Changes to Legislation: as of 11 November 2026, this Act is up to date with all changes known to be in force.

Number 27 *of* 1965

SUCCESSION ACT 1965

REVISED

Updated to 1 November 2023

This Revised Act is an administrative consolidation of the *Succession Act 1965*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Screening of Third Country Transactions Act 2023* (28/2023), enacted 31 October 2023, and all statutory instruments up to and including the *European Union (Restrictive Measures concerning Sudan) Regulations 2023* (S.I. No. 535 of 2023), made 2 November 2023, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 27 *of* 1965.

SUCCESSION ACT 1965

REVISED

Updated to 1 November 2023

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Number 27 *of* 1965.

SUCCESSION ACT 1965

REVISED

Updated to 1 November 2023

AN ACT TO REFORM THE LAW RELATING TO SUCCESSION TO THE PROPERTY OF DECEASED PERSONS AND, IN PARTICULAR, THE DEVOLUTION, ADMINISTRATION, TESTAMENTARY DISPOSITION AND DISTRIBUTION ON INTESTACY OF SUCH PROPERTY, AND TO PROVIDE FOR RELATED MATTERS. [22*nd December*, 1965.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I

Preliminary and General

Short title.

1.—This Act may be cited as the Succession Act, 1965.

Commencement.

2.—This Act shall come into operation on such day, not earlier than the 1st day of July, 1966, as the Minister by order appoints.

Interpretation.

3.—(1) In this Act, except where the context otherwise requires—

F1**[**"Act of 2015" means the Children and Family Relationships Act 2015;**]**

"administration", in relation to the estate of a deceased person, means letters of administration, whether with or without a will annexed, and whether granted for special or limited purposes;

"administrator" means a person to whom administration is granted;

F2**[**"civil partner" has the meaning assigned to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; **]**

"conveyance" includes a mortgage, charge, lease, assent, transfer, disclaimer, release and every other assurance of property by any instrument except a will;

"the court" shall be construed in accordance with section 6;

"estate" shall be construed in accordance with section 14;

"grant" means grant of representation;

"infant" means a person under the age of twenty-one years;

"an intestate" means a person who leaves no will or leaves a will but leaves undisposed of some beneficial interest in his estate, and "intestate" shall be construed accordingly;

F3**[**"issue" shall be construed in accordance with section 4A (inserted by the Status of Children Act, 1987);**]**

F4**[**"legal right" means—

(*a*) the right of a spouse under section 111 to a share in the estate of a deceased person, and

(*b*) the right of a civil partner under section 111A to a share in the estate of a deceased person;**]**

“the Minister” means the Minister for Justice;

"pecuniary legacy" includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money, including all death duties free from which any devise, bequest, or payment is made to take effect;

“per stirpes” shall be construed in accordance with subsection (3);

“personal representative” means the executor or the administrator for the time being of a deceased person;

“possession” includes the receipt of, or the right to receive, rents and profits, if any;

“probate” means probate of a will;

“property” includes all property both real and personal;

“purchaser” means a grantee, lessee, assignee, mortgagee, chargeant or other person who F5**[**...**]** acquires an estate or interest in property for valuable consideration;

“real estate” has the meaning assigned to it by section 4;

“representation” means probate or administration;

“share”, in relation to the estate of a deceased person, includes any share or interest, whether arising under a will, on intestacy or as a legal right, and includes also the right to the whole estate;

“trust corporation” has the meaning assigned to it by subsection (4) of section 30;

“valuable consideration” means consideration in money or money's worth;

“will” includes codicil.

F3**[**(1A) In this Act a reference, however expressed, to a person whose parents have married or have not married each other shall be construed in accordance with section 4 of the Status of Children Act, 1987.**]**

(2) Descendants and relatives of a deceased person begotten before his death but born alive thereafter shall, for the purposes of this Act, be regarded as having been born in the lifetime of the deceased and as having survived him.

(3) Where a deceased person's estate or any share therein is to be distributed *per stirpes* among his issue, any issue more remote than a child of the deceased shall take through all degrees, according to their stocks, in equal shares if more than one, the share which the parent of such issue would have taken if living at the death of the deceased, and no issue of the deceased shall take if the parent of such issue is living at the death of the deceased and so capable of taking.

(4) In this Act, a reference to any enactment is to that enactment as amended or extended by any other enactment, including this Act.

(5) In this Act, a reference to a Part, section, or Schedule is to a Part, section, or Schedule of this Act, unless it is indicated that a reference to some other enactment is intended.

Meaning of "real estate" and "estate or interest".

[1959 (No. 8) ss. 2, 6]

4.—For the purposes of this Act—

(*a*) "real estate" includes chattels real, and land in possession, remainder, or reversion, and every estate or interest in or over land (including real estate held by way of mortgage or security, but not including money to arise under a trust for sale of land, or money secured or charged on land);

(*b*) the estate or interest of a deceased person in an estate tail shall be deemed to be an estate or interest ceasing on his death, but any further or other estate or interest of the deceased person in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an estate or interest so ceasing;

(*c*) the estate or interest of a deceased person under a joint tenancy where any tenant survives the deceased person shall be deemed to be an estate or interest ceasing on his death;

(*d*) on the death of a corporator sole his estate or interest in the corporation's real estate shall be deemed to be an estate or interest ceasing on his death;

(*e*) the estate or interest of a deceased person in real estate shall not be deemed to be an estate or interest ceasing on his death merely because by reason of illegitimacy or otherwise he did not leave next-of-kin surviving him.

F6[Succession rights.

4A.—(1) F7[F8[Subject to subsection (1A) and section 4B,] in deducing any relationship] for the purposes of this Act, the relationship between every person and his father and mother shall, subject to section 27A of this Act (inserted by the Act of 1987), be determined in accordance with section 3 of the Act of 1987, and all other relationships shall be determined accordingly.

F9[(1A) In deducing any relationship for the purposes of this Act, the relationship between every donor-conceived child (within the meaning of the Act of 2015) and his or her parents shall be determined in accordance with section 5 of the Act of 2015 and all other relationships shall be determined accordingly.]

(2) F7[Subject to subsection (2A) (inserted by section 65(d) of the Act of 2015), where a person] whose father and mother have not married each other dies intestate, he shall be presumed not to have been survived by his father, or by any person related to him through his father, unless the contrary is shown.

F9[(2A) The reference to father in subsection (2) does not include a man who is, under section 5 of the Act of 2015, a parent of the first-mentioned person referred to in that subsection.]

(3) The reference in section 75(1) to Part VI and the reference in the said section 75(1) to the foregoing provisions of the said Part VI shall, in relation to an instrument *inter vivos* made, or a will coming into operation, after the commencement of Part V of the Act of 1987, be construed as including references to this section.

F10[(4) This section is without prejudice to section 60 (which section as construed in accordance with section 27(3) of the Act of 1987 relates to the property rights of adopted persons) of the Adoption Act 2010.]

(5) This section shall not affect any rights under the intestacy of a person dying before the commencement of Part V of the Act of 1987.

(6) In this section F11[and section 4B,] "the Act of 1987" means the Status of Children Act, 1987.]

F12[Special provisions in relation to affected persons

4B.— (1) Where, under this section, a relationship between an affected person and another person is to be deduced in accordance with this subsection, the relationship between the affected person and—

(*a*) his or her father and mother shall, subject to section 27A of this Act, be determined in accordance with section 3 of the Act of 1987, and

(*b*) his or her social father and social mother shall, subject to section 27A of this Act, be deemed, respectively, to be the same as the relationship between the affected person and his or her father and mother,

and all other relationships shall be determined accordingly.

(2) Without prejudice to the generality of subsection (1) —

(*a*) where the relationship between an affected person and another person is to be deduced in accordance with that subsection, this Act shall be construed as follows—

(i) a reference, other than in section 4A, to the father of an affected person shall be construed as including a reference to both the father and the social father of the affected person,

(ii) a reference, other than in section 4A, to the mother of an affected person shall be construed as including a reference to both the mother and the social mother of the affected person,

(iii) a reference to the parent of an affected person shall be construed as including a reference to both the parent and the social parent of the affected person,

(iv) a reference to the brother of an affected person shall be construed as including a reference to both the brother of the affected person and a person who is determined in accordance with subsection (1) to have the same relationship with the affected person as a brother of the affected person,

(v) a reference to the sister of an affected person shall be construed as including a reference to both the sister of the affected person and a person who is determined in accordance with subsection (1) to have the same relationship with the affected person as a sister of the affected person,

(vi) a reference to the child of a person shall be construed as including a reference to both the child of the person and an affected person in relation to whom the person is a social parent, and

(vii) a reference to the issue of a person shall be construed as including a reference to both the issue of the person and a person who is determined in accordance with subsection (1) to have the same relationship with the person as the issue of the person,

and

(*b*) for the purposes of section 71, an affected person shall be deemed to have the same blood relationship with his or her social parent as he or she would have were the social parent his or her parent.

