

**ADMINISTRATION OF ESTATES  
INTESTACY AND THE  
STATUTORY LEGACY**

**ANAYSIS OF RESPONSES**

**December 2007**

# ADMINISTRATION OF ESTATES INTESTACY AND THE STATUTORY LEGACY

## SUMMARY OF RESPONSES

### The Statutory Legacy

1. In January 2007 the Department of Finance and Personnel issued a Consultation Paper proposing increases to the levels at which the statutory legacy is set.<sup>1</sup> The consultation closed on 19 April 2007. Only 4 responses were received. This Paper contains a summary of those responses. Appendix A lists those who responded as well as those with whom the Department consulted.
2. The statutory legacy is the sum of money from a deceased person's estate which his or her surviving spouse or civil partner will receive if the deceased has not made a will. Where there is a surviving spouse or civil partner then the allocation of a share to that person takes precedence over any other distribution of the estate (excepting the satisfaction of debts, the payment of funeral expenses and any inheritance tax liability).
3. The statutory legacy is set at two levels. If a person dies and is survived by his spouse or civil partner and his children the surviving spouse or civil partner will be given the first £125,000 of the estate automatically. If a person dies and is survived by his spouse or civil partner but has no surviving issue (children and grandchildren etc.) the spouse or civil partner will be given the first £200,000 of the estate automatically if there are other relatives such as parents or siblings. The current levels apply to deaths occurring on or after 1<sup>st</sup> January 1994.

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<sup>1</sup> The full Consultation Paper and a Summary document are available at [www.dfpni.gov.uk/past\\_projects.htm](http://www.dfpni.gov.uk/past_projects.htm).

4. In addition to fixed monetary amounts the surviving spouse or civil partner also receives the personal chattels of the deceased and an absolute share of the residuary estate.
5. The rules on intestacy are set out in the Administration of Estates Act (Northern Ireland) 1955. Under this Act (as amended) the power to set the statutory legacy figures is exercised from time to time by the Department of Finance and Personnel. The power is exercisable by subordinate legislation subject to affirmative resolution of the Northern Ireland Assembly. Table 1 in Appendix B shows the levels at which the statutory legacy has been set since 1955.

## **The Consultation Paper**

6. Reconsideration in Northern Ireland of the level at which the statutory legacy is set was prompted largely by a comparable review carried out in England and Wales by what is now the Ministry of Justice. That consultation concluded that the current levels of the statutory legacy were inadequate and should be increased significantly to £350,000 for cases where the deceased left a surviving spouse or civil partner and children and £650,000 if the deceased left a surviving spouse or civil partner but no children. In reaching these provisional figures significant weight was given to the rise in house prices across England and Wales, but specifically the prices in the Greater London area.
7. The Department was not persuaded that these proposed figures would be appropriate for Northern Ireland and conducted a review of the social, economic and demographic factors which may influence the decision to set the statutory legacy at a particular level. Specific attention was paid to the rising cost of residential property in Northern Ireland, as well as the nature of ownership of property and the value of intestate estates.<sup>2</sup> This review of the evidence led the Department to conclude that while the statutory legacy figures in Northern Ireland

should be increased, the figures proposed for England and Wales were set at too high a level to be adopted here.

8. The Consultation Paper posed 4 questions. Two related specifically to the level of the statutory legacy for Northern Ireland. The third asked whether the figures in Northern Ireland should mirror those in England and Wales. The fourth was more forward looking, questioning whether a wider review of intestacy law should be undertaken.

**Q1. Do you agree that the statutory legacy figures should be increased? If not, why?**

**Q2. Do you agree that the current levels should be increased to £200,000 and £300,000 respectively for the lower and higher levels? If not, at what level should the lower and higher levels of the statutory legacy be set?**

9. Respondents were agreed that the current levels should be raised given the lapse of time since the last increase. One respondent agreed with the proposed increases, but wished the Department to consider the possibility of retaining the family home as part of the statutory legacy given to the surviving spouse or civil partner. Another respondent who agreed that the current levels were inadequate suggested much greater increases to £1million and £2million for the lower and higher levels respectively.

