000 where the deceased leaves a spouse and children, and £200,000 where the deceased leaves a spouse and parents or siblings but no children¹.
3. The remainder of the estate, once the statutory legacy has been paid, is divided between the spouse and the other nearest surviving relatives. If the deceased leaves children, half of the remainder will be paid directly to the children, and the spouse will take a life interest in the other half. This means that the spouse receives any income generated by the half in which he or she enjoys a life interest for the rest of his or her lifetime. When the spouse dies, the capital sum passes to the children. If there is a spouse but no surviving children, half of the remainder will be paid directly to the closest relative(s), and the spouse will take an absolute interest in the other half.

¹ The Family Provision (Intestate Succession) Order 1993

4. In effect, if an estate is worth less than £125,000 and the deceased leaves a spouse and children, the whole estate will go to the spouse. There will be no remainder and the children will receive nothing. If the deceased's estate exceeds £125,000, the excess over this figure will be split. Half will go to the children absolutely and half will be held on trust for them subject to the spouse's life interest. If the deceased leaves a spouse and other relatives but no children and the estate exceeds £200,000, half of the remaining estate, once the statutory legacy has been paid, is paid directly to the surviving spouse, and the other half of the remainder is paid to the deceased's parents, or if not alive, to the deceased's siblings. If the estate is worth less than £200,000, then the parents or siblings receive nothing.

Scope and aim

5. This paper aims to review the current levels at which the statutory legacy is set, and to seek views on whether the levels ought to be changed, and if so, to what.
6. This paper does not review the rules relating to the life interest or the structure of the intestacy rules generally. Nor do we consider in the paper whether the statutory legacy ought to be abolished or substantially altered in form. We are, therefore, not concerned with the identity of the closest relatives or with the situation in which there is no surviving spouse. We do, however, invite views on whether a review of these matters might now be appropriate.
7. This paper is only concerned with the law of England and Wales.

Timing of the review

8. We are conducting this review now for a number of reasons. First, the current levels of the statutory legacy have been in place for over ten years. The last five updates have taken place at intervals of between four and six years. It is therefore timely to consider whether the present levels are still appropriate.

Secondly, we have received several letters from Members of Parliament, lawyers, and members of the public over the last year or so, complaining about the effect of the current levels of the statutory legacy and suggesting that the levels should be reviewed. Finally, the issue has been raised in Parliament on four occasions in the last five years. In December 2000, Helen Southworth MP tabled an Early Day Motion proposing an increase in the lower level of the statutory legacy from £125,000 to £200,000. 79 Members of Parliament signed the motion. Parliamentary questions about the levels have also been asked by Anne McIntosh MP on 27 June 2001 and by Lord Shutt of Greetland on 8 September 2004 and 27 January 2005.

Background to the statutory legacy

9. The statutory legacy forms part of the intestacy rules, which are set out in section 46 of the Administration of Estates Act 1925 (as amended). The statutory legacy itself was first introduced into the law of England and Wales by the Law of Property Act 1922. The level was then £1000. At that time 98% of estates were worth less than that amount. The purpose of the statutory legacy was to ensure that in the great majority of cases the surviving spouse received the whole estate absolutely.² In the event, the 1922 Act was not brought into force, but the intestacy provisions (including the £1000 level) were carried into section 46 of the Administration of Estates Act 1925, and took effect on 1 January 1926 as part of the 1925 property law reforms.

10. In 1922, the intestacy provisions were designed to reflect what were thought likely to have been the wishes of the average person. In effect, the order of distribution of assets formed a statutory will. The structure of the rules was based on information gathered from a number of wills filed with the Probate Registry in the years before 1922. The outcome of the research concluded that the average

² Solicitor-General, Sir Leslie Scott, made this clear during the passage of the Bill through the House of Commons, *Hansard* (H.C.) 15 May 1922, vol.154, col.99.

person would probably want to provide for their spouse and their own children.³ This attitude appears to be the same today.⁴ We will be carrying out some research into the terms of wills today in parallel with this consultation to try to verify this conclusion.⁵

11. Since 1922, there have been seven reviews of the statutory legacy, either on its own or as part of a wider review of intestacy law. Of these reviews the most wide ranging were the reports of the Committee on the Law of Intestate Succession, chaired by Lord Morton of Henryton, which reported to Parliament in 1951,⁶ and of the Law Commission, which delivered its report “Distribution on Intestacy” in 1989.⁷

12. The following table shows the increases in the amount of the statutory legacy over time.

Table 1: Amount of statutory legacy – spouse’s entitlement

Year	Spouse and children	Spouse and other relatives
1925	£1,000	-
1952	£5,000	£20,000
1966	£8,750	£30,000
1972	£15,000	£40,000

³ In 1952 the Committee on the Law of Intestate Succession (Cmd.8310, 1951, para 18) based its recommendation on a study of wills which found that where the testator’s estate was less than £5,000, most left the whole to the spouse.

⁴ See para 86 for further discussion of this point.

⁵ This will involve studying a sample of wills proved by the Probate Registry and District Probate Registries.

⁶ “Report of the Committee on the Law of Intestate Succession” (Cmd.8310)

⁷ “Family Law: Distribution on Intestacy” (Law Com. No.187)

1977	£25,000	£55,000
1981	£40,000	£85,000
1987	£75,000	£125,000
1993	£125,000	£200,000

13. Among the factors taken into account when setting the lower level were: changes in the value of money as a result of inflation; general increases in the cost of housing, particularly in the most expensive region; the ability of the surviving spouse to remain in the matrimonial home; the level at which testators mostly left all of the estate to their spouse; and the residual opportunity for the deceased's children to receive a share of the estate.
14. The factors applied in setting the upper figure are less well documented. Certainly, the ratio between the figure chosen for the lower level, where there are children, and that chosen for the upper level applicable, where there are no children, has not been constant. Similarly, the ratio of the increase in the lower level and the increase in the upper level on the occasion of each review has changed. However, the predominant guiding factor in setting the upper level seems to have been to try to ensure that the surviving spouse should be made absolutely secure before other relatives should benefit.⁸

Other changes to the intestacy rules

15. In addition to these changes in the level of the statutory legacy, there have been a few other significant changes to the intestacy rules since 1925 that are relevant to our consideration of the statutory legacy.
16. The Intestates' Estate Act 1952 introduced for the first time different levels of the statutory legacy depending on which relatives of the deceased, in addition to the spouse, were surviving. The Act also introduced the right for a surviving spouse

⁸ Report of the Committee on the Law of Intestate Succession (Cmd.8310, 1951, para 33-35)

to buy out his or her life interest for a lump sum,⁹ and extended the provisions of the Inheritance (Family Provision) Act 1938 to intestate estates.¹⁰ These changes were based on the recommendations of the Committee on the Law of Intestate Succession.¹¹

17. The Family Provision Act 1966 gave the Lord Chancellor a statutory power to raise the levels of the statutory legacy.¹² This enabled changes to be made more quickly and easily. This may account for the more frequent increases since that date, but they may equally be attributable to increased rates of inflation.

18. The next relevant significant statutory change to the law as it affects persons interested in the estate of a deceased person was made by the Inheritance (Provision for Family and Dependants) Act 1975.¹³ It provided for specified family members and dependants of the deceased to apply to the court for financial assistance from the estate. This was based on the Inheritance (Family Provision) Act 1938, but it extended the categories of people eligible to apply, did not link reasonable financial provision so closely to maintenance requirements, and gave the court greater choice as to the methods by which the estate might be redistributed.

⁹ This is explained in more detail at para 36.

¹⁰ The Inheritance (Family Provision) Act 1938 allowed a spouse, an unmarried or disabled daughter, or an infant or disabled son to make a claim from the estate for maintenance.

¹¹ See n 5.

¹² Section 1 of the Family Provision Act 1966 amended section 46 of the Administration of Estates Act 1925, substituting the words “fixed net sum” for the actual amount of the statutory legacy. Section 1(4) of the 1966 Act provides that any order of the Lord Chancellor shall be made by statutory instrument.

¹³ This is explained in more detail at para 37.

19. Finally, the recently enacted Civil Partnership Act 2004 will extend the rights of spouses under the intestacy rules to civil partners. References in this paper to spouses should, as from 5 December 2005, be deemed to include reference to civil partners.

Problems with the present law

20. Currently, the main complaint about the size of the statutory legacy, of which we are aware, is that it is not sufficiently large. In particular, it does not always ensure the surviving spouse is able to remain in the marital home. If the deceased owned the marital home absolutely and it is worth more than the statutory legacy, then unless there are sufficient other assets in the estate, the deceased's children or other relatives may force the spouse to sell the home in order to receive their share. However, there is a converse complaint that the statutory legacy is so large that children of the deceased receive nothing.¹⁴ This is a particular cause for concern when the children are from an earlier relationship since they are less likely to be provided for in the surviving spouse's will, and they will not be entitled to anything under the intestacy rules if the surviving spouse subsequently dies intestate. In those circumstances, a step-child would have to rely on an application under the Inheritance (Provision for Family and Dependents) Act 1975. Application under the 1975 Act can, however, only be made by a step-child of the deceased if he or she was a dependant of the deceased, or was treated by the deceased as a child of the family in relation to a marriage to which the deceased was party.