(3) Where—

(*a*) an order under section 117 or 121, or

(*b*) a provision to a person out of the estate of a testator pursuant to an order under section 117 or 121 or in connection with proceedings or a claim under such section or sections,

was made before the date on which this subsection comes into operation—

(i) an affected person in whose interest the order, or to whom the provision, was made and in relation to whom the testator concerned was a social parent shall be treated as if the relationship between him or her and the testator was deduced in accordance with subsection (1), and

(ii) the order or provision shall not be rendered invalid by reason of the fact that the testator was the social parent, and not the parent, of any affected person.

(4) The taking, before the date on which this subsection comes into operation, by—

(*a*) the spouse of a testator of the share of the testator's estate referred to in section 111(2), or

(*b*) the civil partner of a testator of the share of the testator's estate referred to in section 111A(2),

shall not be rendered invalid by reason of the fact that the testator concerned was the social parent, and not the parent, of a person.

(5) Where, in the distribution of the estate of an intestate—

(*a*) a person, before the date on which this subsection comes into operation, took the estate or a share of the estate, and

(*b*) at the time of such taking—

(i) the person did not have the relationship with the intestate that would have entitled him or her under Part VI to the taking, but

(ii) the person would have had such a relationship with the intestate had the relationship been deduced in accordance with subsection (1),

the taking of the estate or share of the estate, as the case may be, by the person shall not be rendered invalid by reason of the fact that the person did not have the relationship referred to in paragraph (b)(i).

(6) This subsection applies where—

(*a*) an intestate dies before the date on which subsection (7) comes into operation, and

(*b*) administration of the estate of the intestate has been granted on or before the relevant date.

(7) Where—

(*a*) subsection (6) applies, and

(*b*) by the date on which this subsection comes into operation, the affected person concerned has not taken the estate or a share of the estate of the intestate to which he or she would be entitled were his relationship with the intestate deduced in accordance with subsection (1),

for the purposes of the distribution under Part VI of the part of the estate which has not yet been taken by any person, the relationship between an affected person and the intestate, and all other relationships, shall be deduced in accordance with subsection (1).

(8) Where—

(*a*) an intestate dies before the date on which this subsection comes into operation, and

(*b*) administration of the estate of the intestate is granted after the relevant date,

for the purposes of the distribution under Part VI of the estate of the intestate, the relationship between an affected person and the intestate concerned, and all other relationships, shall be deduced in accordance with subsection (1).

(9) This subsection applies where—

(*a*) a testator dies before the date on which this subsection comes into operation, and

(*b*) representation of the testator's estate is taken out after the relevant date.

(10) Where subsection (9) applies—

(*a*) for the purposes of sections 111 and 111A, the relationship between the testator and an affected person, and all other shall be deduced in accordance with subsection (1),

(*b*) where the effect of paragraph (a) is that the share of the estate of the testator to which the spouse or civil partner, as the case may be, of the testator is entitled as a legal right is different to the share to which he or she would have been entitled had the paragraph not applied, section 115(4) shall apply as if the words "or one year from the date on which section 4B(10) comes into operation," were substituted for "or one year from the first taking out of representation of the deceased's estate," and

(*c*) for the purposes of section 117—

(i) the relationship between an affected person and the testator, and all other relationships, shall be deduced in accordance with subsection (1), and

(ii) where an affected person, pursuant to subparagraph (i), makes an application under section 117(1), section 117(6) shall apply as if the words "from the date on which section 4B(10) comes into operation" were substituted for "from the first taking out of representation of the deceased's estate".

(11) For the purposes of this Act, a person is an affected person where—

(*a*) as a result of the giving of information that was false or misleading, the name of a person other than his or her mother was entered in the register of births as his or her mother, and

(*b*) the person named as mother and, if applicable, father in the entry assumed the role of a parent in relation to him or her and treated him or her as her or their lawful child,

whether or not the entry has been corrected or cancelled pursuant to Part 3B or section 63, 64 or 65 of the Act of 2004.

(12) In this section—

"register of births" means a register of births maintained by An tArd-Chláraitheoir under section 13 (1)(a) of the Civil Registration Act 2004 , as amended, or under the repealed enactments (within the meaning of that Act);

"relevant date" means the 26th day of April 2022;

"social father" means, in relation to an affected person, the man named in the entry in the register of births referred to in subsection (11) as his or her father;

"social mother" means, in relation to an affected person, the woman named in the entry in the register of births referred to in subsection (11) as his or her mother;

"social parent" means, in relation to an affected person, his or her social father or social mother.**]**

Presumption of simultaneous death in cases of uncertainty.

[New]

5.—F13**[**(1)**]** Where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, then, for the purposes of the distribution of the estate of any of them, they shall all be deemed to have died simultaneously.

F13**[**(2) Where immediately prior to the death of two or more persons they held any property as joint tenants and they died, or under subsection (1) were deemed to have died, simultaneously, they shall be deemed to have held the property immediately prior to their deaths as tenants in common in equal shares.

(3) Property deemed under subsection (2) to have been held by persons as tenants in common shall form part of their respective estates.**]**

Jurisdiction.

[1961 (No. 39) s. 22 (1) and Third Schedule at ref. nos. 16 and 17]

6.—(1) The jurisdiction conferred on a court by this Act may be exercised by the High Court.

(2) Subject to subsection (3), the Circuit Court shall, concurrently with the High Court, have all the jurisdiction of the High Court to hear and determine proceedings of the following kinds:

(*a*) an action in respect of the grant or revocation of representation of the estate of a deceased person in case there is any contention in relation thereto;

(*b*) proceedings in respect of the administration of the estate of a deceased person or in respect of any share therein;

(*c*) any proceeding under section 56, 115, 117 or 121.

F14**[**(3) Unless the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent prescribed by rules of court, the Circuit Court shall not, by virtue of subsection (2), have jurisdiction where the estate of the deceased person, in so far as it consists of real estate of which, at the time of his death, he was beneficially seised or possessed, exceeds F15**[**market value**]** of F16**[**€3,000,000**]**.**]**

(4) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge of the circuit where the deceased, at the time of his death, had a fixed place of abode.

F17**[**(5) In this section "market value" means, in relation to land, the price that would have been obtained in respect of the unencumbranced fee simple were the land to have been sold on the open market, in the year immediately preceding the bringing of the proceedings concerned, in such manner and subject to such conditions as might reasonably be calculated to have resulted in the vendor obtaining the best price for the land.**]**

Expenses.

7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeals.

8.—The enactments mentioned in the Second Schedule are hereby repealed to the extent specified in the third column.

Savings.

[1959 (No. 8) s. 8]

9.—(1) Nothing in this Act shall affect any unrepealed enactment dispensing with probate or administration in the case of personal estate not including chattels real.

(2) Subject to section 118, nothing in this Act shall—

(*a*) affect any duty payable in respect of real estate or impose on real estate any other duty than is payable in respect thereof immediately before the commencement of this Act, or

(*b*) affect any remedy for the recovery of any death duty;

provided, however, that succession duty shall be payable having regard to the rules of distribution of property contained in this Act.

(3) Except to the extent to which any provision of this Act expressly provides to the contrary, the provisions of this Act shall not apply to the estate of any person dying before the commencement of this Act.

(4) The provisions of this Act shall not apply to the will of a testator who dies before the commencement of this Act but shall apply to the will of every testator who dies after such commencement, whether the will was executed before or after that time.

(5) The repeal of any enactment by this Act shall not, save where the contrary appears, affect any established jurisdiction, form or course of pleading, practice or procedure derived from the repealed enactment.

PART II

Devolution of Real and Personal Estate on Death

Devolution of real and personal estate.

[1881 (c. 41) s. 30; 1959 (No. 8) ss. 6, 7 (1), 15 (pt.)]

10.—(1) The real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve on and become vested in his personal representatives.

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The personal representatives shall be the representatives of the deceased in regard to his real and personal estate and shall hold the estate as trustees for the persons by law entitled thereto.

(4) The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate or interest not ceasing on his death, and include property over which he exercised by will a general power of appointment.

(5) This section shall apply to property vested on any trust in a deceased person solely, as it applies to his real and personal estate.

Abolition of existing rules of descent, escheat, etc.

[New]

11.—(1) Without prejudice to the succeeding provisions of this section, all existing rules, modes and canons of descent and of devolution by special occupancy are hereby abolished except in so far as they may apply to the descent of an estate tail.

(2) Dower and tenancy by the curtesy are hereby abolished.

(3) Escheat to the State and escheat to a mesne lord for want of heirs are hereby abolished.

Further assimilation of law respecting real and personal estates of deceased persons.

[1959 (No. 8) s. 7 (2)]

12.—(1) All enactments (including this Act) and rules of law relating to—

(*a*) the effect of representation as respects personal estate,

(*b*) the dealing with personal estate before representation,

(*c*) the powers, rights, duties, and liabilities of personal representatives in respect of personal estate,

(*d*) the payment of costs of administration, and

(*e*) all other matters with respect to the administration of personal estate,

shall, so far as applicable, apply to real estate as if it were personal estate; and subsequent provisions of this section shall not prejudice the generality of this subsection.

(2) All jurisdiction of any court with respect to the appointment of administrators or otherwise with respect to the grant of representation as respects personal estate shall extend over, and be exercisable in relation to, real estate as if it were personal estate and the rights, as respects citations to see proceedings, of persons interested or claiming to be interested in the real estate of a deceased person shall be the same as those of persons interested or claiming to be interested in the personal estate of that deceased person.

