

Guide

# Inheritance (Provision for Family and Dependants) Act 1975: Common questions

13 June 2024  Daniel Edwards

The Inheritance (Provision for Family and Dependants) Act 1975 (usually referred to as 'the Inheritance Act') is a piece of legislation that allows certain individuals to make a claim against an estate of a deceased person where they have not been given reasonable financial provision in their will (or as a result of an intestacy).

## How does the Inheritance Act work?

The Inheritance Act 1975 applies to all estates of people who die domiciled in England and Wales, regardless of what their will says (or if they didn't leave a will for that matter) or their reasons for leaving somebody a reduced inheritance, or excluding them all together.

If a court decides the inheritance received by a person is not reasonable, it can order that they receive a greater share of the estate than they were due under the will (or the intestacy rules if there is no will).

## Who can claim under the Inheritance Act 1975?

The Inheritance Act allows only certain categories of people to make a claim for "reasonable financial provision" from the estate of the deceased.

These categories of people include:

1. The spouse or civil partner of the deceased;
2. Former spouses or civil partners who have not remarried or formed a new civil partnership;
3. Children of the deceased, including adopted children and children who were treated as a child of the family; and
4. Individuals who were financially dependent on the deceased, such as cohabitants, or individuals who were maintained by the deceased prior to their death

In order therefore to make a claim under the Inheritance Act, the person or persons claiming must first show that;

1. The deceased died domiciled in England and Wales;
2. They are within one of the categories of people entitled to make a claim; and
3. The deceased's will (or the intestacy rules if applicable) result in a situation whereby they will not receive reasonable financial provision from their estate.

## How will the court decide what is 'reasonable'?

If a court is satisfied those grounds are met, it will then go on to consider a number of factors in order to decide what does constitute reasonable financial provision, and what orders it should make as to the re-allocation of the estate to ensure the claimant or claimants are adequately provided for.

These grounds include;

- The claimant's assets and income, including what those are likely to be in the foreseeable future;
- The assets and income of the other beneficiaries in the estate, again, including what those are likely to be in the foreseeable future;
- The size of the deceased's estate; in other words, how much money there is to share amongst everybody.

If the court determines that the claimant has not received reasonable financial provision, it may make an order for a lump sum payment, the transfer of property into the claimant's name, or the provision of ongoing maintenance by way of an income for instance. In other words, under the Inheritance Act the court can order provision be made in a wide variety of ways, and it has a total discretion as to how it does that.

## Do most cases go to court?

No. In fact, it is very rare that a case reaches a full court trial. Most cases are settled long before that, often through a process called mediation.

## How much does it all cost?

Running a case all the way to trial is undoubtedly expensive, but cases can sometimes be settled quickly and cost effectively.

Each case is different though, so taking upfront and honest advice on the likely costs of bringing or defending a claim is vital.

The first step is usually to write to the beneficiaries of the estate and the personal representatives setting out the basis of the claim. This phase can usually be estimated with a fair degree of certainty at the outset, but will vary case by case.

## How long do I have to bring an Inheritance Act claim?

It is important to note that claims under the Inheritance Act must normally be made within six months of the grant of probate. It is therefore important to seek legal advice as soon as possible if you believe that you may have a claim under the Act. Claims brought after this date will need permission of the court to proceed, which may not be forthcoming.

## How else can I dispute a will?

There are lots of other ways to [challenge a will](#) – see our [disputing a will article](#).

## Contact



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