Proposed reform

21. Clearly there is a tension in satisfying the competing interests of a surviving spouse, children and other relatives out of limited assets. The present level was

¹⁴ This point was debated in Parliament, following Lord Mishcon's unstarred question about what action the Government would take in light of the Law Commission's report on the intestacy rules (*Hansard* (Lords) vol.538 No.22, 16 June 1992, col.170), and was the main reason for not adopting the 1989 proposals of the Law Commission that the entire estate should always pass to the surviving spouse ("Family Law: Distribution on Intestacy" (Law Com. No.187)).

thought to represent a fair balance in 1993 when the latest figures were set. However, the purchasing power of that statutory legacy has declined. Thus, even if the 1993 balance was correct, it no longer achieves the result originally intended.

22. There is no single clear formula that can be applied to produce the appropriate levels for the statutory legacy. Any change in the levels will be the result of balancing several factors, which will in some instances be contradictory. In our view the levels chosen should ideally strike a fair balance between the needs of the spouse and the reasonable expectations of the children and/or other relatives. Among the factors to be taken into account in assessing the proper level for the statutory legacy are: inflation (in particular, in the cost of living and in house prices); increases in home ownership; the effect of joint ownership of property; the need to provide assets in addition to the marital home; increases in the incidence of family breakdown; and the proportion of estates that fall within the statutory bands. Consideration should also be given to predictable future changes in these areas. Consideration of these factors should guide any decision to increase, decrease or retain the present levels of the statutory legacy.

Provisional conclusion

23. Our provisional conclusion, based on the analysis in this consultation document, is that the present levels should be increased from £125,000 and £200,000 to £350,000 and £650,000 respectively.

Structure of this paper

24. In this Part of this paper we have set out a preliminary overview of the issues to be covered and our provisional conclusion. More particularly, this part sets out the background to the consultation paper – what it is about, what it seeks to do, and why it has been produced. In Part 2 we explain the present law. In Part 3 we describe the problems with the current law and examine the frequency with which they are likely to occur. In Part 4 we identify the principles that ought to inform the revision of the statutory legacy. We then consider the options for reform and explain our provisional conclusion. Annex A contains the text of section 46 of the

Administration of Estates Act 1925 as amended. Finally, the questionnaire on page 60 contains a summary of the questions asked in the course of the paper.

Defined terms used in this paper

25. The 'estate' of a deceased person is the property owned solely by the deceased at the time of death. It may include land, household and personal items, money, stocks, shares and other investments, businesses, and any payment or income owed to the deceased.
26. Where two or more people own property together, the descent of the property on death will usually depend on whether they own the property as 'tenants in common' or 'joint tenants'. In the case of a tenancy in common, each owner has a separate defined interest. Accordingly, when one dies his or her share forms part of the estate and passes under his or her will or the rules of intestacy. Any property that is owned jointly under a joint tenancy will automatically pass by survivorship to the remaining joint owner(s) and will not form part of the estate.
27. "Letters of administration" are the grant of representation¹⁵ issued by the Probate Registry when there is no will and allows the estate to be administered according to the intestacy rules.
28. "Spouse" refers to a person that has lawfully married another person of the opposite sex under the law of England and Wales, or has lawfully married according to recognised law of another country.
29. The Civil Partnership Act 2004 creates civil partnership, a new form of legal relationship which may be formed by two persons of the same sex. This is a parallel status to marriage, and, once the Act comes into force on 5 December

¹⁵ A grant of representation is a legal document issued by the Probate Registry (part of the Principal Registry of the Family Division in the High Court) which gives a person authority to deal with the estate of the deceased.

2005, civil partners will be subject to all the same legal rights and responsibilities under the intestacy rules as spouses. In this paper, as mentioned above, references to a spouse are intended to include reference to a civil partner when the provisions of the Civil Partnership Act 2004 are brought into force.

Abbreviations used in this paper

30. The following abbreviations are used:

1925 Act refers to the Administration of Estates Act 1925 as amended

1975 Act refers to the Inheritance (Provision for Family and Dependents) Act 1975

Morton Committee refers to the Committee on the Law of Intestate Succession, chaired by Lord Morton of Henryton, which reported to Parliament in 1951 (Cmd.8310)

Part 2: The current law

31. This section describes the present law relating to the statutory legacy. It then considers how often the rules are applied in practice.

Current law

32. The intestacy rules set out a statutory scheme for the distribution of a deceased's estate when there is no will, or when an existing will is invalid. The intestacy rules will also apply to the part of an estate that is not disposed of by a will, if the will does not dispose of the whole estate, or part of the will is invalid.
33. The statutory legacy arises when an intestate deceased leaves a spouse.
34. There is no recognised legal status of 'common law marriage' in the law of England and Wales, and co-habitants (whether opposite-sex unmarried couples or same-sex couples who are not registered as civil partners) are not entitled to receive anything under the statutory legacy provisions. Polygamous marriage is not allowed under English law but English law does accord full recognition to polygamous marriages lawfully entered into in another country. It has not been settled how the intestacy provisions, and in particular the statutory legacy, would be applied in the case of multiple surviving spouses.¹⁶ Consideration of this issue is, however, beyond the scope of this paper.
35. The full intestacy rules, as set out in s.46 Administration of Estates Act 1925 (as amended), are included in **annex A**. However, in essence the rules applying to the statutory legacy provide that:

¹⁶ Philip Rosdale, "Problems of succession in polygamous marriages", *Solicitors Journal* [06 February 1998], p.106

where the intestate leaves –

*Surviving spouse but no issue or any other relation of the whole blood*¹⁷:

the spouse takes the whole of the estate absolutely.

Surviving spouse and children:

the spouse takes –

the ‘personal chattels’ (household articles, including cars, but nothing used for business purposes);

a statutory legacy of the deceased’s assets up to the first £125,000 value of the estate; and

a life interest in half the remainder, (which goes in equal shares to the deceased’s children on the spouse’s death):

the children take the other remaining half in equal shares immediately.¹⁸

Surviving spouse, but no children:

the spouse takes –

the ‘personal chattels’ (household articles, including cars, but nothing used for business purposes);

a statutory legacy of the deceased’s assets up to the first £200,000 value of the estate; and

half the remainder of the estate absolutely:

the deceased’s parents or, if there are none, the deceased’s brothers and sisters¹⁹ take the other remaining half in equal shares immediately.

¹⁷ Whole blood refers to shared biological parentage, for example, a sibling of the whole blood would have the same biological mother and father as the deceased, while a maternal aunt of the whole blood would have the same biological mother and father as the deceased’s mother. Half blood, however, refers to the incidence of only one shared biological parent, for example a maternal aunt of the half blood might have the same biological mother as the deceased’s mother, but a different father.

36. Where the surviving spouse has a right to a life interest, he or she may redeem the half share he or she holds as a life interest.²⁰ In this way, assuming the estate is large enough, he or she can obtain a further capital sum of money immediately. This sum may potentially finance the purchase of the matrimonial home in cases where the statutory legacy proves insufficient to do so.²¹
37. Finally, certain individuals who feel they have not been sufficiently provided for either in a will or under the intestacy rules, may apply to the court for an order for “reasonable financial provision” to be made from the deceased’s estate under the Inheritance (Provision for Family and Dependants) Act 1975.²² Those eligible to apply are: the surviving spouse; a former spouse of the deceased who has not remarried; a person that had been living with the deceased for two years immediately before the death as the husband or wife of the deceased; a child of the deceased; any person who, in the case of the deceased being or having been married, was treated by the deceased as a child of the family in relation to that marriage; and, any person maintained wholly or in part by the deceased immediately before the death.
38. In exercising its jurisdiction under the 1975 Act, the court will take a range of factors into account when deciding whether and how much of the estate to re-distribute. These include the financial resources and needs of the applicant, any

¹⁸ If under 18 years old and unmarried, this will be held on statutory trust until the beneficiary reaches 18 years old or marries, whichever is sooner. If a beneficiary has predeceased the intestate, his or her share is distributed evenly either amongst his or her children, or if none, amongst the remaining members of the class (or their children).

¹⁹ As n 17.

²⁰ Strictly, this right only applies to property in possession

²¹ s.47A Administration of Estates Act 1925, as inserted by s.2 Intestates’ Estates Act 1952.

²² s.1 Inheritance (Provision for Family and Dependants) Act 1975.

other applicant(s) and any beneficiary to the estate, the size of the estate, and any other matter which the court considers relevant in the circumstances of the case.²³ Where the applicant is the spouse, former spouse or co-habitant of two years, the court will also have regard to the age of the applicant, the duration of the marriage or co-habitation, and the contribution made to the welfare of the deceased's family.²⁴ Where the applicant is the child or step-child of the deceased, the court will also have regard to the manner in which the applicant was being or might expect to have been educated or trained, and in the case of the step-child, the court will additionally consider the extent to which the deceased had assumed responsibility for his or her maintenance, and the liability of anyone else to do so.²⁵

39. We believe that applications under the 1975 Act are relatively expensive to conduct and that they are also few in number.²⁶

Number of estates affected by the statutory legacy

40. It is not readily possible to determine exactly how many surviving spouses are affected by the statutory legacy. Figures are not collected for the actual number of people that die intestate leaving a spouse and other relatives. However, it is possible to get a rough idea of the number of estates potentially affected, by applying to the average number of intestate estates each year, the proportion of deaths represented by persons who leave a surviving spouse.