(3) A grant of representation shall, unless containing an express limitation to the contrary, have effect as well over the real as over the personal estate.

Vesting of estate between death and grant of administration.

[1959 (No. 8) s. 13]

13.—Where a person dies intestate, or dies testate but leaving no executor surviving him, his real and personal estate, until administration is granted in respect thereof, shall vest in the President of the High Court who, for this purpose, shall be a corporation sole.

Construction of references to estates of deceased persons.

[New]

14.—References in the subsequent provisions of this Act and in any subsequent enactment to the estate of a deceased person shall, unless the contrary intention appears, include references to both the real and personal estate of that deceased person.

Construction of references to heirs.

[1891 (c. 66) s. 89]

15.—(1) The word "heir" or "heirs", used as a word of limitation in any enactment, deed or instrument passed or executed either before or after the commencement of this Act, shall have the same effect as if this Act had not been passed.

(2) The word "heir" or "heirs", used as a word of purchase in any enactment, deed or instrument passed or executed before the commencement of this Act, shall bear the same meaning as if this Act had not been passed.

(3) The word "heir" or "heirs", used as a word of purchase in any enactment, deed or instrument passed or executed after the commencement of this Act, shall, unless the contrary intention appears, be construed to mean the person or persons, other than a creditor, who would be beneficially entitled under Part VI to the estate of the ancestor if the ancestor had died intestate.

(4) Subject as aforesaid, references in any enactment, deed or instrument passed or executed either before or after the commencement of this Act to the heirs of any person shall be construed to refer to his personal representatives.

PART III

Executors and Administrators

Summons to executor to prove or renounce.

[1537 (c. 18)]

16.—The High Court shall have power to summon any person named as executor in a will to prove or renounce probate.

Cesser of right of executor to prove.

[1857 (c. 79) s. 84; 1859 (c. 31) s. 12]

17.—Where a person appointed executor by a will—

(*a*) survives the testator but dies without having taken out probate, or

(*b*) is cited to take out probate and does not appear to the citation, or

(*c*) renounces probate,

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall devolve and be committed in like manner as if that person had not been appointed executor.

Withdrawal of renunciation.

[New]

18.—(1) Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Act, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously taken out representation, and a memorandum of the subsequent probate shall be endorsed on the original grant.

(2) This section applies whether the testator died before or after the commencement of this Act.

Death of sole or last surviving executor.

[New]

19.—(1) Where the sole or last surviving executor of a testator dies after the commencement of this Act, the executor of such executor shall not be the executor of that testator.

(2) This section applies whether the testator died before or after the commencement of this Act.

Right of proving executors to exercise powers.

[Cf. 1959 (No. 8) s. 18 (2)]

20.—(1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, all the powers which are by this Act or otherwise by law conferred on the personal representative may be exercised by the proving executor or executors or the survivor or survivors of them and shall be as effectual as if all the persons named as executors had concurred therein.

(2) This section applies whether the testator died before or after the commencement of this Act.

Executor not to act while administration is in force.

[1857 (c. 79) s. 80]

21.—Where administration has been granted in respect of the estate, or any part of the estate, of a deceased person, no person shall have power to bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked or has expired.

Protection of persons acting on probate or administration.

[1857 (c. 79) ss. 82, 83]

22.—(1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse

himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

Liability of person fraudulently obtaining or retaining estate of deceased.

[1634 (sess. 3. c. 10)]

23.—(1) If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming to his hands, or the debt or liability released, after deducting—

(*a*) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and

(*b*) any payment made by him which might properly be made by a personal representative.

(2) In this section, "full valuable consideration" means such valuable consideration as amounts or approximates to the value of that for which it is given.

Liability of estate of personal representative.

[1695 (c. 6) s. 11]

24.—Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the estate of the deceased, and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Validity of conveyance not affected by revocation of representation.

[New]

25.—(1) All conveyances of any estate or interest in the estate of a deceased person made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the grant.

(2) This section takes effect without prejudice to any order of the court made before the commencement of this Act, and applies whether the deceased died before or after such commencement.

PART IV

Grants of Representation

Grants of probate.

[1857 (c. 79) s. 6]

26.—(1) The High Court shall have power to grant probate to one or more of the executors of a deceased person, and a grant may be limited in any way the Court thinks fit.

(2) The High Court shall have power to revoke, cancel or recall any grant of probate.

Grants of administration.

[1357 (st. 1. c. 11); 1537 (c. 18); 1959 (No. 8) s. 12]

27.—(1) The High Court shall have power to grant administration (with or without will annexed) of the estate of a deceased person, and a grant may be limited in any way the Court thinks fit.

(2) The High Court shall have power to revoke, cancel or recall any grant of administration.

(3) Subject to subsection (4), the person or persons to whom administration is to be granted shall be determined in accordance with rules of the High Court.

(4) Where by reason of any special circumstances it appears to the High Court (or, in a case within the jurisdiction of the Circuit Court, that Court) to be necessary or expedient to do so, the Court may order that administration be granted to such person as it thinks fit.

(5) On administration being granted, no person shall be or become entitled without a grant to administer any estate to which that administration relates.

(6) Every person to whom administration is granted shall, subject to any limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

[1857 (c. 79) ss. 75, 76, 77]

(7) Where any legal proceedings are pending touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, the High Court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate of the deceased, and every person to whom such administration is granted shall be subject to the immediate control of the Court and act under its direction.

(8) The Court may, out of the estate of the deceased person, assign to an administrator appointed under subsection (7) such reasonable remuneration as the Court thinks fit.

(9) This section applies whether the deceased died before or after the commencement of this Act.

F18**[**Entitlement to grant of probate or administration.

27A.—F19**[**(1)**]**F20**[**Subject to *subsection (2)*, for the purpose of the application**]** of *section 26* or *27* in respect of the estate of a deceased person, the deceased shall be presumed, unless the contrary is shown, not to have been survived by any person related to him F20**[**whose parents have not married each other or whose parents are not civil partners of each other**]** or by any person whose relationship with the deceased is deduced through a person F20**[**whose parents have not married each other or whose parents are not civil partners of each other**]**.

F19**[**(2) *Subsection (1)* shall not apply in relation to a person whose parents have not married each other or whose parents are not civil partners of each other where—

(*a*) the person has been adopted by a cohabiting couple—

(i) under an adoption order, or

(ii) outside the State, where that adoption is recognised by virtue of the law for the time being in force in the State,

or

(*b*) they are the parents, under section 5 of the Act of 2015, of the person.

(3) In this section—

"Act of 2010" means the Adoption Act 2010;

"adoption order" has the same meaning as it has in section 3(1) of the Act of 2010;

"cohabiting couple" has the same meaning as it has in section 3(1) (amended by section 102 of the Act of 2015) of the Act of 2010.**]]**

Representation of real and personal estate separately or together.

[1959 (No. 8) s. 15]

28.—(1) Representation may be granted either separately in respect of real estate and in respect of personal estate, or in respect of real estate together with personal estate, and may be granted in respect of real estate although there is no personal estate, or in respect of personal estate although there is no real estate.

(2) Where the estate of the deceased person is known to be insolvent, the grant shall not be severed except as regards a trust estate.

Power to grant representation where no estate.

[1959 (No. 8) s. 16]

29.—The High Court shall have jurisdiction to make a grant of representation in respect of a deceased person, notwithstanding that the deceased left no estate in the State, and to make a *de bonis non* or other form of grant in respect of unadministered estate, notwithstanding that there is no unadministered estate of the deceased in the State.

Power to grant representation to a trust corporation.

[New. Cf. 1928 (No. 9)]

30.—(1) The High Court may—

(*a*) where a trust corporation is named in a will as executor, whether alone or jointly with another person, grant probate to the corporation either solely or jointly with another person, as the case may require, and

(*b*) grant administration to a trust corporation, either solely or jointly with another person,

and the corporation may act accordingly as executor or administrator, as the case may be.

(2) Representation shall not be granted to any person on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the Court may require with a view to the grant to the corporation of representation, and the acts of an officer so authorised shall be binding on the corporation.

(4) In this Act, "trust corporation" means—

(*a*) a corporation appointed by the High Court in any particular case to be a trustee;

(*b*) a corporation empowered by its constitution to undertake trust business, and having a place of business in the State or Northern Ireland, and being—

(i) a company established by Act or charter, or

(ii) an Associated Bank under the Central Bank Act, 1942, or

(iii) a company (whether registered with or without limited liability) within the definition contained in the Companies Act, 1963, or within the meaning of the corresponding law of Northern Ireland, having a capital (in stock or shares) for the time being issued of not less than £250,000, of which not less than £100,000 has been paid up in cash, or

(iv) a company (registered without limited liability) within the definition contained in the said Companies Act or within the meaning of the said law of Northern Ireland, one of the members of which is a corporation within any of the previous provisions of this paragraph; or

F21**[**(*v*) a building society authorised under the Building Societies Act, 1989; or**]**

(*c*) a corporation which satisfies the President of the High Court that it undertakes the administration of any charitable, ecclesiastical or public trust without remuneration, or that by its constitution it is required to apply the whole of its net income for charitable, ecclesiastical or public purposes and is prohibited from distributing, directly or indirectly, any part thereof by way of profits, and is authorised by the President of the High Court to act in relation to such trusts as a trust corporation.

