



Inheritance and Trustees' Powers Bill [HL]: Committee Stage Report

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This is a report on the House of Commons Committee Stage of the [Inheritance and Trustees' Powers Bill \[HL\]](#) (the Bill). It complements [Research Paper 14/11](#) prepared for the Commons Second Reading.

The Bill is based substantially on a draft bill prepared by the Law Commission. It is following the special procedure which applies to Law Commission bills. The Bill is a technical Bill which would amend aspects of the law of intestacy and family provision claims, and the statutory powers of trustees in all trusts. It is supported by the Opposition.

The Bill was considered by a Second Reading Committee on 3 March 2014 and by a Public Bill Committee in a single sitting on 12 March 2014. The Bill was reported without amendment.

The Bill would extend to England and Wales.

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1 Introduction and background

The *Inheritance and Trustees' Powers Bill [HL]* (the Bill) is based substantially on a draft bill prepared by the Law Commission. It was introduced in the House of Lords as [HL Bill 46 of 2013-14](#), under the House of Lords procedure for Law Commission Bills.¹ The Bill was amended in Special Public Bill Committee and on Report. It completed its passage through the House of Lords on 10 February 2014 and was introduced into the House of Commons as [Bill 172 of 2013-14](#) on the same day.

Under Standing Order No. 59, Law Commission Bills are automatically referred to a Second Reading Committee. The Bill was considered by a Second Reading Committee on 3 March 2014² and had its formal Second Reading (without debate) on 4 March 2014.³ It was considered by a Public Bill Committee at a single sitting on 12 March 2014.⁴ No amendments had been tabled and there was no disagreement to any of the clauses. The Bill was reported without amendment.

The Government's [Explanatory Notes](#) published with the Bill provide detailed commentary on the clauses. Further background and information about the Bill's provisions is included in [Library Research Paper 14/11](#), which was prepared for the Bill's Second Reading in the House of Commons.

The Bill is a technical Bill which would amend aspects of the law of intestacy and family provision claims, and the statutory powers of trustees in all trusts, including:

- amending the entitlement of the surviving spouse or civil partner under the intestacy rules;
- providing for the statutory legacy (which the surviving spouse inherits before the deceased's estate is shared with children or other descendants) to be updated regularly;
- updating the definition of "personal chattels";
- amending other technical rules relating to intestacy and family provision claims;
- amending the management powers of all trustees under sections 31 and 32 of the *Trustee Act 1925* (powers to distribute income or capital from a trust fund to or for the benefit of beneficiaries who are not yet entitled to take such funds outright).

The Bill would extend to England and Wales. The Explanatory Notes state that the Bill deals with one provision, relating to the adoption of children, which is within the legislative competence of the National Assembly for Wales, and that the consent of the National Assembly will be sought for this provision and any future amendments which fall within their competence.⁵

¹ Information about the procedure is set out in the House of Lords, [Companion to Standing Orders and Guide to the Proceedings of the House of Lords](#), 2013, paragraphs 8.43 and 8.112-8.117

² [Second Reading Committee Deb 3 March 2014 cc3-16](#)

³ [HC Deb 4 March 2014 c861](#)

⁴ [PBC Deb 12 March 2014 cc3-6](#)

⁵ [Bill 172-EN](#), paragraph 3

2 Second Reading Committee debate

In Second Reading Committee, Simon Hughes, Minister of State at the Ministry of Justice, said that making a will and planning ahead made matters easier for relatives, but that the Bill was intended to address the situation where the deceased did not leave a will:

We know that if people have not made a will, the process for dealing with their financial and personal affairs can be especially challenging, which is why the Government have introduced changes to modernise and simplify inheritance law to benefit many people at what will be a particularly difficult time.⁶

Simon Hughes referred to the Bill as a “fairly short but technical Bill [which] will amend certain aspects of the law of England and Wales on inheritance and trustees’ statutory powers”.⁷ He outlined the process of consultation and policy development which had preceded the Bill, and set out why the Government had decided not to accept the Law Commission’s recommendations relating to intestacy rights for cohabitants:

Legal rights for cohabiting couples are complex and potentially far-reaching, and I am not trying to address them in the Bill. The family justice system is already in the middle of a comprehensive reform programme, so it would not be wise to consider further reform in this controversial area until we finish the reform of the much less controversial area that is the subject of the Bill.⁸

The Minister then went on to outline each provision and concluded by urging people to make a will.

Dan Jarvis, Shadow Minister for Justice, supported the Bill and agreed that it was important:

[The Bill] simplifies what in practice is often an over-complicated area of family law. It updates rules that have not been reviewed for more than 20 years to better reflect the circumstances of families living in 21st century Britain, and it irons out minor technical issues.