²³ s.3(1) Inheritance (Provision for Family and Dependents) Act 1975

²⁴ s.3(2), (2A) Inheritance (Provision for Family and Dependents) Act 1975

²⁵ s.3(3) Inheritance (Provision for Family and Dependents) Act 1975

²⁶ only 82 such claims were issued in 2003, and 73 in 2002, including claims where a will existed; we do not know the proportion that related to intestate estates (Table 2.3 Chancery Division: Claims and originating summonses issued in London by nature of proceedings *Judicial Statistics 2002* and *Judicial Statistics 2003*).

41. The number of intestate estates can be determined by looking at the number of letters of administration granted each year. Over the last five years, an average of 57,600 letters of administration have been granted each year.²⁷ Although this excludes partially intestate estates, it gives a good indication of the number of estates distributed according to the intestacy rules.

42. In 2002 there were 533,527 deaths in England and Wales. 203,338, or 38%, of those that died were married.²⁸

43. Assuming that the proportion of all deaths represented by spouses leaving a widow or widower can be read across to the number of intestate estates, it is reasonable to assume that the number of deaths in a year in relation to which the statutory legacy may be relevant is about 21,900. Whether it is the upper or the lower level of the statutory legacy that is relevant, will depend on whether the deceased left children.

44. Amongst non-pensioner married households, around 65 percent have children living within the home,²⁹ and there will be additional households where the children have left home, meaning that at least 65 percent of married couples have had children.³⁰ Applying this proportion to the 21,900 figure, we can say

²⁷ The number of grants of representation issued in relation to a will has been about 200,000 a year. The actual number of grants has slightly increased each year, both on intestacy and where there is a will.

²⁸ Table 9 Deaths: age, sex and marital status, 2002 (Series DH1 no.35 “Mortality statistics, general, Review of the Registrar General on deaths in England and Wales, 2002”).
http://www.statistics.gov.uk/downloads/theme_health/DH1_35_2002/DH1no35.pdf

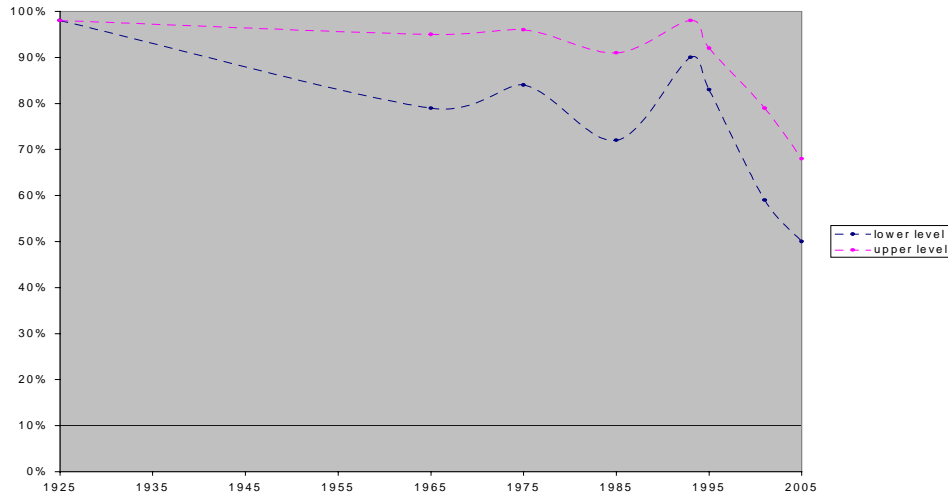
²⁹ 48 percent contain dependent children and a further 16.4 percent contain grown up children only, these numbers include step-children, Census 2001 – Families of England and Wales (<http://www.statistics.gov.uk/census2001/profiles/commentaries/family.asp#married>)

³⁰ We can assume that although in married couple pensioner households almost all children will now have left home, when the couples were younger the proportions would have been similar.

that the lower level of the statutory legacy may be relevant in at least 14,235 of the 21,900 intestate estates. Conversely, the upper level would be relevant in the remaining 7,665 or fewer cases.

45. However, in many of these cases the value of the estate will be less than the relevant level of the statutory legacy. The proportion of estates falling into this category has changed over time. In 1925, 98% of estates were worth less than the statutory legacy. In 1993 the Government believed that over 90% of intestate estates in England and Wales had a net value below £125,000.³¹ The chart below illustrates in general terms how that percentage has changed over time.

Chart 1: Percentage of estates falling within the statutory legacy – 1925 to 2005³²



³¹ Press Notice (Notes for Editors) 1 July 1993, "Proposed Changes to Intestacy Laws".

³² Figures for 1925 and 1993 taken from Government statements. Figures for other years taken from Inland Revenue estate duty and inheritance tax figures for assets by range of estate (Inland Revenue projected figures for 2004-5). Figures not available for all years in which the level of the statutory legacy was changed or for all years in between.

46. In 2001-2, therefore, only about 59 per cent of estates passed on death were valued at less than £125,000, and 79% at less than £200,000.³³ These percentages, when applied to the average number of estates that require a grant of letters of administration and the percentage of estates where the deceased was married and left children, suggest that there could be between 6,000 and 9,000 estates a year where a spouse would not receive the whole estate if the deceased left children, or up to 1,600 estates a year where a spouse would not receive the whole estate if the deceased left parents or siblings but no children. In other words, each year there are potentially 9,000 spouses who are adversely affected by the current lower level, and potentially 1,600 spouses who are affected by the current upper level of the statutory legacy.³⁴
47. These figures may be significantly higher than the number of surviving spouses affected in reality because of the way that the family home is usually owned by married couples. We discuss this more fully in Part 3, but for present purposes it is enough to note that married couples occupy around 45 percent of households,³⁵ and in about 35 percent of these cases the home will probably be owned by one spouse only, with a further 4.5 percent owned under a tenancy-in-common.³⁶ If this total of about 40 percent of married households is applied to

³³ 53% were valued at £100,000 or less. 26 per cent were valued at between £100,000 and £200,000, and 21 per cent were over £200,000. Percentages calculated from Inland Revenue's Inheritance Tax table 12.4 "Estates passing on death in 2001-02: assets by range of estate" total net capital value. http://www.inlandrevenue.gov.uk/stats/inheritance_tax/table12-4.pdf

³⁴ The 9,000 figure would apply if all married couples had children. The 1,600 figure would apply if no married couple non-pensioner households had children that had left home, and this proportion applied to married pensioner households as well.

³⁵ Census 2001 – Families of England and Wales
(<http://www.statistics.gov.uk/census2001/profiles/commentaries/family.asp#married>)

³⁶ 71% of households are owner-occupied. 32% of owned homes are jointly owned by a married couple (see n 45). 32% of 71% = 23% of 100%. The 10% of these that are owned as a tenancy-in-common would equate to 2.3% of all households. If 45% of all households are occupied by a married couple and 23% are owned jointly, this leaves 22% of households either owned by one spouse or not owned by either spouse. Applying the 71% rate of owner-occupation to this segment (i.e. 22%) we find that 16% of all households are owned by one

the figures of 9,000 and 1,600, the number of estates where the spouse might be at risk of losing the home could be 3,600 and 640 respectively. These figures do not, of course, take account of the amount by which an estate exceeds the statutory legacy. Nonetheless, although the figures available do not allow for a precise calculation, we believe that these figures represent a reasonable indication of the number of estates potentially adversely affected by the current levels of the statutory legacy.

48. Finally, in considering these figures, it should be remembered that intestacy is usually a voluntary choice. It can be avoided by the relatively simple expedient of making a valid will.

spouse. If 16% of all homes are owned solely by one spouse, and 45% of all homes are occupied by a married couple, then the proportion of married households where one spouse owns the home is $16/45 = 35\%$.

Part 3: Problems with the current law

49. The underlying aim of the statutory legacy is to mirror the will that the average person, who died intestate, would have made had he or she actually made a will. The principal criticism made to us about the present levels of the statutory legacy is that they have failed to keep up with present day values and are, therefore, too low. In particular, the present low levels produce situations in which a surviving spouse is unable to remain in the family home. Instead, the home has to be sold to provide the money to pay the entitlements of the children or other relatives of the deceased under the intestacy rules. This has certainly occurred in some cases and appears to some people to be unacceptable. The converse criticism is that the size of the statutory legacy is such that, in all but the most valuable estates, the entitlement of any one other than the spouse is hypothetical. In times of changing family patterns, with increasing numbers of step-families, the statutory legacy could be said to offer an insufficient share of the estate to step-children.
50. Having stated the problems in general terms, we will now examine the general factors that have affected the value of the statutory legacy since 1993. Principal among these is inflation (both general and in relation to house prices in particular). We will then examine the more specific issues regarding on the one hand the matrimonial home, including joint ownership and increased owner occupation, and, on the other, changing family structures. Finally, we will try to assess how frequently the levels of the statutory legacy are likely to cause real problems in practice.

Changes in the value of money

51. It is clear that the relative value of the statutory legacy has decreased significantly. Not only is the proportion of cases in which the surviving spouse

obtains the whole estate diminishing,³⁷ the worth of the legacy itself is also much reduced since 1993.

52. The most obvious factor affecting the value of the statutory legacy is inflation. The value of the statutory legacy was last raised in 1993. Since that time the internal purchasing power of the pound has fallen by 32%. In other words, one needs £1.32 today to have the same purchasing power as £1 in 1993.³⁸ Simply to preserve the purchasing power of the levels of statutory legacy set in 1993, the levels would have to be increased from £125,000 to £165,000 where there is a spouse and children, and from £200,000 to £265,000 where there is a spouse and other relatives.