(5) Where a body corporate, as defined by section 4 of the Bodies Corporate (Executors and Administrators) Act, 1928, is named as executor in a will executed before the commencement of this Act, probate may be granted to that body corporate

under this section, notwithstanding that it is not a trust corporation as defined in subsection (4).

Grant of special administration where personal representative is abroad.

[1857 (c. 79) s. 79; 1859 (c. 31) s. 14]

31.—(1) If at the expiration of twelve months from the death of a person any personal representative of the deceased person to whom a grant has been made is residing out of the jurisdiction of the High Court, the High Court may, on the application of any creditor or person interested in the estate of the deceased person, grant to him in such form as the High Court thinks fit special administration of the estate of the deceased person.

(2) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into court of any money or securities belonging to the estate of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the High Court while any legal proceedings to which a special administrator is a party are pending, that personal representative shall be made a party to the legal proceedings, and the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as the court in which the proceedings are pending may direct.

Administration during minority of executor.

[1818 (c. 81); 1857 (c. 79) s. 79; 1859 (c. 31) s. 14]

32.—(1) Where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the High Court thinks fit, until the infant attains the age of twenty-one years and applies for and obtains a grant of probate or letters of administration with the will annexed, and on his attaining that age, and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints an infant to be an executor, the appointment shall not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose unless and until probate is granted to him under this section.

Continuance of legal proceedings after revocation of temporary administration.

[1857 (c. 9) s. 81]

33.—If, while any legal proceedings are pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that court may order that the proceedings be continued by or against the new personal representative in like manner as if the proceedings had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

Administration bonds.

[1959 (No. 8) s. 14]

34.—(1) Every person to whom a grant of administration is made shall give a bond (in this section referred to as an administration bond) to the President of the High Court to inure for the benefit of the President of the High Court for the time being and, if the High Court, the Probate Officer or (in the case of a grant from a district probate registry) the district probate registrar so requires, with one or more surety or sureties conditioned for duly collecting, getting in, and administering the estate of the deceased.

(2) (*a*) An administration bond shall be in a penalty of double the amount at which the estate of the deceased is sworn, unless the High Court, the Probate Officer or (in the case of a grant from a district probate registry) the district probate registrar shall in any case direct it to be reduced, in which case the Court, the Probate Officer or the district probate registrar may do so.

(*b*) The High Court, the Probate Officer or (in the case of a grant from a district probate registry) the district probate registrar may also direct that more administration bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court, the Probate Officer or the district probate registrar (as the case may be) shall think reasonable.

(3) An administration bond shall be in such form as the President of the High Court may prescribe by rules, and shall include a provision for payment of all death duties payable in respect of the estate of the deceased for which the personal representative is accountable and a further provision for the payment of all income tax and sur-tax payable out of the estate of the deceased.

(4) Where it appears to the satisfaction of the High Court that the condition of an administration bond has been broken, the High Court may, on application in that behalf, order that the bond be assigned to such person as may be specified in the order, and the person to whom the bond is assigned in pursuance of the order shall be entitled to sue thereon in his own name as if it had been originally given to him instead of to the President of the High Court and to recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.

(5) Nothing in this section shall require the Chief State Solicitor or the Solicitor for the Attorney General, when applying for or obtaining administration for the use or benefit of the State, to give an administration bond.

[New]

(6) Sureties to administration bonds shall not be required when the grant is made to a trust corporation.

[New]

(7) An administration bond issued by a guarantee society or insurance company approved by the President of the High Court shall be acceptable for the purposes of this section whether the application for the grant is made in person or by a solicitor.

Applications for grants and revocations.

[1857 (c. 79) ss. 50, 63]

35.—(1) An application for the grant or revocation of representation may be made to the Probate Office or the district probate registry for the district where the deceased, at the time of his death, had a fixed place of abode.

(2) The application may be made either in person or through a solicitor.

[R.S.C., O. 79, r. 3; O. 80, r. 3]

(3) Where, in any contentious matter arising out of an application to the Probate Office, the High Court is satisfied that the Circuit Court has jurisdiction in the matter, the High Court may remit the matter to the judge of the circuit where the deceased, at the time of his death, had a fixed place of abode and the said judge shall proceed in the matter as if the application had been made to the Circuit Court in the first instance.

Grants in district probate registries.

[1857 (c. 79) ss. 50, 52, 54]

36.—(1) A grant may be made in common form by a district probate registrar in the name of the High Court and under the seal of the registry where the deceased, at the time of his death, had a fixed place of abode within the district where the application for the grant is made.

(2) No grant shall be made by a district probate registrar in any case in which there is contention until the contention is disposed of, or in any case in which it appears to him that a grant ought not to be made without the direction of the Court.

(3) In any case where it appears doubtful to a district probate registrar whether a grant should or should not be made, or where any question arises in relation to a grant, or an application for a grant, the district probate registrar shall send a statement of the matter to the Probate Office for the directions of a judge of the High Court for the time being exercising probate jurisdiction, and the judge may direct the district probate registrar to proceed with the matter in accordance with such instructions as the judge thinks necessary, or may forbid any further proceedings by the district probate registrar in relation to the matter, leaving the party applying for the grant to apply to the High Court through the Probate Office or, if the case is within the jurisdiction of the Circuit Court, to that court.

[1857 (c. 79) ss. 53, 55, 56; 1859 (c. 31) ss. 21, 22]

(4) A district probate registrar shall send to the Probate Office a notice in the prescribed form of every application made in the registry for a grant as soon as may be after the application has been made, and no grant shall be made by him F22**[**until he has satisfied himself, on the basis of an examination of all notices of applications for grants made to the Probate Office and the district probate registries,**]** that no other application appears to have been made in respect of the estate of the deceased.

(5) F23**[**...**]**

(6) All notices so transmitted to the Probate Office shall be filed and kept in that Office.

(7) F23**[**...**]**

(8) A district probate registrar shall, twice in every month, transmit to the Probate Office a list in the prescribed form of the grants made by him and not included in a previous return, and also copies of the wills to which the grants relate, certified by him to be correct.

(9) A district probate registrar shall file and preserve all original wills of which probate or administration with the will annexed has been granted by him, subject to such regulations with respect to the preservation and inspection of the wills as may from time to time be made by the President of the High Court.

(10) The President of the High Court may from time to time give directions for the disposal, whether by destruction or otherwise, of such of the notices kept in the Probate Office in pursuance of this section, as have, in his opinion, ceased, owing to lapse of time, to be of any public value.

Second and subsequent grants.

[1859 (c. 31) s. 16]

37.—Second and subsequent grants shall be made in the Probate Office or district probate registry, as the case may be, from which the original grant issued.

Caveats.

[1857 (c. 79) s. 57]

38.—(1) A caveat against a grant may be entered in the Probate Office or in any district probate registry.

(2) On a caveat being entered in a district probate registry, the district probate registrar shall immediately send a copy thereof to the Probate Office to be entered among the caveats in that Office.

Calendars of grants.

[1959 (No. 8) s. 17]

39.—(1) The President of the High Court shall from time to time cause to be prepared in the Probate Office calendars of grants made in the Probate Office and in the several district probate registries for such periods as the President of the High Court may direct.

(2) Every such calendar shall contain a note of every probate or administration with the will annexed and of every other administration granted within the period specified in the calendar, setting forth—

(*a*) the date of the grant,

(*b*) the place (being the Probate Office or a district probate registry) in which the grant was made,

(*c*) the name and address and the date of death of the testator or intestate,

(*d*) the names and descriptions of the executors or administrators, and

(*e*) the value of the estate, if any.

(3) A copy of every calendar so prepared shall be sent by post or otherwise to every district probate registry, and every copy so sent shall be kept in the district probate registry to which it is sent.

(4) Calendars and copies may be inspected in accordance with the directions of the President of the High Court.

Copies of wills, etc., to be delivered to Revenue Commissioners.

[1857 (c. 79) s. 100]

40.—Subject to any arrangements which may from time to time be made between the President of the High Court and the Revenue Commissioners, the Probate Office and every district probate registry shall, within such period after a grant as the President may direct, deliver to the Commissioners or their proper officer the following documents—

(*a*) in the case of a probate or of administration with a will annexed, the Inland Revenue affidavit and a copy of the will (if required);

(*b*) in the case of administration without a will annexed, the Inland Revenue affidavit;

(*c*) in every case of administration, a copy or extract of the administration;

(*d*) in every case, such certificate or note of the grant as the Commissioners may require.

Issue of grants of representation in case of Circuit Court decrees.

[1857 (c. 79) s. 59]

41.—On a decree being made by the Circuit Court for the grant or revocation of representation the Probate Officer or the district probate registrar shall, on the application of a person entitled thereto, grant representation in compliance with the decree or, as the case may require, recall or vary, according to the effect of the decree, any representation already granted.