No matter how straightforward some of the proposals may seem, we should not underestimate their importance. Even the most minor of improvements to the way in which the system works could make a world of difference to people having to manage the distribution of an estate while also coping with the loss of a loved one.⁹

He asked what practical steps the Government was taking to encourage people to make a will and to keep a will updated. In response, Simon Hughes set out the Government’s intention to have an annual public campaign:

We are considering a proposal that, once a year, we would have a public campaign for people to make wills in the easiest way possible, both locally and electronically, and to make provision for lasting powers of attorney. Sadly, as people are increasingly living longer, more are getting Alzheimer’s and need to arrange for people to look after their affairs and deal with other issues such as organ donation, which I have discussed with the Health Secretary. We want to do that together, and do it publicly with a common website for those who can use it.

⁶ [Second Reading Committee Deb 3 March 2014 c3](#)

⁷ [Second Reading Committee Deb 3 March 2014 c4](#)

⁸ [Second Reading Committee Deb 3 March 2014 c4](#)

⁹ [Second Reading Committee Deb 3 March 2014 c11](#)

My thought is...that we might do that around fathers' day, or a similar day. ...I am trying to find something that will allow us to get through to the mindsets of people so that we can address the question, and I will be happy to work with the hon. Gentleman and his colleagues to try to ensure that we get the best, most transparent and most easy-to-use system possible.¹⁰

Dan Jarvis then went on to raise four issues on the Bill on which he sought clarification:

- the number of estates which would be affected by the reforms to intestacy in clauses 1 and 2. Simon Hughes replied:

...in the latest year for which we have figures, which is a couple of years ago, about a third of all deaths in this country were of people who died intestate. The figure that the hon. Gentleman gave was correct—220,000 or thereabouts.

Regarding provisions for deciding on how much money is set aside for a spouse, I indicated that roughly 10% of those 220,000 cases—about 22,000 a year, or 25,000 in round figures—concerned estates worth more than £250,000. Such cases are affected by clauses 1 and 2, but only if the deceased has a surviving spouse and children. Otherwise, we are talking about 2% of those who die, who are challenged by the £450,000 threshold, which is the threshold for whether the spouse alone is the survivor.¹¹

- whether the Minister anticipated a fall in the number of family provision claims as a consequence of the provisions in the Bill and, if so, by when and by how much. Simon Hughes replied:

Bluntly, I doubt it. I do not have any formal, technical advice on that. We will not be able to provide for people disposing of their estate in a way that other members of the family do not like, or cutting people out of their wills... My hope is that the situation will gradually improve, but I am not expecting a sudden miraculous transformation in the number of people applying for money from an estate.¹²

- whether the Government could provide any further information on the fiscal impact that the reforms would have, both on the Ministry of Justice and on HM Courts and Tribunals Service. Simon Hughes replied:

The fiscal impact on the Ministry of Justice is likely to be small, but it is in the right direction. The Bill will reduce by a little the number of people who go to court about such matters, which must be a good thing. The more such situations are sorted by somebody planning before they die, so that it is in writing, the less likely they will go to court for contest. We want to try to take these things out of the courts as far as possible. The Bill will have a beneficial impact on the spending of the state, although not a big one.¹³

- whether the Government had considered an alternative form of wording for personal chattels used “solely as an investment”, citing the concerns raised by practitioner groups. Simon Hughes replied:

The Law Society suggested adding “solely or mainly” as a definition in clause 3(1) as a proposed change to the 1925 Act. The Government disagreed with that, because the

¹⁰ [Second Reading Committee Deb 3 March 2014 c14](#)

¹¹ [Second Reading Committee Deb 3 March 2014 c13](#)

¹² [Second Reading Committee Deb 3 March 2014 c14](#)

¹³ [Second Reading Committee Deb 3 March 2014 c14](#)

wording could encourage disputes and litigation. I understand the hon. Gentleman's point. We want to ensure that we do not have litigation, or that we have as little as possible. It strikes me that the benefits of the definition, in practical terms, are as follows. First, personal chattels, such as the money or the shares or securities for money that are found in the house, should logically go to the spouse or the next relative. Secondly, if property was used solely or mainly for business purposes—if someone was running their own car hire firm or a shop, for example—and that was the family business, we would not want to put it into the pot for people to fight over. Lastly, using the common understanding of the definition “was used at the death of the intestate solely or mainly for business purposes”, we are trying to distinguish something that is clearly a business unrelated to the family from a vehicle, for example, that is used for family purposes and for the purposes of business. We cannot take away someone's car, for example, when it is a family asset and they need it to carry on. I will look again at that.¹⁴

3 Public Bill Committee debate

The Public Bill Committee met for a single sitting on 10 March 2014.¹⁵ No amendments had been tabled and there was no disagreement to any of the clauses.