Home Ownership and House Price Inflation

53. Equally obviously, the retail price index is not necessarily a good guide to the rate of inflation in respect of capital assets. The most common single largest asset in a typical estate is probably the home, or share of the home, that the deceased owned. Homes are particularly relevant because they are now so widely owned.
54. The value of the matrimonial home, or a share in it, is only relevant to the estate if the ownership is sufficiently valuable to generate a capital value. Rented homes only rarely have such a value. In effect, the homes with which we are concerned are those owned either freehold or on a long leasehold. In 1900 only 10% of householders were owner-occupiers. The vast majority of the 98% of estates in 1925 that were below £1000 would not have included a house or flat. By 1951 the proportion of owner-occupiers had increased to 29%. It has continued to

³⁷ See chart 1, page 22.

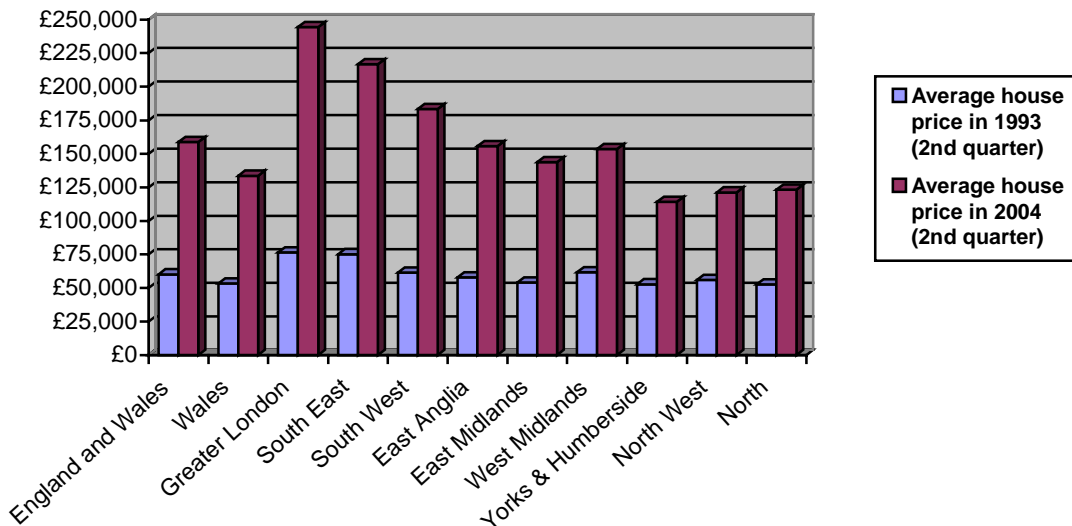
³⁸ Retail Price Index (all items including mortgage interest payments) for July 1993 was 140.7, for July 2004 was 186.8. $186.8 / 140.7 = 1.32$

increase, reaching 45% in 1964; 59% in 1980 and 67% in 1993. In 2003, 71% of householders were owner-occupiers.³⁹

55. Whilst, because of the rules on joint ownership, this does not mean that the estates of all householders will contain the capital value of a home or a share in a home, it does indicate that changes in house prices are going to affect the value of a greater number of estates than previously.

56. The effect of this trend towards owner-occupation is compounded by the fact that since 1993 house prices have increased at a significantly higher rate than general inflation as measured by the retail price index. This is illustrated in the following chart.⁴⁰

Chart 2: Average house price by region - 1993 & 2004



³⁹ Table 104 Dwelling stock: by tenure1, England (historical series)

http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=1563&l=3

57. The chart shows that average house prices in England and Wales increased by 165% from 1993 to 2004. In money terms the increase was from £60,000 to £160,000. Applying this percentage to the 1993 levels would produce figures of £331,250 where there is a surviving spouse and children and £530,000 where there is a spouse and other relatives. By contrast, applying the percentage rise in the retail price index over the same period would produce figures of only £165,000 and £265,000 respectively.
58. However, the national average hides considerable regional variations. The increase in Greater London was 219%. This was the highest percentage rise over the period. As a result, the average house price in Greater London increased from 76,500 to 244,500. At the other end of the scale, the increase in Yorkshire and Humberside was from 52,800 to 114,200. This represented an increase of only 116%. Applying these percentages to the 1993 levels of the statutory legacy would produce widely differing figures. Using the rise in Greater London as the factor, the lower level of the statutory legacy would have to increase to £398,750 and the upper level to £638,000. Using the rise in Yorkshire and Humberside the corresponding figures would be £270,000 and £432,000.
59. Looking at the chart in another way, if one sought to preserve the 1993 ratio of the average house price to the statutory legacy, the equivalent figures for the lower and upper levels would be £333,300 and £533,300.
60. From these figures, it is evident that the purchasing power of the statutory legacy has decreased significantly.

⁴⁰ Source for figures used: Halifax historical data spreadsheet “All Houses (All Buyers), Seasonally Adjusted - Quarterly Data”
(http://www.hbosplc.com/economy/includes/historic_data_03_12_04.xls)

61. It is also clear that in 2005 it must be more likely than it was in 1993 that the statutory legacy alone will fail to provide enough money for the surviving spouse to purchase and maintain the matrimonial home.

62. The following examples illustrate the impact of the increase in house prices.

Example 1:

The deceased has died intestate leaving an estate of £165,000.

The facts are:

The deceased has left a wife and two children.

The family home is worth £150,000, is free of mortgage and was owned solely by the deceased.

The deceased and his wife had a joint bank account of £25,000.

The deceased had a savings account of £15,000 in his sole name.

The deceased's wife retains ownership of the £25,000 in the joint bank account automatically.

The deceased's wife is entitled to the first £125,000 of the estate and a life interest in half the remainder, i.e. £20,000 (which goes to the deceased's children in equal shares on her death).

The children share the other half, £20,000, equally and take immediately.

Potentially this puts the wife in difficulties because she has not been left enough to keep the house should the children want their share. To secure the house she needs to find £20,000. However, she does have the £25,000 in the joint bank account so she could pay the children off from that. Alternatively she could redeem her life interest,⁴¹ and use the capital sum realised and some of the £25,000 in the joint bank account to pay the children off.

⁴¹ See para 37 and section 47A of the 1925 Act

Example 2:

The deceased has died intestate leaving an estate worth £520,000.

The facts are:

The deceased was in his second marriage.

He has left two children by his first wife who live with her.

He has left two children by his second wife who live in the family home.

He and his second wife had a joint bank account of £5,000.

The family home is worth £500,000, is free of mortgage and was owned solely by the deceased.

The deceased had a savings account of £20,000.

The second wife retains ownership of the £5,000 in the joint bank account automatically.

She is entitled to a statutory legacy of £125,000 and a life interest in half the remainder i.e. £197,500 (which goes to the deceased's children in equal shares on her death).

The remaining £197,500 goes to the four children in equal shares.

This puts the second wife in a difficult position. Even if she redeems her life interest⁴² in the £197,000, and adds it to the £125,000, she will still not receive enough from the estate to keep the matrimonial home outright.

⁴² As n 42.

In effect, the deceased's children can demand their share of the £197,000, and by doing so it may cause the second wife to have to sell the matrimonial home, unless she can raise enough money to pay off the children.

63. At first glance it seems clear from these examples and the preceding statistics that the levels of statutory legacy set in 1993 are in need of urgent upwards revision. The situation is, however, more complicated than it might first seem. First, one should consider the effect of joint ownership of property on the size of estates. Secondly, account must be taken of the changing nature of the family since 1993. Both these factors might modify one's view of the nature of the problems, if any, with the present levels of the statutory legacy.

Joint home ownership

64. The property that forms part of the deceased's estate is that which he or she owned solely. Property owned jointly with another, such as a joint bank account or a matrimonial home jointly owned by husband and wife as beneficial joint tenants,⁴³ would pass automatically to the surviving owner on the death of the other and would not form part of the estate. Where the deceased and the surviving spouse owned the matrimonial home as tenants in common, only the deceased's share would form part of his or her estate. The statutory legacy only attaches to the property owned solely by the deceased at his or her death.

65. Precise figures are not available for the number of married couples who jointly own their home. However, a crude analysis of a sample of the entries on the land register suggests that about 30 per cent of homes are currently owned by a

⁴³ All jointly owned land is held on a joint tenancy as to the legal estate. The equitable or beneficial interest may be held as joint tenants or tenants in common.

married couple, and of these, about ten per cent of the couples hold the property as tenants in common.⁴⁴ The remaining 90 percent are beneficial joint tenants.

66. These figures do not give any indication of the shares in which the tenants in common hold the property, but it seems reasonable to assume that, as between spouses, the majority would be held in equal shares. If these assumptions are correct, it follows that in the vast majority of cases, the matrimonial home is held jointly as joint tenants and will pass to the survivor automatically, outside the intestacy provisions. This implies, broadly speaking, that the estate of the first of a married couple to die is only going to include any part of the value of the matrimonial home in a small portion of cases. The increase in house prices is only material to the adequacy of the statutory legacy in these cases.

67. A side effect of this is that where the home is jointly owned, the deceased's estate is very unlikely to come to more than the statutory legacy. As such, this means that the deceased's children or other relatives are unlikely to receive anything, but the spouse will be able to remain in the family home regardless of whether the statutory legacy is increased.