Deposit and inspection of wills and other documents.

[1857 (c. 79) s. 71]

42.—(1) The following documents—

(*a*) all original wills of which representation is granted in the Probate Office,

(*b*) copies of all wills the originals of which are to be preserved in district probate registries, and

(*c*) such other documents as the President of the High Court may direct,

shall be deposited and preserved in the Probate Office under the control of the President of the High Court and may be inspected in accordance with his directions.

(2) Subsection (1) shall have effect subject to the provisions of the Public Records (Ireland) Act, 1867, which provides for the ultimate removal of records to the Public Record Office for safe keeping.

Official copies of wills and grants.

[1857 (c. 79) s. 74]

43.—(1) An official copy of the whole or any part of a will, or of a grant of representation, may be obtained from the Probate Office or district probate registry where the will has been proved or the representation granted.

(2) An official copy of a grant of representation shall be sufficient evidence of the grant. This subsection applies whether the grant was made before or after the commencement of this Act.

Trial by jury of questions of fact.

[1857 (c. 79) s. 41]

44.—(1) The court may cause any question of fact arising in any proceedings under this Act to be tried by a jury, and such question shall be so tried in any case where all the parties to the proceedings concur in an application to the court for a jury.

(2) Where any party makes an application for a jury without the concurrence of the other party and the court refuses the application, the refusal of the court shall be subject to appeal.

PART V

Administration of Assets

Estate of deceased to be assets for payment of debts and legal right.

[1285 (c. 19); 1357 (st. 1.c.11); 1695 (c. 12) ss. 7, 8; 1833 (c. 104); 1869 (c. 46)]

45.—(1) The estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the estate of which a deceased person in pursuance of any general power disposes by his will, are assets for payment of the funeral, testamentary and administration expenses, debts (whether by specialty or simple contract) and liabilities, and any legal right, and any disposition by will inconsistent with this section is void as against the creditors and any person entitled to a legal right, and the court shall, if necessary, administer the property for the purpose of the payment of the expenses, debts and liabilities and any legal right.

(2) This section takes effect without prejudice to the rights of incumbrancers.

Administration of assets.

[New]

46.—(1) Where the estate of a deceased person is insolvent, it shall be administered in accordance with the rules set out in Part I of the First Schedule.

(2) (*a*) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person, and shall not be exercisable where the estate is insolvent.

(*b*) Subject to paragraph (*a*), nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent, it shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities and any legal right in the order mentioned in Part II of the First Schedule.

(4) Nothing in subsection (3) affects the rights of any creditor of the deceased or the legal right of a spouse.

(5) Where a creditor, a person entitled to a legal right or a personal representative applies an asset out of the order mentioned in Part II of the First Schedule, the persons entitled under the will or on intestacy shall have the right to have the assets marshalled so that a beneficiary whose estate or interest has been applied out of its order shall stand in the place of that creditor or person *pro tanto* as against any property that, in the said order, is liable before his own estate or interest.

(6) A claim to a share as a legal right or on intestacy in the estate of a deceased person is a claim against the assets of the estate to a sum equal to the value of that share.

Charges on property of deceased to be paid primarily out of the property charged.

[1854 (c. 113), 1867 (c. 69) and 1877 (c. 34) extended to personalty]

47.—(1) Where a person dies possessed of, or entitled to, or, under a general power of appointment, by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal or equitable mortgage or charge or otherwise (including a lien for unpaid purchase money), and the deceased person has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased person, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

(*a*) by a general direction for the payment of debts or of all the debts of the testator out of his estate, or any part thereof, or

(*b*) by a charge of debts upon any such estate,

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

Causes of action surviving on death.

48.—The personal representatives of a deceased person may sue and be sued in respect of all causes of action which, by virtue of Part II of the Civil Liability Act, 1961, survive for the benefit of, or against, the estate of the deceased, subject to the provisions of that Act and the rules of limitation under the Statute of Limitations, 1957, or otherwise.

Distribution of assets after notice to creditors.

[1859 (c. 35) s. 29]

49.—(1) Where the personal representatives have given such notices to creditors and others to send in their claims against the estate of the deceased as, in the opinion of the court in which the personal representatives are sought to be charged, would have been given by the court in an administration suit, the personal representatives shall, at the expiration of the time named in the said notices, or the last of them, for sending in such claims, be at liberty to distribute the assets of the deceased, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which the personal representatives have then notice.

(2) The personal representatives shall not be liable to any person for the assets or any part thereof so distributed unless at the time of such distribution they had notice of that person's claim.

(3) Nothing in this section shall prejudice the right of any creditor or claimant to follow any such assets into the hands of any person who may have received them.

(4) This section applies whether the deceased died before or after the commencement of this Act.

Powers of personal representatives to sell and to act as trustees.

[1959 (No. 8) s. 18]

50.—(1) The personal representatives may sell the whole or any part of the estate of a deceased person for the purpose not only of paying debts, but also (whether there are or are not debts) of distributing the estate among the persons entitled thereto, and before selling for the purposes of distribution the personal representatives shall, so far as practicable, give effect to the wishes of the persons of full age entitled to the property proposed to be sold or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons so, however, that—

(*a*) a purchaser shall not be concerned to see that the personal representatives have complied with such wishes; and

(*b*) it shall not be necessary for any person so entitled to concur in any such sale.

(2) Subject to section 20, it shall not be lawful for some or one only of several personal representatives, without leave of the High Court, to exercise any power conferred by this section or section 60 to dispose of any land.

(3) F24**[**...**]**

Protection of purchasers.

[1959 (No. 8) s. 19]

51.—(1) A purchaser from the personal representatives of a deceased person of any property, being the whole or any part of the estate of the deceased, shall be entitled to hold that property freed and discharged from any debts or liabilities of the deceased, except such as are charged otherwise than by the will of the deceased, and from all claims of the persons entitled to any share in the estate, and shall not be concerned to see to the application of the purchase money.

(2) (*a*) This subsection applies to all property other than property the ownership of which is registered under the Registration of Title Act, 1964.

(*b*) A purchaser of any property to which this subsection applies, being the whole or any part of the estate of a deceased person, which has been conveyed by the personal representatives to any person shall be entitled to hold that property freed and discharged from the claims of creditors of the deceased and from any claims of the persons entitled to any share in the estate.

(3) F25**[**...**]**

General provisions as to assent or transfer by personal representatives.

[1959 (No. 8) s. 20]

52.—(1) In this section and in section 53—

(*a*) references to the land of a deceased person are references to land to which he was entitled or over which he exercised a general power of appointment by will;

(*b*) "person entitled" includes, in relation to any estate or interest in land—

(i) the person or persons (including the personal representatives of the deceased or any of them) who (whether by devise, bequest, devolution or otherwise) may be beneficially entitled to that estate or interest, and

(ii) the trustee or trustees or the personal representative or representatives of any such person or persons.

(2) Without prejudice to any other power conferred by this Act on personal representatives with respect to any land of a deceased person, the personal representatives may at any time after the death of the deceased execute an assent vesting any estate or interest in any such land in the person entitled thereto or may transfer any such estate or interest to the person entitled thereto, and may make the assent or transfer either subject to or free from a charge for the payment of any money which the personal representatives are liable to pay.

(3) Where an assent or transfer under subsection (2) is made subject to a charge for all moneys, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before the assent or transfer.

(4) At any time after the expiration of one year from the death of an owner of land, if the personal representatives have failed on the request of the person entitled to transfer, by assent or otherwise, the land to the person entitled, the court may, if it thinks fit, on the application of the person entitled and after notice to the personal representatives, order that the transfer be made, and, in default of compliance with that order within the time specified therein by the court, may make an order vesting the land in the person entitled as fully and effectually as might have been done by a transfer thereof by the personal representatives.

(5) An assent not in writing shall not be effectual to pass any estate or interest in land.

(6) The statutory covenants implied where a person is expressed in a deed to convey as personal representative shall also be implied in any assent signed by a personal representative unless the assent otherwise provides.

(7) Subject to section 20, it shall not be lawful for some or one only of several personal representatives, without leave of the court, to make an assent or transfer under this section.

(8) This section shall not operate to impose any stamp duty in respect of an assent.

Special provisions as to unregistered land.

[1959 (No. 8) s. 21]

53.—(1) An assent to the vesting of any estate or interest in unregistered land of a deceased person in favour of the person entitled thereto shall—

(*a*) be in writing,

(*b*) be signed by the personal representatives,

(*c*) be deemed, for the purposes of the Registration of Deeds Act, 1707, to be a conveyance of that estate or interest from the personal representatives to the person entitled,

(*d*) operate, subject to the provisions of the Registration of Deeds Act, 1707, with respect to priorities, to vest that estate or interest in the person entitled subject to such charges and incumbrances, if any, as may be specified in the assent and as may otherwise affect that estate or interest,

(*e*) subject to the provisions of the Registration of Deeds Act, 1707, be deemed (unless a contrary intention appears therein) for all purposes necessary to establish the title of the person entitled to intervening rents and profits to relate back to the death of the deceased, but nothing in this paragraph shall operate to enable any person to establish a title inconsistent with the will of the deceased.