**Q3. In your opinion should the statutory legacy figures in Northern Ireland remain in step with figures adopted for England and Wales?**

10. Since 1977 the statutory legacy figures for Northern Ireland have always been set at the same levels as those agreed for England and Wales. Prior to 1977 the statutory legacy figures in Northern Ireland had always been considerably lower than those in England and Wales. We were thus interested in addressing the “parity” question: should the

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<sup>2</sup> Table 2 in Appendix B sets out the trend in house price inflation from 1985. Table 3 in Appendix B

figures be the same across the jurisdictions irrespective of the different economic and demographic conditions which might exist?

11. Two respondents addressed this issue. One agreed that the figures should remain the same “provided the Northern Ireland legacy figures reflect the economic situation in Northern Ireland at the time”. The Law Society for Northern Ireland considered that it was not necessary for the figures to remain in step with those adopted in England & Wales at this time given the analysis contained in the Consultation Paper.

**Q4. Are there other aspects of the law on intestacy which should be reviewed? For example, should cohabitants be able to inherit on the same basis as spouses and civil partners? Do the rules pay sufficient regard to the needs of children from a previous marriage and stepchildren?**

12. Only one respondent addressed this issue indicating that the current rules should not be extended to cater for cohabitants or stepchildren. It was suggested that current rules on constructive trusts provided protection to cohabitants, while a stepchild (if he or she had been treated as a child of the family) could avail of family provision legislation.

### **Other comments**

13. The Law Society noted that it had been 14 years since the 1993 statutory legacy figures were set. It considered that this was too long a period and suggested that the figures be reviewed at least every 5 – 7 years.

### **Conclusion**

14. There is no formula which will determine at any given time the appropriate levels of the statutory legacy. A number of factors are

relevant: the original intention of the legislators; the surviving spouse's or civil partner's other entitlements under the intestacy rules; the value of estates; the value and nature of property which passes outside the estate, for example survivor's pension rights. The figures proposed in the Consultation Paper were arrived at after considering all of these factors and a judgment made which would allow reasonable provision for a surviving spouse or civil partner in almost all cases.

### **New statutory legacy figures**

15. Following public consultation and consultation with the Committee for Finance and Personnel of the Northern Ireland Assembly, the Department of Finance and Personnel has increased the statutory legacy figures for Northern Ireland in relation to deaths occurring on or after 1<sup>st</sup> January 2008.<sup>3</sup>

16. If a person dies and is survived by his spouse or civil partner and his children the surviving spouse or civil partner will be given the first £250,000 of the estate automatically. If a person dies and is survived by his spouse or civil partner but has no surviving issue (children and grandchildren etc.) the spouse or civil partner will be given the first £450,000 of the estate automatically if there are other relatives such as parents or siblings.

17. As at December 2007 the Ministry of Justice has yet to determine new statutory legacy figures for intestate deaths occurring in England & Wales.

### **Next review**

18. The Department is committed to keeping these figures under review and has undertaken to examine the figures again in five years time.

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<sup>3</sup> The Administration of Estates (Rights of Surviving Spouse or Civil Partner) Order (Northern Ireland) 2007 (SR 2007 No 452).

# APPENDIX A

## LIST OF RESPONDENTS

King & Gowdy Solicitors  
Strabane Solicitors' Association  
The Bar Council  
The Law Society

## LIST OF CONSULTEES

Members of Parliament (MPs)  
Members of the Legislative Assembly (MLAs)  
Members of the European Parliament (MEPs)  
Lords and Commons Spokespersons for Northern Ireland (all parties)  
NI members of the House of Lords  
Political Parties  
District Councils  
Health and Social Services Trusts  
Health and Social Services Boards  
Health and Social Services Councils  
Education and Library Boards  
Solicitors' Associations