68. The following example illustrates this point.

Example 3

The deceased has left a wife and their two children.

⁴⁴ These figures were taken from the HM Land Registry's Intelligent Register database (i.e. sample data only) which equates to 8,859,164 registers (approx 44.7% of computerised register total). The number of registers found, from this sample, where there are only two proprietors with the same surname (i.e. probably husband & wife but could be brothers, sisters etc) was 2,830,835 which equates to 32% of the total sample. Of these 2.83 million registers, 268,454 (9.5%) contained a restriction indicating a tenancy in common entry.

He and his wife owned the matrimonial home, worth £250,000, as joint tenants.

They had a joint bank account containing £4,500 at the time of death.

The deceased had a savings account of £15,000 in his sole name and shares worth £8,000 at the time of death, also in his sole name.

He has died intestate and his estate is valued at £23,000.

His wife, the surviving spouse, will automatically retain ownership of the matrimonial home and the money in the joint bank account.

She will also be entitled to the first £125,000 value of the deceased's estate, which means that she will take the whole £23,000 plus the deceased's chattels.

The deceased's children inherit nothing.

69. In example 3, had the home been held under a tenancy in common with each spouse holding a half share, the deceased's £125,000-share of the home would have been added to the rest of the estate (worth £23,000). The first £125,000 would have gone to the spouse by way of the statutory legacy payable. The remaining £23,000 would have been divided, with £11,500 going to the deceased's children immediately (£5,750 each), and the spouse taking a life interest in the other £11,500 with the two children as remaindermen.⁴⁵ As such, the spouse would have still retained the family home, but the children would also have received a legacy.

⁴⁵ That is, the capital sum in which the spouse holds an interest would revert to the children upon the spouse's death.

70. In conclusion, it would appear from these points that it is unlikely that the level of the statutory legacy will be the decisive factor in determining the surviving spouse's ability to retain ownership of the jointly owned family home in the vast majority of cases. In most cases where the home is jointly owned, the home will not even form part of the estate. Indeed, this is likely to be the case in about half of all married households.⁴⁶ However, the incidence of joint ownership does not completely diminish the possibility of the surviving spouse losing the family home. We should not therefore lose sight of the fact that there remains a significant portion of marital homes that are owned solely by one spouse, where the full effect of the rise in house values will be felt.⁴⁷

'Endowing' the surviving home owner

71. If one disregards the money that a surviving spouse may need to maintain a house over a period of years, the lower level of the statutory legacy comfortably covers a half share in an average priced family home.⁴⁸ Nonetheless, the degree of coverage is significantly less than in 1993, when the lower level of the statutory legacy was about five times a half share in an average priced home. Focussing on the sale price alone may not allow a surviving spouse an adequate amount with which to meet any mortgage payments and to repair, maintain and modernise (as need requires) the home over the years after the death of the first spouse to die. As the ratio between the average house price and the statutory legacy has not been constant, it is not clear how the 'endowment' portion of the statutory legacy has been calculated. It is, however, a factor included in the current levels.

⁴⁶ If 23% of all households are owned jointly by a married couple (n 35), the 90% of these that are owned as a joint tenancy would equate to 20.7% of all households. If 45% of all households are occupied by a married couple, then the proportion of married households where the home is owned as a joint tenancy is $20.7/45 = 46\%$.

⁴⁷ See para 47.

⁴⁸ Average house price in 2004 is £160,000. See Chart 2, page 27. A half-share is therefore £80,000. This is approximately two-thirds of the lower level.

Family breakdown

72. Another major social change since 1925 is the decline in the number of marriages and the increase in the proportion of marriages that end in divorce. In 1925, when the current intestacy rules were introduced and the statutory legacy was set at £1000, co-habitation and divorce were very uncommon. Setting the statutory legacy at this amount provided for the family unit as a whole, since it was a natural assumption that if a person died, the surviving spouse would continue to look after the children (if they were dependent) and the estate would pass to the children on the surviving spouse's subsequent death. It was only if the estate was much larger than average that the children received a separate gift in their own right, on the first parent's death. This occurred in only 2% of estates in 1925 and about 10% in 1993.
73. The situation today, however, is that the family structure is less permanent. This can have an impact on the effect of the statutory legacy. Marriages have declined from 358,490 in 1950 to 267,961 in 2000.⁴⁹ At the same time, divorce has become much more common, for example in 2001, 8.2% of the population were divorced, compared to 6.2% in 1991 and just 1.3% in 1971.⁵⁰ Re-marriage is also widespread, about 40% of marriages in 2001 being re-marriages for one or both parties.⁵¹ In addition, many children are born outside of marriage.⁵² As a result of these new trends, it is more likely that the deceased will have children by someone other than the surviving spouse. The 2001 census also found that more than one in ten dependent children live in step-families.⁵³ In these cases, as

⁴⁹ Marriages: 1947-2001, Month of occurrence
(<http://www.statistics.gov.uk/STATBASE/expodata/files/1770851101.csv>)

⁵⁰ Census 2001 – Families of England and Wales
(<http://www.statistics.gov.uk/census2001/profiles/commentaries/family.asp>)

⁵¹ Taken from Table 2.1 Marriage and Divorces, 1990-2000
(<http://www.statistics.gov.uk/StatBase/Expodata/Spreadsheets/D6137.xls>)

⁵² In 2003, there were 257,268 live births outside of marriage, compared to 364,280 inside marriage (Table 7: Live births and sudden infant deaths by marital status, parity (within marriage) and type of registration (outside marriage), 2003: Health Statistics Quarterly 23)

the following example illustrates, the order of death of the step-parents can be critical in determining whether any assets are to descend to step-children on intestacy.

Example 4

A child's mother and father divorced. The father bought an apartment and later re-married. The mother bought a house with a new partner, as tenants-in-common with a half share each, and they later married.

The father has died intestate. He was the sole owner of the apartment valued at £120,000 and he had savings of £10,000, making a total estate of £130,000.

The deceased's second wife takes the first £125,000 and a life interest in half of the remaining £5,000 (which goes to the deceased's child on her death).

The child receives £2,500 from his father's estate immediately and the remaining £2,500 upon the step-mother's death.

If the second wife then dies intestate, the child will not be entitled to any part of his father's estate that she received.

The mother has died intestate. The house is worth £250,000, of which she owned a half-share. She had £5,000 in a bank account, and owed £10,000 on credit cards. Her total net estate is valued at £120,000.

The deceased's second husband takes the whole amount, as it comes within the statutory legacy limit.

The child receives nothing from his mother's estate. If the second husband then dies intestate, the child will not be entitled to any part of his mother's estate that the second husband received.

⁵³ (<http://www.statistics.gov.uk/cci/nugget.asp?id=348>). Although those dying are more likely to be older, and therefore to have grown-up rather than dependent children, this is a useful indication of the current family structure.

74. In this example the child does receive a small amount from his father's estate. However, if the level of the statutory legacy were higher, he would not in this instance receive anything; the whole amount would go to the second wife.
75. Of course, the situation set out in the example could work conversely to the child's advantage. If the step-parents each died intestate, leaving their estate to the child's parents who later also died intestate, the child would effectively inherit the estates of four people rather than two.
76. In some cases, where the surviving spouse is a step-parent, he or she may continue to provide for the deceased's other children, both through life and in a will. However, if the surviving spouse and the deceased's own children do not have a positive relationship, there is no guarantee that the children will be provided for by the surviving spouse. Even where the surviving spouse cares for, or maintains, the children of the deceased spouse during his or her lifetime, the step-children are not entitled to anything under the current intestacy rules if the surviving spouse then dies intestate.⁵⁴ For example, if a child's parents divorce, re-marry, and then both die intestate before their new partners do, the only chance that child would have to receive any part of his parents' assets on intestacy is if the statutory legacy is lower than the value of each parent's individual estate (see example 4, above). This is in stark contrast to the situation where the child's parents stay married for life, in which case the child will receive the whole of the assets upon the second parent's intestate death (regardless of the statutory legacy).
77. For these reasons, it may be much more important now than previously, when looking at the level of the statutory legacy, to consider the balance between the reasonable expectations of the surviving spouse and those of the deceased's

⁵⁴ If a person has been treated as a child of the family in relation to a marriage that the deceased was party to, and does not feel that he or she has been adequately provided for by a will or by the intestacy rules, he or she can make an application to the court for financial provision to be made from the estate according to his or her need (Inheritance (Provision for Family and Dependents) Act 1975).

children. That the consideration of the position of children is not a new point is illustrated by the Government's response to the Law Commission's 1989 Report "*Family Law: Distribution on Intestacy*" (Law Com. No.187). The Commission's principal recommendation was that the surviving spouse should receive the whole of the intestate estate in all circumstances, but that otherwise the basic structure of the law should remain. The Government rejected this recommendation, because it was not convinced that it would be right to exclude other members of the family completely in all cases, in particular where the deceased left children from a previous marriage.⁵⁵

Summary

78. In conclusion, it is clear that the levels of the statutory legacy are in need of review. Their absolute and relative values have declined significantly. However, changing social circumstances, particularly in relation to family structures, will need to be taken into account in striking the right balance for the future. We know from correspondence and the debates in Parliament that there have been some individual cases, in which the present levels have caused hardship, but the overall number of such cases in which a surviving spouse will have been forced to sell the marital home seems likely to be relatively small.