(2) Any person in whose favour an assent or conveyance of any unregistered land is made by personal representatives may at his own expense require the personal representatives to register that assent or conveyance in the Registry of Deeds pursuant to the Registration of Deeds Act, 1707.

[New]

(3) An assent or conveyance of unregistered land by a personal representative shall, in favour of a purchaser, be conclusive evidence that the person in whose favour the assent or conveyance is given or made is the person who was entitled to have the estate or interest vested in him, but shall not otherwise prejudicially affect the claim of any person originally entitled to that estate or interest or to any mortgage or incumbrance thereon.

(4) This section applies to assents and conveyances made after the commencement of this Act whether the deceased died before or after such commencement.

Special provisions as to registered land.

54.—(1) An assent or transfer made by a personal representative in respect of registered land shall be in the form required under section 61 of the Registration of Title Act, 1964, and shall be subject to the provisions of that Act.

(2) The Registration of Title Act, 1964, is hereby amended by the substitution of the following subsection for subsection (3) of section 61:

"(3) (*a*) An application for registration made by a person who claims to be by law entitled to the land of a deceased registered full owner, accompanied by an assent or transfer by the personal representative in the prescribed form,

shall authorise the Registrar to register such person as full or limited owner of the land, as the case may be.

(*b*) On the determination of the estate or interest of an owner who is registered as limited owner of land pursuant to such an assent or transfer, the assent or transfer shall, on application being made in the prescribed manner, authorise the Registrar to register, as full or limited owner, as the case may be, the person in whose favour the assent or transfer was made, or the successor in title of that person, as may be appropriate.

(*c*) It shall not be the duty of the Registrar, nor shall he be entitled, to call for any information as to why any assent or transfer is or was made and he shall be bound to assume that the personal representative is or was acting in relation to the application, assent or transfer correctly and within his powers."

Powers of personal representatives as to appropriation.

[New]

55.—(1) The personal representatives may, subject to the provisions of this section, appropriate any part of the estate of a deceased person in its actual condition or state of investment at the time of appropriation in or towards satisfaction of any share in the estate, whether settled or not, according to the respective rights of the persons interested in the estate.

(2) Except in a case to which section 56 applies, an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.

(3) Except in a case to which section 56 applies, an appropriation shall not be made under this section unless notice of the intended appropriation has been served on all parties entitled to a share in the estate (other than persons who may come into existence after the time of the appropriation or who cannot after reasonable enquiry be found or ascertained at that time) any one of which parties may within six weeks from the service of such notice on him apply to the court to prohibit the appropriation.

(4) An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased, shall not (save as in this section mentioned) be made under this section except with the following consents:

(*a*) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;

(*b*) when made in respect of any settled share, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income.

(5) If the person whose consent is so required is an infant or a person of unsound mind, the consent shall be given on his behalf by his parents or parent, guardian, committee or receiver, or if, in the case of an infant there is no such parent or guardian, by the court on the application of his next friend.

(6) No consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot after reasonable enquiry be found or ascertained at that time.

(7) If no committee or receiver of a person of unsound mind has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased, no consent shall be required on behalf of the person of unsound mind.

(8) If, independently of the personal representatives there is no trustee of a settled share, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such share provided that the appropriation is of an investment authorised as aforesaid.

(9) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(10) For the purposes of such appropriation, the personal representatives may ascertain and fix the values of the respective parts of the estate and the liabilities of the deceased person as they may think fit, and may for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance which may be requisite for giving effect to the appropriation.

(11) Unless the court on an application made to it under subsection (3) otherwise directs, an appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(12) The personal representatives shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot after reasonable enquiry be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(13) This section does not prejudice any other power of appropriation conferred by law or by the will, if any, of the deceased, and takes effect with any extended powers conferred by the will, if any, of the deceased, and, where an appropriation is made under this section, in respect of a settled share, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition and management or varying investments which would have been applicable thereto or to the share in respect of which the appropriation is made, if no such appropriation had been made.

(14) If, after any property has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite notices and consents, if any, had been given.

(15) In this section, a settled share includes any share to which a person is not absolutely entitled in possession at the date of the appropriation and also an annuity.

(16) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

(17) Where any property is appropriated under the provisions of this section, a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

(18) The powers conferred by this section may be exercised by the personal representatives in their own favour.

Right of surviving spouse F26**[**or civil partner**]** to require dwelling and household chattels to be appropriated.

[New]

56.—(1) Where the estate of a deceased person includes a dwelling in which, at the time of the deceased's death, the surviving spouse F26**[**or civil partner**]** was ordinarily resident, the surviving spouse F26**[**or civil partner**]** may, subject to subsection (5), require the personal representatives in writing to appropriate the dwelling under section 55 in or towards satisfaction of any share of the surviving spouse F26**[**or civil partner**]**.

(2) The surviving spouse F26**[**or civil partner**]** may also require the personal representatives in writing to appropriate any household chattels in or towards satisfaction of any share of the surviving spouse F26**[**or civil partner**]**.

(3) If the share of a surviving spouse F26**[**or civil partner**]** is insufficient to enable an appropriation to be made under subsection (1) or (2), as the case may be, the right conferred by the relevant subsection may also be exercised in relation to the share of any infant for whom the surviving spouse F26**[**or civil partner**]** is a trustee under section 57 or otherwise.

(4) It shall be the duty of the personal representatives to notify the surviving spouse F26**[**or civil partner**]** in writing of the rights conferred by this section.

(5) A right conferred by this section shall not be exercisable—

(*a*) after the expiration of six months from the receipt by the surviving spouse F26**[**or civil partner**]** of such notification or one year from the first taking out of representation of the deceased's estate, whichever is the later, or

(*b*) in relation to a dwelling, in any of the cases mentioned in subsection (6), unless the court, on application made by the personal representatives or the surviving spouse F26**[**or civil partner**]**, is satisfied that the exercise of that right is unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more difficult to dispose of them in due course of administration and authorises its exercise.

(6) Paragraph (*b*) of subsection (5) and paragraph (*d*) of subsection (10) apply to the following cases:

(*a*) where the dwelling forms part of a building, and an estate or interest in the whole building forms part of the estate;

(*b*) where the dwelling is held with agricultural land an estate or interest in which forms part of the estate;

(*c*) where the whole or a part of the dwelling was, at the time of the death, used as a hotel, guest house or boarding house;

(*d*) where a part of the dwelling was, at the time of the death, used for purposes other than domestic purposes.

(7) Nothing in subsection (12) of section 55 shall prevent the personal representatives from giving effect to the rights conferred by this section.

(8) (*a*) So long as a right conferred by this section continues to be exercisable, the personal representatives shall not, without the written consent of the surviving spouse F26**[**or civil partner**]** or the leave of the court given on the refusal of an application under paragraph (*b*) of subsection (5), sell or otherwise dispose of the dwelling or household chattels except in the course of administration owing to want of other assets.

(*b*) This subsection shall not apply where the surviving spouse F26**[**or civil partner**]** is a personal representative.

(*c*) Nothing in this subsection shall confer any right on the surviving spouse F26**[**or civil partner**]** against a purchaser from the personal representatives.

(9) The rights conferred by this section on a surviving spouse F26**[**or civil partner**]** include a right to require appropriation partly in satisfaction of a share in the deceased's estate and partly in return for a payment of money by the surviving spouse F26**[**or civil partner**]** on F27**[**his or her**]** own behalf and also on behalf of any infant for whom the spouse F26**[**or civil partner**]** is a trustee under section 57 or otherwise.

(10) (*a*) In addition to the rights to require appropriation conferred by this section, the surviving spouse F26**[**or civil partner**]** may, so long as a right conferred by this section continues to be exercisable, apply to the court for appropriation on F27**[**his or her**]** own behalf and also on behalf of any infant

for whom the spouse F26**[**or civil partner**]** is a trustee under section 57 or otherwise.

(*b*) On any such application, the court may, if of opinion that, in the special circumstances of the case, hardship would otherwise be caused to the surviving spouse F26**[**or civil partner**]** or to the surviving spouse F26**[**or civil partner**]** and any such infant, order that appropriation to the spouse F26**[**or civil partner**]** shall be made without the payment of money provided for in subsection (9) or subject to the payment of such amount as the court considers reasonable.

(*c*) The court may make such further order in relation to the administration of the deceased's estate as may appear to the court to be just and equitable having regard to the provisions of this Act and to all the circumstances.

(*d*) The court shall not make an order under this subsection in relation to a dwelling in any of the cases mentioned in subsection (6), unless it is satisfied that the order would be unlikely to diminish the value of the assets of the deceased, other than the dwelling, or to make it more difficult to dispose of them in due course of administration.

(11) All proceedings in relation to this section shall be heard in chambers.

(12) Where the surviving spouse F26**[**or civil partner**]** is a person of unsound mind, a requirement or consent under this section may, if there is a committee of F27**[**his or her**]** estate, be made or given on behalf of the spouse F26**[**or civil partner**]** by the committee by leave of the court which has appointed the committee or, if there is no committee, be given or made by the High Court or, in a case within the jurisdiction of the Circuit Court, by that Court.