Simon Hughes provided further information about the number of intestate estates:

Perhaps I can give colleagues a reason why the Bill is important. ... More than 480,000 deaths were registered in England and Wales in 2011. In the same year, 260,000 grants of representation were obtained to administer estates, of which 40,000 were intestate. For the remaining 220,000 deaths—nearly half the total number—for which there was no grant of representation, it can be assumed that about four out of five might be intestate. Therefore nearly 180,000 people die every year without leaving written provision. That is calculated on the basis that estates for which there is no grant of representation are likely to be smaller, because people do not bother to go through the legal process. Smaller estates are therefore likely to be intestate.

We have estimated, on advice, that in 2011 the total number of intestate deaths in England and Wales was approximately 220,000, so we are dealing with a lot of people and a lot of families. We are trying to reduce the room for potential dispute, as we all know how terribly controversial things can become if arrangements are not clear. Just under 46% of the total number of registered deaths in 2011 were classed as intestate.

...Between November 2007 and October 2008—the last year for which we have accurate figures—there were just over 1,000 intestate estates in England and Wales that were over the top level that is relevant to the Bill, which is more than £450,000. That is very few indeed. Working assumptions from census data and other work indicate that between 5% and 10% of intestate deaths involve spouses who leave parents, full siblings or descendants of their brothers and sisters, but no children or other descendents, so only between 50 and 100 intestate estates will be affected by clause 1.¹⁶

After Simon Hughes had outlined the intent of Clause 1, Dan Jarvis again welcomed the Bill and said that Opposition Members would not oppose any of the Bill's provisions:

If we can save just a few grieving families from having to go through the intestacy procedures and make life a little easier for those families that do have to go through

¹⁴ [Second Reading Committee Deb 3 March 2014 c14-15](#)

¹⁵ [PBC Deb 12 March 2014 cc3-6](#)

¹⁶ [PBC Deb 12 March 2014 cc3-4](#)

them, the Bill will make a real difference. For that reason, we will not be opposing this clause or any of the other provisions to be considered by the Committee.¹⁷

The Bill was reported without amendment.

4 Members of Committees

4.1 Members of Second Reading Bill Committee

Chair: Sir Edward Leigh

Members:

Bellingham, Mr Henry (North West Norfolk) (Con)
Brine, Steve (Winchester) (Con)
Cunningham, Alex (Stockton North) (Lab)
Doyle-Price, Jackie (Thurrock) (Con)
Evennett, Mr David (Lord Commissioner of Her Majesty's Treasury)
Hames, Duncan (Chippenham) (LD)
Harris, Rebecca (Castle Point) (Con)
Hepburn, Mr Stephen (Jarrow) (Lab)
Hillier, Meg (Hackney South and Shoreditch) (Lab/Co-op)
Howell, John (Henley) (Con)
Hughes, Simon (Minister of State, Ministry of Justice)
Jarvis, Dan (Barnsley Central) (Lab)
Jones, Mr Marcus (Nuneaton) (Con)
Mearns, Ian (Gateshead) (Lab)
Opperman, Guy (Hexham) (Con)
Phillipson, Bridget (Houghton and Sunderland South) (Lab)
Rutley, David (Macclesfield) (Con)
Shannon, Jim (Strangford) (DUP)
Wright, David (Telford) (Lab)

Committee Clerks: Kate Emms, Matthew Hamlyn

4.2 Members of the Public Bill Committee

Chair: Albert Owen

Members:

Bellingham, Mr Henry (North West Norfolk) (Con)
Brine, Steve (Winchester) (Con)
Cunningham, Alex (Stockton North) (Lab)
Dinenage, Caroline (Gosport) (Con)
Evennett, Mr David (Lord Commissioner of Her Majesty's Treasury)
Gilbert, Stephen (St Austell and Newquay) (LD)
Harris, Rebecca (Castle Point) (Con)
Hepburn, Mr Stephen (Jarrow) (Lab)
Hillier, Meg (Hackney South and Shoreditch) (Lab/Co-op)
Howell, John (Henley) (Con)
Hughes, Simon (Minister of State, Ministry of Justice)
Jarvis, Dan (Barnsley Central) (Lab)
Jones, Mr Marcus (Nuneaton) (Con)

¹⁷ [PBC Deb 12 March 2014 c5](#)

Mearns, Ian (Gateshead) (Lab)
Phillipson, Bridget (Houghton and Sunderland South) (Lab)
Rutley, David (Macclesfield) (Con)
Shannon, Jim (Strangford) (DUP)
White, Chris (Warwick and Leamington) (Con)
Wright, David (Telford) (Lab)

Committee Clerks: Kate Emms, Matthew Hamlyn