Q1. Do you agree that the main factors affecting the adequacy of the statutory legacy are:

- **Changes in the value of money and other assets, in particular houses;**
- **Increases in owner-occupation and joint ownership; and**
- **Changes in family structure?**

If not, please explain why.

⁵⁵ See *Hansard* (Lords) vol.538 No.22, 16 June 1992, col.170.

Part 4: The options for reform and a provisional proposal

79. In Part 3 we described the problems caused by the current levels of the statutory legacy. In this Part we first consider the principles that ought to be applied to determine the appropriate levels for the statutory legacy today. We then identify the options for reform and apply the principles to them. Having done this, we make a provisional proposal for increasing the statutory legacy. We confirm the appropriateness of our proposal by comparing its effect to that of previous increases. Finally, we air the possibility of a more fundamental review of the intestacy rules.

Principles applicable to the setting of the statutory legacy

80. As we have stated, the basic aim of the intestacy rules in general and the statutory legacy in particular is to mirror the will that it is reasonable to assume a deceased person would have made, had he or she actually done so. In carrying out this exercise, we need to consider not only what the deceased might have left to his or her spouse but also what he or she would have been likely to leave for his or her children or other relatives.

81. As we have mentioned we will be carrying out some empirical research into the content of wills today in parallel with this consultation. However, from the history of past increases in the statutory legacy, four principles can be deduced, which characterise the effect of the hypothetical will of the average married person.

82. First, it is clear that at all times overwhelming priority has been accorded to the surviving spouse. Secondly, prominence has been given to securing the marital home for the use of the surviving spouse. Thirdly, the expectations of the children and other relatives have been acknowledged. Fourthly, it is reasonable to assume that, latterly at least, some allowance was made in setting new levels for future increases in value.

83. The result of applying these principles on previous occasions was that in all but the wealthiest tenth or so of estates, the surviving spouse took the entire estate. The vast majority of children and other relatives received nothing. This is, perhaps, an inevitable consequence of a system in which an absolute sum rather than a proportion is used to divide the estate. However, although this might seem harsh on children and other relatives, one should not lose sight of the moderating influence of the 1975 Act. Under this Act children and others may make an application for financial assistance from the estate should any real hardship be likely to occur.

Applying the principles

84. Having identified four principles that have guided the setting of the levels of the statutory legacy in the past and thereby, in effect, having described the effect of the hypothetical will, we will now consider each in turn. First, we will examine the first three principles in relation to the lower and upper limits respectively. We will then consider the fourth principle in relation to both.

Lower level: Priority to the surviving spouse

85. The first principle is that the interest of the surviving spouse should be paramount. As already explained, as a result of increases in values and inflation – both generally and in house prices – it is more likely today than previously that the deceased's estate will be worth more than the statutory legacy. Conversely, however, his or her portion of the residue is also itself likely to be larger.
86. The policy of giving the vast majority of the estate to the surviving spouse seems to be supported by evidence drawn from Inland Revenue figures on the distribution of the value of bequests. These show that, on average, a spouse leaves about 75% of his or her estate to his or her surviving partner.⁵⁶ The policy is also supported by the result of a survey, albeit now a little dated, conducted on

⁵⁶ Table 12.9 *Inheritance Tax: Distribution of the value of bequests by sex and marital status of deceased and relationship to beneficiary, UK deaths 2000-01.*

behalf of the Law Commission in 1988-9. This showed that almost two-thirds of the married people interviewed thought that the whole of their estate would go to their spouse. By contrast, only nine per cent of married interviewees thought that their estate would be shared between the spouse and children, and a mere five percent thought that everything would go to the children.⁵⁷

Lower level: securing the marital home

87. In policy terms, the priority given to the surviving spouse is complemented by a desire to ensure that he or she should retain the family home. The object of the policy is to ensure that he or she is secure both in the immediate aftermath of the bereavement and in the longer term. This has been achieved on some occasions in the past by setting the lower level of the statutory legacy well above the average house price in the most expensive area in England and Wales. However, the disproportionate size of increases in house prices not only as against inflation generally but also in the most expensive region as against increases in other regions puts this approach under pressure.
88. Increases in joint ownership of property will help the surviving spouse to retain the matrimonial home and will also buttress the position of the surviving spouse generally. This is because if the home no longer forms part of the estate, the children or other relatives are less likely to receive anything as the whole of the estate is more likely to be swallowed up by the statutory legacy.

Lower level: interests of children

89. On the occasion of previous increases, as already mentioned, the children of the deceased have only inherited in the case of larger estates. Increases in family breakdown mean that there may be more cases in which step-children, in particular, could be unfairly excluded from the distribution of their parent's estate. If the surviving spouse is not the children's natural parent, and the spouse

⁵⁷ Family Law: Distribution on Intestacy, 1989, Law Com.No.187 (Appendix C, Table 3, p.34)

receives all or most of the estate, then those assets are potentially lost to the deceased's children forever.

Upper level: priority to the surviving spouse

90. As we noted earlier, the method of setting the upper limit has not been so clearly described on earlier occasions as the lower limit. However, the principle behind it was well expounded in the Morton Committee's report, following which the upper level was established. The Committee suggested that "the intestate would have wished to make quite certain that the position of the surviving spouse is secure before the parents are entitled to a share in the estate", but also that in the case of a very large estate, "a childless person, dying intestate, would wish that close relatives, such as parents or brothers and sisters, should take some benefit from the estate, subject always to adequate provision being made for the spouse".⁵⁸ This opinion seems to be supported by the survey conducted as part of the Law Commission's report, in which 90% of married respondents thought that where the deceased left a spouse and siblings, but no children, the spouse should receive the whole of the estate.⁵⁹

Upper level: securing the marital home

91. The higher level of the upper limit has in practice presumably meant that the retention of the family home has not been an issue in relation to the upper limit.

Upper level: interests of parents and siblings

92. The incidence of family breakdown does not impact in the same way on the ability of parents and siblings to inherit as it does on children. The number of times that the deceased had married would not alter the expectations of such relatives. They would not be expecting to inherit the remainder of the estate upon the surviving spouse's death in the way that the natural children of both the

⁵⁸ At paras 33-34, p.12

⁵⁹ Family Law: Distribution on Intestacy, 1989, Law Com.No.187 (Appendix C, Table 9, p.42)

deceased and the surviving spouse might expect to receive the whole estate on the death of the second parent. In this way, there is not the same driver to set the level lower, relative to the value of estates as a whole, than has been the case in the past.⁶⁰

Future inflation – lower and upper level

93. Building an allowance for future changes in values into the levels of the statutory legacy is inevitably speculative. However, we would hope that the levels chosen should, barring exceptional circumstances, hold good for at least say, 5 years, before another adjustment is required. For this reason, some allowance for future growth seems sensible.
94. Of the measures that we have considered, all are to some extent speculative but house price changes are particularly difficult to forecast. Taking a general indicator, projections for the Retail Price Index produced by HM Treasury⁶¹ indicate an expectation that the index will increase by about 14 percent over the next five years. However, projections for changes in house prices in 2005 range from a national average of –2% by Halifax to 4% by the Council of Mortgage Lenders. Projections beyond 2005 are scarcer, though the Council of Mortgage Lenders forecast a 2% increase for both 2006 and 2007, and Halifax predict that there will be modest increases beyond 2005. However, if prices in the most expensive region were to be taken as the most important factor, the forecasters produce a more confused picture. The forecasts for London's residential property market in 2005 are -4% by Halifax and 3% by Nationwide. Taking an average of projections for 2005,⁶² and using 2% as the annual rate of growth beyond that, we can project that it is reasonable for our purposes to assume a 10% or so increase

⁶⁰ See chart 1, page 22.

⁶¹ Table B3: Economic assumptions for the public finances, 2004 Pre-Budget Report, p.198

⁶² 1.5%, taken as a mean average of –2% (Halifax), 2% (Nationwide), 3% (RICS), and 4% (Council of Mortgage Lenders). See:
<http://rics.org.uk/Property/Residentialproperty/Residentialpropertymarket/forecastroundup.html>

in home prices over the coming five years. This is also consistent with HM Treasury’s projection for the Retail Price Index.

Conclusion

95. In conclusion, we consider that the interest of the surviving spouse should still be the most important consideration in setting the levels of the statutory legacy. However, we do not think that it is any longer appropriate to make a specific link with the house prices in the most expensive region. To do so would, to a very large degree, prevent children and other relatives from inheriting. This would be particularly undesirable in this time of increased breakdown of traditional family structures. We also consider that some acknowledgement should continue to be made of the legitimate expectations of children. We also think that it seems reasonable to allow a 10% or so addition for future increases in values over the next five years.

Q2. Do you agree that the interests of the surviving spouse should be the most important consideration in setting the levels of the statutory legacy? If not, why?

Options for reform

96. Having identified the principles that ought to be applied in defining the appropriate levels for the statutory legacy today, we now consider the options for change that are available for enabling the statutory legacy to work well in the majority of cases in the future. There are three main options: to lower, retain or increase the current levels. We look at the potential benefits and costs of these options in turn.

Option 1: Reduce level of statutory legacy

97. The first approach to consider is a reduction in the statutory legacy levels. A reduction would favour the children or relatives over the spouse and reduce the number of cases in which the matrimonial home would automatically be secured

for the surviving spouse. However, it would assist the children of the deceased who might otherwise be automatically excluded from receiving part of the estate.