(13) An appropriation to which this section applies shall for the purposes of succession duty be deemed to be a succession derived from the deceased.

[Cf. "dwelling" in 1960 (No. 42) s. 2 (1)]

(14) In this section—

"dwelling" means an estate or interest in a building occupied as a separate dwelling or a part, so occupied, of any building and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling;

"household chattels" means furniture, linen, china, glass, books and other chattels of ordinary household use or ornament and also consumable stores, garden effects and domestic animals, but does not include any chattels used at the death of the deceased for business or professional purposes or money or security for money.

Appointment by personal representatives of trustees of infant's property.

[New]

57.—(1) Where an infant is entitled to any share in the estate of a deceased person and there are no trustees of such share able and willing to act, the personal representatives of the deceased may appoint a trust corporation or any two or more persons (who may include the personal representatives or any of them or a trust corporation) to be trustees of such share for the infant and may execute such assurance or take such other action as may be necessary for vesting the share in the trustee so appointed. In default of appointment the personal representatives shall be trustees for the purposes of this section.

(2) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of the property vested in the trustees so appointed.

Powers of trustees of infant's property.

[New]

58.—(1) Property vested under section 57 may be retained in its existing condition or state of investment or may be converted into money and invested in any security in which a trustee is authorised by law to invest, with power, at the discretion of the trustees, to change such investments for others so authorised.

(2) F28**[**...**]**

(3) A person who is sole trustee under section 57 shall be entitled to receive capital trust money.

(4) Persons who are trustees under section 57 shall be deemed to be trustees for the purposes of sections 42 and 43 of the Conveyancing Act, 1881.

(5) Without prejudice to any powers under the said sections 42 and 43, persons who are trustees under section 57 may at any time or times pay or apply the capital of any share in the estate to which the infant is entitled for the advancement or benefit of the infant in such manner as they may, in their absolute discretion, think fit and may, in particular, carry on any business in which the infant is entitled to a share.

(6) The powers conferred by subsection (5) may also be exercised by the surviving spouse F29**[**or civil partner**]** as trustee of any property of an infant appropriated in accordance with section 56.

Right to follow property.

[Restates existing law relating to right to follow property; as to real estate, see 1830 (c. 47) 1839 (c. 60) and 1848 (c. 87)]

59.—(1) Property which has been conveyed by personal representatives to any person (other than a purchaser) shall, so long as it remains vested in that person, or in any person claiming under him (not being a purchaser), continue to be liable to answer the debts of the deceased and any share in the estate to the extent to which it was liable when vested in the personal representatives.

(2) In the event of a sale or mortgage of the property by a person (not being a purchaser) to whom it was conveyed by the personal representatives, or by any person claiming under him (not being a purchaser), the seller or mortgagor shall continue to be personally liable for such debts and for any share in the estate to the extent to which the property was liable when vested in the personal representatives.

(3) This section applies whether the deceased died before or after the commencement of this Act.

Powers to deal with estate, etc.

[Restates, clarifies and extends to real estate existing law relating to personal estate; as to real estate, see 1859 (c. 35) ss. 14 to 18]

60.—(1) The personal representatives of a deceased owner of land may, in addition to any other powers conferred on them by this Act—

(*a*) make such leases of the land as may be reasonably necessary for the due administration of the estate of the deceased owner; or

(*b*) with the consent of the beneficiaries, or with the approval of the court, make leases of the land for such term and on such conditions as the personal representatives may think proper; or

(*c*) make, on such terms and conditions as the personal representatives may think proper, F30**[**a sub-lease of the land**]** with a nominal reversion, where such F31**[**...**]** sub-lease amounts in substance to a sale and the personal representatives have satisfied themselves that it is the most appropriate method of disposing of the land in the course of the administration of the estate;

and, where personal representatives F31**[**...**]** lease any land pursuant to any power conferred on them by this subsection, they may sell F31**[**...**]** any reversion expectant upon the determination of any such lease.

(2) The right of the personal representatives to obtain possession of any premises demised by them pursuant to the power conferred by paragraph (*a*) of subsection (1) shall be exercisable notwithstanding anything to the contrary contained in the Rent Restrictions Act, 1960.

(3) The personal representatives of a deceased person may from time to time raise money by way of mortgage or charge for the payment of expenses, debts and liabilities,

and any legal right and, with the approval of all the beneficiaries being *sui juris* or the court (but not otherwise), for the erection, repair, improvement or completion of buildings, or the improvement of lands forming part of the estate of the deceased.

(4) This section shall not prejudice or affect any power or duty of personal representatives to execute any document or do any other act or thing for the purpose of completing any transaction entered into by a deceased person before his death.

[1840 (c. 105) s. 61]

(5) The personal representatives of a deceased person may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living.

[1840 (c. 105) s. 62]

(6) Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

(*a*) within six months after the termination of the lease or tenancy;

(*b*) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

The enactments relating to distress for rent apply to any distress made pursuant to this subsection.

[New]

(7) The personal representatives may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

[Enlarges powers conferred by 1893 (c. 53) s. 21]

(8) The personal representatives of a deceased person may—

(*a*) accept any property before the time at which it is transferable or payable;

(*b*) pay or allow any debt or claim on any evidence they may reasonably deem sufficient;

(*c*) accept any composition or security for any debt or property claimed;

(*d*) allow time for payment of any debt;

(*e*) compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, dispute, claim or other matter relating to the estate of the deceased;

(*f*) settle and fix reasonable terms of remuneration for any trust corporation appointed by them under section 57 to act as trustee of any property and authorise such trust corporation to charge and retain such remuneration out of that property,

and for any of those purposes may enter into such agreements or arrangements and execute such documents as seem to them expedient, without being personally responsible for any loss occasioned by any act or thing so done by them in good faith.

(9) This section shall not prejudice or affect any powers conferred by will on personal representatives, and the powers conferred by this section on the personal representatives of a deceased person who has died testate shall be exercised subject to any provisions contained in his will with respect to the disposal of his estate.

(10) This section applies whether the deceased died before or after the commencement of this Act.

Purchasers from personal representatives.

[Restates existing law: as to real estate, see 1859 (c. 35) s. 17]

61.—A purchaser from personal representatives shall be entitled to assume that the personal representatives are acting correctly and within their powers.

Time allowed for distribution.

[1695 (c. 6) s. 4]

62.—(1) The personal representatives of a deceased person shall distribute his estate as soon after his death as is reasonably practicable having regard to the nature of the estate, the manner in which it is required to be distributed and all other relevant circumstances, but proceedings against the personal representatives in respect of their failure to distribute shall not, without leave of the court, be brought before the expiration of one year from the date of the death of the deceased.

(2) Nothing in this section shall prejudice or affect the rights of creditors of a deceased person to bring proceedings against his personal representatives before the expiration of one year from his death.

Advancements to children to be brought into account.

[New]

63.—(1) Any advancement made to the child of a deceased person during his lifetime shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so made in or towards satisfaction of the share of such child in the estate of the deceased or the share which such child would have taken if living at the death of the deceased, and as between the children shall be brought into account in distributing the estate.

(2) The advancement shall, for the purposes of this section only, be reckoned as part of the estate of the deceased and its value shall be reckoned as at the date of the advancement.

(3) If the advancement is equal to or greater than the share which the child is entitled to receive under the will or on intestacy, the child or the issue of the child shall be excluded from any such share in the estate.

(4) If the advancement is less than such share, the child or the issue of the child shall be entitled to receive in satisfaction of such share so much only of the estate as, when added to the advancement, is sufficient, as nearly as can be estimated, to make up the full amount of that share.

(5) The onus of proving that a child has been made an advancement shall be upon the person so asserting, unless the advancement has been expressed in writing by the deceased.

(6) For the purposes of this section, "advancement" means a gift intended to make permanent provision for a child and includes advancement by way of portion or settlement, including any life or lesser interest and including property covenanted to be paid or settled. It also includes an advance or portion for the purpose of establishing a child in a profession, vocation, trade or business, a marriage portion and payments made for the education of a child to a standard higher than that provided by the deceased for any other or others of his children.

(7) For the purposes of this section, personal representatives may employ a duly qualified valuer.

(8) Nothing in this section shall prevent a child retaining the advancement and abandoning his right to a share under the will or on intestacy.

(9) Nothing in this section shall affect any rule of law as to the satisfaction of portion debts by legacies.

(10) In this section "child" includes a person to whom the deceased was *in loco parentis*.

Duty of personal representatives as to inventory.

[1357 (st. 1.c.11); 1537 (c. 18); 1695 (c. 6) s. 1]

64.—The personal representatives of a deceased person shall, when lawfully required to do so, exhibit on oath in the court a true and perfect inventory and account of the estate of the deceased, and the court shall have power to require personal representatives to bring in inventories.

Administration on behalf of the State.

[1884 (c. 71) ss. 2, 3]

65.—(1) Where administration of an estate is granted for the use or benefit of the State (whether to the Chief State Solicitor, the Solicitor for the Attorney General or any other person), any legal proceedings by or against the administrator for the recovery of the estate or any share thereof shall be of the same character and be instituted and carried on in the same manner, and be subject to the same rules of law and equity in all respects, as if the grant had been made to the administrator as a person beneficially entitled to a share of the estate.