ADAPT NI  
Age Concern (NI)  
All Saint's Church  
AL-NISA Womens Group (BIC)  
Shameem Athar AL-NUR  
Amalgamated Engineering & Electrical Union  
Amalgamated Transport & General Workers Union  
The Most Rev Sean Brady (Archbishop of Armagh)  
The Most Rev Alan Harper (Archbishop of Armagh)  
Arts Council for Northern Ireland  
Association of Baha'i Women Ballymena  
Association of Baptist Churches in Ireland  
Association of Local Authorities  
Bar Council  
Barnardo's  
BASPCAN  
Belfast Butterfly Club  
Belfast Deaf Association  
Belfast European Partnership Board  
Belfast Hebrew Congregation  
Belfast Islamic Centre  
Belfast Lesbian, Gay, Bisexual  
Belfast Traveller Education & Development Group  
Belfast Travellers Support Group  
Presbyterian Church in Ireland

British Association of Social Workers  
British Deaf Association (NI)  
British Epilepsy Association  
British Irish Orthoptic Society  
British Medical Association  
Business & Professional Women  
Mr R W Alcorn RM  
His Honour Judge Burgess  
His Honour Judge McKay QC  
Mr Ken Nixon RM  
Carafriend  
CARE for Northern Ireland  
Carers NI  
Carrickfergus Local Strategy Partnership  
Castledawson & Curran Presbyterian Churches  
Catholic Guides of Ireland  
Magistrates Courts Association  
Council of County Court Judges  
Lisburn Domestic Violence Forum  
NI Guardian Ad Litem Agency  
Men's Action Network  
Charis Consultancy Services  
NI Human Rights Commission  
Victim Support  
Child Care NI  
Child Poverty Action Group  
Child Support Agency NI  
Childcare NI  
Childline NI  
Children (NI)  
Children are Unbeatable NI  
Children are Unbeatable Scotland  
Children are Unbeatable Wales  
Children in NI  
Children's Law Centre  
Children's Rights Alliance for England  
Chinese Chamber of Commerce  
Chinese Christian Church  
Chinese Lay Health Project  
Chinese Welfare Association  
Christian Institute  
Chrysalis Women's Centre  
Church of Ireland  
Civic Forum Secretariat  
Clogher Valley Independent Christian School  
Coalition on Sexual Orientation  
Coleraine Borough Strategic Partnership  
Coleraine Congregational Church  
Columba Community  
Commissioner for Children & Young People NI  
Committee on the Administration of Justice  
Community Development & Health Network (NI)  
Community Foundation for Northern Ireland  
Community Fund  
Community Practitioners & Health Visitors Assoc.

Community Worker Corrymeela  
Confederation of British Industry  
Contact Youth Counselling Services  
Cookstown Independent Methodist Church  
Cookstown Local Strategy Partnership  
Co-ordinator AMEN  
Co-ordinator Just Men  
Council for the Homeless (NI)  
Council on Social Responsibility  
Counteract  
His Honour Judge P Markey QC  
Covenant Protestant Reformed Church (in NI)  
Craigavon District Partnership  
Craigavon Standing Conference on Women's Organisation  
Craigavon Traveller Supportive Committee  
Criminal Bar Association of NI  
Cruse Bereavement Care (NI)  
Democratic Dialogue  
Department of Social Work (UUJ)  
Derry Well Women  
Mr Brendan Murtagh (UUJ)  
Mediation Network NI  
Parenting Initiative  
NI Co-ownership Housing Association  
Gingerbread NI  
Centre for ChildCare Research  
The 174 Trust  
Disability Action  
Bryson House  
Barnardos (NI)  
Down & Connor Family Ministry Commission  
Down Syndrome Association  
Dungannon Methodist Church  
E.P.O.C.H.  
East Belfast Community Development Agency  
Enniskillen Independent Methodist Church  
Equal Opportunities Officer QUB  
Equality Commission for NI  
Equality Forum NI  
Evangelical Presbyterian Church  
Ms Sheena Grattan Faculty of Law (QUB)  
Ms Laura Lundy Faculty of Law (QUB)  
Falls Community Council  
Falls Women's Centre  
Families Need Fathers  
Federation of Small Businesses  
Federation of Women's Institutes NI  
Fellowship of Independent Methodist Churches  
Fermanagh District Partnership  
Fermanagh Women's Network  
Finaghy Evangelical Presbyterian Church  
First Division Association  
Foyle Friend  
Foyle Womans Information Network  
Free Presbyterian Church of Ulster