98. The principal potential benefit of this option is that a larger amount will be available for the deceased's children and other eligible relatives. This would meet concerns that the deceased's children can sometimes receive nothing or relatively little. The disadvantages are, however, obvious. A reduction would reduce the number of cases in which the surviving spouse inherited all or even a substantial part of the estate. It would also increase the number of homes at risk of sale to realise funds to pay off children or other relatives. These cases are, of course, the ones that have been most instrumental in precipitating this review. A reduction would therefore cut against the primary objectives of giving paramountcy to the interest of the surviving spouse and protecting his or her ownership of the marital home. We have accordingly provisionally concluded that a reduction in the levels of the statutory legacy would be inappropriate.

Option 2: No change to the existing levels

99. The next possible option is to leave the statutory legacy levels as they are. In effect, choosing this option would be a decision to retain the decrease in relative value of the statutory legacy that has occurred since 1993. We have therefore also provisionally rejected retaining the levels of the statutory legacy at their present levels.

Option 3: Increase level of statutory legacy

100. The third option is to increase the levels of the statutory legacy. This is our preferred option. It will give us the opportunity to redress some or all of the erosion in the position of the surviving spouse that has taken place since 1993, thus, restoring the paramountcy of the interest of the surviving spouse and securing the marital home in most cases. We think that this will produce the outcome that will most closely correspond with the expectations of married persons today, whilst still enabling us to make the rules slightly more friendly in their effects to children and other relatives.

Q3. Do you agree that the levels of the statutory legacy should be increased?

Assessment of the increases

101. The key question is, of course, how large the increases should be. In our view, the statutory legacy ought to be set at a level that leads to an acceptable division of the intestate’s estate in the majority of cases. We also consider that the levels should not be distorted by focussing on the wealthiest in society. We think it reasonable to assume that wealthier persons will be more likely to make a will than people with lesser means. The intestacy rules are, in effect, a safety net. Recent increases have been made with specific reference to the cost of houses in the most expensive region. However, for the reasons already given, we do not think that the cost of houses in the most expensive region should remain the determining factor.

102. Alternative measures for the increase might be the retail price index or the level of house price rises more generally. The result of applying the proportionate increase in these measures to the present levels of the statutory legacy, which we discussed in Part 3, is summarised in the following table.

Table 2: Possible increases in the statutory legacy

Basis for change (1993 – 2004)	Possible levels for statutory legacy where deceased leaves:	
	Spouse & Children	Spouse and parents or siblings but no children
1. No change	£125,000	£200,000
2. Inflation – RPI linked	£165,000	£265,000
3. House price average percentage rise in England and Wales	£330,000	£530,000

4. House price: average percentage rise in most expensive area of England and Wales	£400,000	£640,000
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103. As is immediately obvious there is a huge range covered by these figures. Each measure has some advantages and disadvantages.

Retail price index

104. Use of the retail price index would be consistent with general changes in the value of money. It would also better reflect the fact that estates are not made up entirely of land. Also, unlike house prices, the retail price index does not have regional variations. Although there are regional variations in the cost of some items, the RPI provides a national picture of the cost of living, and would therefore provide a regionally consistent basis for an increase in the statutory legacy.

Average house price increase in England and Wales

105. An increase in line with average house prices in England and Wales would have the benefit that it would go a long way to meet one of the main concerns that prompted this review. It would ensure in more cases than at present that the surviving spouse would be able to retain the marital home. However, an increase of this order may not be sufficient to protect the spouse where the value of the matrimonial home, owned absolutely by the intestate deceased, is higher than the national average. House prices in the South East, particularly in some London areas, are considerably higher than the average house price. In addition, the population in the South East is larger than in any other area. London and the South East accounts for almost a third of the population of England as a whole⁶³

⁶³ Table 1.3 Population: subnational (Government Office Regions of England)

and over a quarter of married households.⁶⁴ However, we should not lose sight of the likelihood that the problem of preserving the ownership of the family home occurs only in a relatively small number of cases.

Average house price increase in Greater London

106. The third measure of an increase in line with the rise in the average house price in the most expensive region would be consistent with previous increases in the lower level, which have been made in line with the average cost of a home in the most expensive region. The difficulty with this measure is that the increase in this area has been significantly greater than in other areas. Adopting this measure might unduly favour spouses in areas of lower housing prices and exaggerate the size of the problem relating to homes at present.

Conclusion – index linked increase

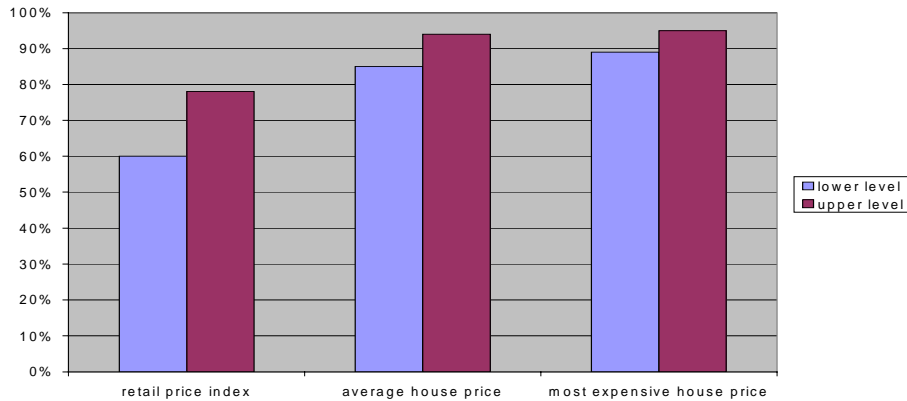
107. Taking all these factors into account, our provisional view is that none of the indices provides a satisfactory answer to the question of how large the increase of the statutory legacy should be. In our view it seems unlikely that a rise linked to the RPI would satisfy our requirement of giving paramountcy to the interest of the surviving spouse. Adopting the percentage rise in the average house prices would produce a figure more in line with expectations and would link closely with the principle of securing the family home. The third option of the average increase in house prices in the most expensive region would reinforce this but only at the expense of almost eliminating the cases in which children and other relatives inherit. We don't think this would be appropriate. We can therefore conclude that the appropriate levels for the statutory legacy should fall between the two figures created by the house price increase indices, with the outcome being likely to be geared towards the lower end of the range.

⁶⁴ The South East contains 16% of all married couple households, with a further 11% in London (3.20 Households: by type, spring 2002)

Value of estates – lower level

108. Another way of measuring the appropriate size for the increase is to refer to the percentage of estates falling within a suggested value. For example, as already mentioned, in 1925, 98% of estates fell entirely within the level of the statutory legacy. Such a figure would not be appropriate today when joint home ownership is so much more common and family breakdown far from a rarity. In 1993, the equivalent figure was at least 90%. Today, only about 59% of estates are lower than the lower level of the statutory legacy. By way of illustration, the following chart shows the percentage of estates that would be lower than the new levels if they were set in accordance with the indices just discussed.

Chart 3: percentage of estates within statutory legacy, applying inflation indices to projected value of estates in 2004-5



109. From the information available about people’s expectations and the distribution of assets on death generally,⁶⁵ and applying the principles we have identified, we think that the present proportion is too low. However, there is no distinct and certain rule that can be used to set the correct proportion, but a figure in the region of 85% would secure the primacy of the surviving spouse and his or her retention of the family home in most cases. It would also give a greater chance to inherit to children and other relatives than returning to the 1993 levels. Adopting this approach would produce a lower level limit for the statutory legacy

⁶⁵ As per Inland Revenue figures referred to at n 57.

of £330,000, which is the same figure as would be produced by increasing the current statutory legacy by the percentage increase in the average house price.⁶⁶

Value of estates – upper level

110. Chart 3 (above) illustrates the proportion of estates that would fall above the upper level if one of the indices mentioned was to be adopted. However, it should be borne in mind that once estates fall into the top ten percent by value of all estates, the actual value can vary to a large extent without a corresponding variation in percentage terms. About 94% of estates are worth less than £530,000 (the figure based on the increase in average house prices) while 95% of estates are worth less than £640,000 (the figure based on the increase in house prices in the most expensive region). Setting the upper level somewhere between these two figures, say at £600,000, would catch a very large percentage of all estates, meaning that in all but about five or six percent of estates, any surviving spouse would receive the whole estate where the deceased had also left parents or siblings but no children. We think this would accord with our objectives.

Future inflation and growth

111. As suggested earlier,⁶⁷ we propose allowing a growth rate of about 10% for the next five years.

Conclusion – lower level

112. Taking the figure of £330,000⁶⁸ plus a notional ten percent increase for future growth, and rounding to a sensible figure, we provisionally propose that the new lower limit for the statutory legacy should be **£350,000**. This would mean that in

⁶⁶ See Table 2, page 47.

⁶⁷ See para 94.

⁶⁸ See para 109.

about 86% of estates where the deceased left a spouse and children, the spouse would receive the whole estate.

Conclusion – upper level

113. Taking the figure of £600,000⁶⁹ plus a notional ten percent increase, we suggest that the upper level of the statutory legacy could be sensibly rounded and set at **£650,000**. Approximately 96% of estates would then fall within the upper level of the statutory legacy. This is very similar to the proportion of estates that would fall within the upper level if either of the figures linked to house prices in Table 2 were to be adopted. It is also very similar to the result of previous increases in the upper level.

