

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

As the deceased's spouse/dependent you are entitled to make an Application under the Inheritance (Provision for Family and Dependents) Act 1975, which shall be referred to as the I(PFD)A 1975 from now on.

Under the I(PFD)A 1975, there are six categories of persons who are entitled to apply on the grounds that the deceased's Will or the Rules of Intestacy or a combination of both fail to "make reasonable financial provision" for the Applicant.

One of the six categories is the wife or husband of the deceased. A Husband or Wife must prove that he or she was validly married to the deceased and the marriage was subsisting at the date of death.

There is a two-stage process to determine whether "reasonable financial provision" has been made. The Court will ask:-

- i. Has the Will or intestacy or a combination of both had the effect of failing to make reasonable financial provision for the Applicant?
- ii. If so, the Court goes on to consider the question of what would amount to reasonable provision for that Applicant.

There are two tests of reasonableness to be applied; the first to decide whether the provision made for the Applicant was reasonable and second, to decide whether it is reasonable to make an Order now. Both questions must be answered in the Applicant's favour if the Applicant is to succeed.

There are two standards of provision. The Surviving Spouse standard and that applied in all other cases. Broadly speaking, a Spouse is treated in a similar way as if the Spouses were divorcing.

The Court must consider the following matters:-

- i. The financial resources and needs of the Applicant, any other Applicant or beneficiary now or in the foreseeable future.
- ii. Any obligations and responsibilities of the deceased towards any Applicant or beneficiary entitled under the deceased's Will or the Rules of Intestacy. Obligations include moral obligations as well as legal obligations.
- iii. The size and nature of the net Estate of the deceased. The Court will be reluctant to interfere in the case of very small Estates. If the Estate is small, no Order may be made if it would not be sufficient to make a real contribution to the maintenance of the Applicant.
- iv. Any physical or mental disability of any Applicant or any person entitled either under the deceased's Will or the Rules of Intestacy.

- v. Any other matter, including the conduct of the Applicant or of any other person. This covers the conduct of the deceased as well as that of the Applicant or any other beneficiary. The conduct can be negative or positive.

In addition to considering the general guidelines, the Court has special guidelines to consider for each class of Applicant.

For a surviving spouse, the Court would consider the following additional guidelines:-

- i. The age of the Applicant and the duration of the marriage.
- ii. The contribution by the Applicant to the welfare of the family of the deceased, including any contribution in looking after the home and caring for the family.
- iii. The provision the Applicant might reasonably expect to receive if on the day when the deceased died the marriage, instead of being terminated by death, had been terminated by a Decree of Divorce.

The starting point is the amount which the Applicant could have expected to receive from Divorce.

There is a time-limit for making Applications under the I(PFD)A 1975 of 6-months from the grant of Probate or Letters of Administration to the Estate.