Gay & Lesbian Youth NI  
GMB Union  
Gortalowry & Oldtown Community Partnership  
Hashings & Co Solicitors  
Head of Corporate Services Belfast Magistrates Court  
Help The Aged (NI)  
Housing Rights Service  
Human Rights Consortium  
Institute for Conflict Research  
Institute of Professional Legal Studies (QUB)  
Mr Alan Gallagher IPLS  
John Knox Memorial Free Presbyterian Church  
Largy Presbyterian Church  
Larne Christian Fellowship  
Law Centre (NI)  
Law Society (NI)  
Lesbian Line  
Lifestart Foundation  
Limavady District Partnership  
Local Government Staff Commission for NI  
Lurgan Council for Voluntary Action  
Magherafelt Area Partnership  
Magherafelt Womens Group  
Magheramorne Presbyterian Church  
Mandarin Speakers Association  
MD Loughrey Solicitors  
Men to Men  
MENCAP  
Men's Advisory Project  
Mid Ulster International Cultural Group  
Mid-Ulster Women's Network  
Moiria Baptist Church  
Multi-Cultural Group  
Multi-Cultural Resource Centre  
N.C.H. Northern Ireland  
National Children's Bureau  
National Family & Parenting Institute  
National Union of Students & Union of Students in Ireland  
NEWPIN in Northern Ireland  
Newry & Mourne Senior Citizen's Consortium  
Newry & Mourne Women  
Newtownabbey Senior Citizens Forum  
Northern Area Child Protection Committee  
NI Association of Citizens Advice Bureau  
NI Chamber of Commerce & Industry  
NI Childminding Association  
NI Committee ICTU  
NI Council for Voluntary Action (NICVA)  
NI Economic Research Centre  
NI Family Mediation Service  
NI Foster Care Association  
NI Gay Rights Association  
NI Muslim Family Association (NIMFA)  
NI Pakistani Cultural Association  
NI Women's Aid Federation

NI Women's European Platform  
NI Youth Forum  
NIACRO  
NICEM  
NIPPA  
NIPSA  
North & West District Childline Partnership  
North West Forum of People with Disabilities  
Northern Ireland Chamber of Trade  
Northern Ireland Childrens Hospice  
Northern Ireland Court Service  
Northern Ireland Filipino Association  
Northern Ireland Islamic Centre  
NSPCC  
NUCLEUS  
Official Solicitor RCJ  
Oi Kwan Womans Group  
Oi Yin Bangor Chinese Womans Group  
Omagh Women's Area Network  
One World Centre for Northern Ireland  
Men's Movement NI  
Pakistani Community Association  
Parental Equality  
Parenting Forum NI  
Parents Advice Centre  
Playboard  
POBAL  
Positive Parenting NI  
Law Reform Commission of Ireland  
Methodist Church in Ireland  
Press for Change  
Probation Board for NI  
Mrs Leonie McDermott  
PSNI  
Queer Space  
Reformed Presbyterian Church of Ireland  
Accord  
Regional Forum on Domestic Violence  
NIMBA  
RELATE  
RJ Templeton Plc  
The Hon Mr Justice Gillen  
Royal National Institute for Deaf People (RNID)  
Rural Community Network (NI)  
S.P.R.I.N.G.  
Sai Pak Northwest  
Salvation Army  
Save The Children NI  
Secretary Catholic Bishops of N.I  
Secretary N.I Royal College of Nursing  
Secretary BASW  
Secretary Indian Community Centre  
Sense NI  
Shelter (NI) Ltd  
Sikh Cultural Centre