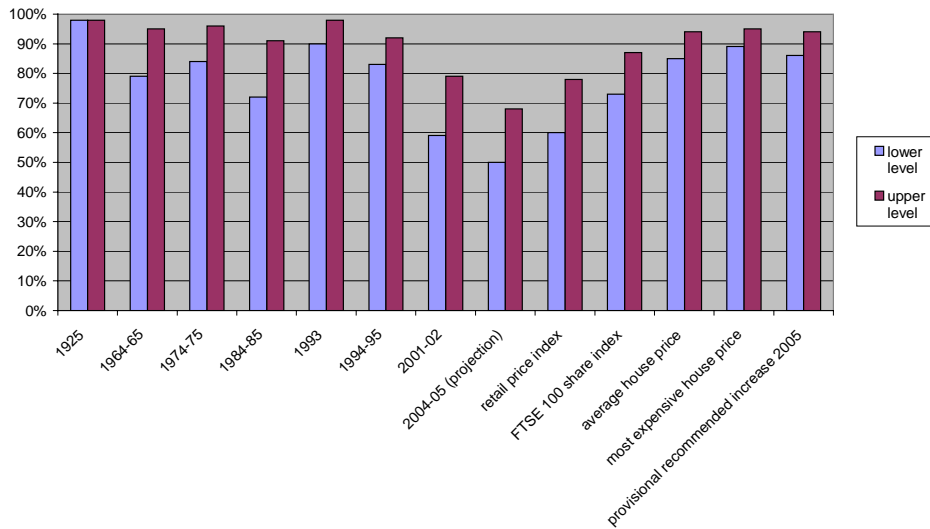
Comparative analysis

114. Although the proposed levels initially may seem to be disproportionately large compared to the current levels, we do not think that the increases are unreasonable. In part, the size of the increase is simply due to the passage of time. Whereas the last 5 increases have been made at intervals of four to six years, it has been over ten years since the last increase in 1993.

115. The following chart compares the percentage of estates falling within the levels of the statutory legacy, both over time, and as against different options for calculating an increase now. The final pair of bars shows our provisional proposal.

⁶⁹ See para 110.

Chart 4: percentage of estates within statutory legacy: past and possible future



116. Chart 4 also makes clear that in terms of the percentage of estates falling within the statutory legacy, the proposed figures are in fact in line with previous levels (at the time they were set), save for a slight reduction in the lower level to account for changes in family structure. They are also in line with the main indicators of inflation.

Summary

117. Taking into account the passage of time since the levels were last set, the changes in the value of assets and money over that period and making some allowance for changes in family structure, we provisionally propose that the lower and upper levels of the statutory legacy should be increased to £350,000 and £650,000 respectively. We conclude that these figures give appropriate priority to the interest of the surviving spouse and the security of the family home, whilst allowing a greater number of children to benefit on intestacy.

Q4. Do you agree that the levels of the statutory legacy should be increased from:

- a. £125,000 to £350,000; and**
- b. £200,000 to £650,000?**

If not, what increases would you suggest and why?

Implementation

118. A lead in time will be required between the making of any Order and its implementation, both to allow estates practitioners to become familiar with the new levels and to allow individuals time to consider whether they should make a will in view of the changes made. We feel that a lead in time of 3 months should provide this opportunity, without causing unnecessary delay.

Q5. Do you agree that three months is a sufficient lead in time for implementation of an increase in the levels of the statutory legacy? If not, what lead in time, if any, would you suggest and why?

119. Given the large increase proposed, it might be more acceptable to introduce the increase in phases, say half of the increase initially, and the remainder of the increase in six months or a year's time.

Q6. Do you consider that implementation of an increase in the levels of the statutory legacy should be phased? If so, please give details

Possible fundamental review

120. As mentioned in Part 1,⁷⁰ this consultation paper only examines potential changes to the level at which the statutory legacy is set. Structural reform of the intestacy rules is outside the scope of this review. However, we are aware that the issues raised in the paper, in particular the level of priority to be accorded to the retention of the family home by a surviving spouse, may appear too complicated to be adequately resolved simply by adjusting the level of the statutory legacy. Similarly, it is of little comfort to many affected children and relatives that it is only the most valuable estates that will produce anything for them.

121. If you consider that a fundamental review of the intestacy rules ought to be conducted, we would be interested to receive any comments or suggestions you may have. The comments could, for example, be about the scope of any future review, or proposals on how the rules should be changed. Any future review of the intestacy rules would, of course, include consultation.

Q7. Do you think that a wider review of the intestacy rules should be conducted?

If so, do you have any proposals as to:

a) what should be considered by the review?

b) what the outcome of the review should be?

⁷⁰ At para 5.

Annex A

s.46 Administration of Estates Act (as amended)

(1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

(i) If the intestate leaves a husband or wife, then in accordance with the following Table:

TABLE

If the intestate -

(1) leaves -

(a) no issue, and	the residuary estate shall be held in trust for the surviving <i>husband or wife</i> [spouse or civil partner] absolutely.
(b) no parent, or brother or sister of the whole blood, or issue of a brother or sister of the whole blood	

(2) leaves issue

(whether or not persons mentioned in subparagraph (b) above also survive)

the surviving *husband or wife* [spouse or civil partner] shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a fixed net sum, free of death duties and costs, to the surviving *husband or wife* [spouse or civil partner] with interest thereon from the date of the death at such rate as the Lord Chancellor may specify by order until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—

(a) as to one half upon trust for the surviving *husband or wife* [spouse or civil partner] during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate, and

(b) as to the other half, on the statutory trusts for the issue of the intestate.

(3) leaves one or more of the following, that is to say, a parent, a brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but leaves no issue

the surviving *husband or wife* [spouse or civil partner] shall take the personal chattels absolutely and, in addition, the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a fixed net sum, free of death duties and costs, to the surviving *husband or wife* [spouse or civil partner] with interest thereon from the date of the death at such rate as the Lord Chancellor may specify by order until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—

(a) as to one half in trust for the surviving *husband or wife* [spouse or civil partner] absolutely, and

(b) as to the other half—

(i) where the intestate leaves one parent or both parents (whether or not brothers or sisters of the intestate or their issue also survive) in trust for the parent absolutely or, as the case may be, for the two parents in equal shares absolutely

(ii) where the intestate leaves no parent, on the statutory trusts for the brothers and sisters of the whole blood of the intestate.

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

(ii) If the intestate leaves issue but no *husband or wife* [spouse or civil partner], the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;

(iii) If the intestate leaves no *husband or wife* [spouse or civil partner] and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;

(iv) If the intestate leaves no *husband or wife* [spouse or civil partner] and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;

(v) If the intestate leaves no *husband or wife* [spouse or civil partner] and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—

First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then

Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate) . . .

(vi) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as *bona vacantia*, and in lieu of any right to escheat.

The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by section nine of the Civil List Act 1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(1A) The power to make orders under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and any such order may be varied or revoked by a subsequent order made under the power.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

(2A) Where the intestate's *husband or wife* [spouse or civil partner] survived the intestate but died before the end of the period of 28 days beginning with the day on which the intestate died, this section shall have effect as respects the intestate as if the *husband or wife* [spouse or civil partner] had not survived the intestate.

(3) Where the intestate and the intestate's *husband or wife* [spouse or civil partner] have died in circumstances rendering it uncertain which of them survived the other and the intestate's *husband or wife* [spouse or civil partner] is by virtue of section one hundred and eighty-four of the Law of Property Act 1925, deemed to have survived the intestate, this section shall, nevertheless, have effect as respects the intestate as if the *husband or wife* [spouse or civil partner] had not survived the intestate.

(4) The interest payable on the fixed net sum payable to a surviving *husband or wife* [spouse or civil partner] shall be primarily payable out of income.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1

Do you agree that the main factors affecting the adequacy of the statutory legacy are:

- **Changes in the value of money and other assets, in particular houses;**
- **Increases in owner-occupation and joint ownership; and**
- **Changes in family structure?**

If not, please explain why.

Question 2

Do you agree that the interests of the surviving spouse should be the most important consideration in setting the levels of the statutory legacy? If not, why?

Question 3

Do you agree that the levels of the statutory legacy should be increased?

Question 4

Do you agree that the levels of the statutory legacy should be increased from:

- a) £125,000 to £350,000; and**

b) £200,000 to £650,000?

If not, what increases would you suggest and why?

Question 5

Do you agree that three months is a sufficient lead in time for implementation of an increase in the levels of the statutory legacy? If not, what lead in time, if any, would you suggest and why?

Question 6

Do you consider that implementation of an increase in the levels of the statutory legacy should be phased? Please give details.

Question 7

Do you think that a wider review of the intestacy rules should be conducted?

If so, do you have any proposals as to:

a) what should be considered by the review?

b) what the outcome of the review should be?

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 07 September 2005 to:

Miss Desiree Yeo
Her Majesty's Courts Service
Civil & Family Justice Division
4th Floor
Selborne House
54-60 Victoria Street
London
SW1E 6QW

Tel: 020 7210 8641

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Email: Yeo.Desiree@hmcourts-service.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at www.dca.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in 6 months time. The response paper will be available on-line at www.dca.gov.uk.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential.**

If you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
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Department for Constitutional Affairs
5th Floor Selborne House
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If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 63.

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