Simon Community NI  
South Tyrone Area Partnership  
South West Belfast Community Forum  
Sperrin Lakeland Senior Citizen's Consortium  
St Vincent de Paul Society  
The Association of Baptist Churches  
The Baha'i Council for Northern Ireland  
The Blind Centre (NI)  
The British Council  
The Cedar Foundation  
The Scottish Law Commission  
The Churches Network on Non-violence  
The Executive Council of the Inn of Court of NI  
The Fostering Network Northern Ireland  
The General Consumer Council for NI  
The Guide Dogs for the Blind Association  
The Head of School of Law School of Law QUB  
The Law Commission  
The National Early Years Network  
The Presbyterian Church in Ireland  
The Rainbow Project Belfast  
The Rainbow Project Derry  
The Women's Centre  
Toberkeigh Presbyterian Church  
Training for Women Network  
Travellers Movement (NI)  
Twins & Multiple Births Association  
Ulster People's College  
Ulster Quaker Service Committee  
ULTACH Trust  
Unicorn Consultancy  
Union of Construction, Allied Trades & Technicians (UCATT)  
UNISON  
Professor Carol Smart University of Leeds  
The Head of the School of Law University of Ulster  
VINE Centre Limited  
Voice of Young People in Care (VOYPIC)  
W.P. Nicholson Memorial Free Presbyterian Church  
Wah-Hip Chinese Community Association  
Wave Trauma Centre  
West Belfast Economic Forum  
Western Area Child Protection Committee  
Mrs Deirdre Dorman  
Wilson Nesbitt Solicitors  
Woman's Information Group  
Women's Forum NI  
Women's Information Group  
Women's Resource & Development Agency  
Women's Support Network  
Workers Education Association  
Youth Action NI  
Youth Council for Northern Ireland  
YouthNet

## APPENDIX B

**TABLE 1**

**Northern Ireland Statutory Legacy Figures**

Year	Spouse and Issue	Spouse and other relatives (no Issue)	Approx number of years between increases
1955 (from 01.01.56)	£1,500	£5,000	-
1969 (from 20.03.70)	£2,250	£7,500	14
1973 (from 02.08.73)	£7,550	£20,000	4
1977 (from 01.01.77)	£25,000	£55,000	4
1981 (from 01.06.81)	£40,000	£85,000	5
1987 (from 01.12.87)	£75,000	£125,000	6
1993 (from 01.01.94)	£125,000	£200,000	6

**England and Wales Statutory Legacy Figures**

Year	Spouse and children	Spouse and other relatives (no Issue)	Approx number of years between increases
1952 (from 01.01.53)	£5,000	£20,000	27 (from 1925)
1966 (from 01.01.67)	£8,750	£30,000	14
1972 (from 01.07.72)	£15,000	£40,000	8
1977 (from 15.03.77)	£25,000	£55,000	5
1981 (from 01.03.81)	£40,000	£85,000	4
1987 (from 01.06.87)	£75,000	£125,000	6
1993 (from 01.12.93)	£125,000	£200,000	6

**TABLE 2**

**House Prices**

There has been an enormous rise in house prices over the past decade. The Quarterly Survey carried out by the University of Ulster and Bank of Ireland puts the cost of the average house in Northern Ireland at over £195,000 in the last quarter of 2006 compared to just over £41,000 in the first quarter of 1994 when the last increase in the statutory legacy took effect. This represents an average increase of over 470% in the cost of a home in Northern Ireland. The Table below sets out a range of average house prices across Northern Ireland for the 1<sup>st</sup> quarter of 1985, 1994, 2006 and 2007.

Year	Average house price in NI	Average house price in cheapest region in NI	Average house price in most expensive region in NI
<b>2007 (1st quarter)</b>	£215,590	£180,818 (L'Derry/Strabane)	£259,035 (Lisburn)
<b>2006 (1<sup>st</sup> quarter)</b>	£153,868	£120,163 (East Antrim)	£169,402 (Enniskillen/Fermanagh/South Tyrone)
<b>1994 (1<sup>st</sup> quarter)</b>	£41,226	£30,786 (Craigavon/Armagh)	£51,705 (Mid & South Down)
<b>1985 (1<sup>st</sup> quarter)</b>	£26,836	23,222 (Belfast)	£34,811 (North Down)

University of Ulster/Bank of Ireland/NIHE Quarterly Survey of House Prices

### TABLE 3

#### Probate Study

Month 2005	August 05		October 05		December 05	
<b>All grants of letters of administration</b>	77		79		87	
<b>Married at date of death</b>	Male (28)	Female (8)	Male (20)	Female (9)	Male (27)	Female (9)
<b>Estates exceeding the lower level of the statutory legacy (£125,000)</b>	Male (4)	Female (0)	Male (4)	Female (0)	Male (4)	Female (1)