(2) Proceedings on behalf of or against the State in respect of the estate of a deceased person or any share thereof or any claim thereon shall not be instituted except subject to the same rules of law and equity in and subject to which proceedings for the like purposes might be instituted by or against a private individual.

[New]

(3) Where the Chief State Solicitor for the time being is administrator of an estate for the use or benefit of the State, he shall cease to be administrator on ceasing to hold office and his successor in office shall become administrator in his place without further grant

PART VI

Distribution on Intestacy

Rules for distribution on intestacy.

66.—All estate to which a deceased person was beneficially entitled for an estate or interest not ceasing on his death and as to which he dies intestate after the commencement of this Act shall, after payment of all expenses, debts and liabilities and any legal right properly payable thereout, be distributed in accordance with this Part.

Shares of surviving spouse and issue.

[New. See 1695 (c. 6) ss. 1, 2, 3]

67.—(1) If an intestate dies leaving a spouse and no issue, the spouse shall take the whole estate.

(2) If an intestate dies leaving a spouse and issue—

(*a*) the spouse shall take two-thirds of the estate, and

(*b*) the remainder shall be distributed among the issue in accordance with F32**[**section 67B(2)**]**.

(3) F33**[**...**]**

(4) F33**[**...**]**

F34**[**Shares of surviving civil partner and issue

67A.— (1) If an intestate dies leaving a civil partner and no issue, the civil partner shall take the whole estate.

(2) If an intestate dies leaving a civil partner and issue—

(*a*) F35**[**subject to subsections (3), (3A) (inserted by section 67(c) of the Act of 2015), (4), (5), (6) and (7)**]**, the civil partner shall take two-thirds of the estate; and

(*b*) the remainder shall be distributed among the issue in accordance with section 67B(2).

(3) F35**[**Subject to subsection (3A), the court may**]**, on the application by or on behalf of a child of an intestate who dies leaving a civil partner and one or more children, order that provision be made for that child out of the intestate's estate only if the court is of the opinion that it would be unjust not to make the order, after considering all the circumstances, including—

(*a*) the extent to which the intestate has made provision for that child during the intestate's lifetime,

(*b*) the age and reasonable financial requirements of that child,

(*c*) the intestate's financial situation, and

(*d*) the intestate's obligations to the civil partner.

F36**[**(3A) An application may not be made under subsection (3) by or on behalf of a child of an intestate where that child is also the child of the surviving civil partner.**]**

(4) The court, in ordering provision of an amount under subsection (3) shall ensure that—

(*a*) the amount to which any issue of the intestate is entitled shall not be less than that to which he or she would have been entitled had no such order been made, and

(*b*) the amount provided shall not be greater than the amount to which the applicant would have been entitled had the intestate died leaving neither spouse nor civil partner.

(5) Rules of court shall provide for the conduct of proceedings under this section in a summary manner.

(6) The costs in the proceedings shall be at the discretion of the court.

(7) An order under this section shall not be made except on an application made within 6 months from the first taking out of representation of the deceased's estate.**]**

F37**[Share of issue where no surviving spouse or surviving civil partner.**

67B.— (1) If an intestate dies leaving issue and no spouse or civil partner, the estate shall be distributed among the issue in accordance with subsection (2).

(2) If all the issue are in equal degree of relationship to the deceased the distribution shall be in equal shares among them; if they are not, it shall be *per stirpes*.**]**

Shares of parents.

[New. See 1695 (c. 6) ss. 3, 8]

68.—F38**[**(1)**]** F39**[**Subject to this section, if an intestate dies**]** leaving neither spouse F40**[**nor civil partner**]** nor issue, his estate shall be distributed between his parents in equal shares if both survive the intestate, but, if only one parent survives, that parent shall take the whole estate.

F41**[**(2) If an intestate who is an affected person dies leaving neither spouse nor civil partner nor issue, his or her estate shall be distributed between each person who is his or her surviving parent in equal shares, but, if only one parent survives, that parent shall take the whole estate.

(3) Where subsection (2) applies, and a surviving parent is both the father and the social father (within the meaning of section 4B) of the intestate concerned, the estate of the intestate shall be distributed between him and the other surviving parents in equal shares, but, if he is the only surviving parent, he shall take the whole estate.**]**

Shares of brothers and sisters and their children.

[See 1695 (c. 6) ss. 2, 3]

69.—(1) If an intestate dies leaving neither spouse F42**[**nor civil partner**]** nor issue nor parent, his estate shall be distributed between his brothers and sisters in equal shares, and, if any brother or sister does not survive the intestate, the surviving children of the deceased brother or sister shall, where any other brother or sister of the deceased survives him, take in equal shares the share that their parent would have taken if he or she had survived the intestate.

(2) If an intestate dies leaving neither spouse F42**[**nor civil partner**]** nor issue nor parent nor brother nor sister, his estate shall be distributed in equal shares among the children of his brothers and sisters.

F43**[**Share of relatives: special provision

69A.— Where, in the application of section 4B to any provision of this Part, the same person would be entitled to take, in relation to the estate of an intestate—

(*a*) a share by virtue of a relationship with the intestate deduced in accordance with a determination under paragraph (a) of section 4B(1), and

(*b*) a share by virtue of a relationship with the intestate deduced in accordance with a determination under paragraph (b) of section 4B(1),

the person—

(i) shall take only one of the shares in the estate referred to in paragraphs (a) and (b), and

(ii) may elect to take either the share referred to in paragraph (a) or the share referred to in paragraph (b).**]**

Shares of next-of-kin.

[See 1695 (c. 6) ss. 2, 3]

70.—(1) If an intestate dies leaving neither spouse F44**[**nor civil partner**]** nor issue nor parent nor brother nor sister nor children of any deceased brother or sister, his estate shall, subject to the succeeding provisions of this Part, be distributed in equal shares among his next-of-kin.

(2) Representation of next-of-kin shall not be admitted amongst collaterals except in the case of children of brothers and sisters of the intestate where any other brother or sister of the intestate survives him.

Ascertainment of next-of-kin.

[New]

71.—(1) Subject to the rights of representation mentioned in subsection (2) of section 70, the person or persons who, at the date of the death of the intestate, stand nearest in blood relationship to him shall be taken to be his next-of-kin.

(2) Degrees of blood relationship of a direct lineal ancestor shall be computed by counting upwards from the intestate to that ancestor, and degrees of blood relationship of any other relative shall be ascertained by counting upwards from the intestate to the nearest ancestor common to the intestate and that relative, and then downward from that ancestor to the relative; but, where a direct lineal ancestor and any other relative are so ascertained to be within the same degree of blood relationship to the intestate, the other relative shall be preferred to the exclusion of the direct lineal ancestor.

Half-blood.

[New as regards real estate]

72.—Relatives of the half-blood shall be treated as, and shall succeed equally with, relatives of the whole blood in the same degree.

F45**[**Distribution of disclaimed estate.

72A.—Where the estate, or part of the estate, as to which a person dies intestate is disclaimed after the passing of the Family Law (Miscellaneous Provisions) Act, 1997 (otherwise than under section 73 of this Act), the estate or part, as the case may be, shall be distributed in accordance with this Part—

(*a*) as if the person disclaiming had died immediately before the death of the intestate, and

(*b*) if that person is not F46**[**the spouse, civil partner or a direct lineal ancestor**]** of the intestate, as if that person had died without leaving issue.**]**

State as ultimate intestate successor.

[New. Replaces escheat and *bona vacantia*]

73.—(1) In default of any person taking the estate of an intestate, whether under this Part or otherwise, the State shall take the estate as ultimate intestate successor.

(2) The Minister for Finance may, if he thinks proper to do so, waive, in whole or in part and in favour of such person and upon such terms (whether including or not including the payment of money) as he thinks proper having regard to all the circumstances of the case, the right of the State under this section.

[Cf. 1954 (No. 25) s. 31]

(3) Section 32 of the State Property Act, 1954 (which provides for the disclaimer of certain land devolving on the State by way of escheat or as *bona vacantia*) shall extend to the grantee's interest under a fee farm grant and the lessee's interest under a lease, where the State has a right to such interest as ultimate intestate successor.

Partial intestacy.

[1830 (c. 40)]

74.—Where the will of a testator effectively disposes of part only of his estate, the remainder shall be distributed as if he had died intestate and left no other estate.

Construction of documents.

[New]

75.—(1) References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, after the commencement of this Act shall, unless the contrary thereby appears, be construed as references to this Part; and references in such an instrument or will to statutory next-of-kin shall, unless the contrary thereby appears, be construed as referring to the persons who would succeed on an intestacy under the foregoing provisions of this Part.

(2) Trusts declared by reference to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act shall, unless the contrary thereby appears, be construed as referring to the enactments (other than the Intestates' Estates Act, 1954) relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

PART VII

WILLS

Property which may be disposed of by will.

[1837 (c. 26) s. 3]

76.—A person may by his will, executed in accordance with this Act, dispose of all property which he is beneficially entitled to at the time of his death and which on his death devolves on his personal representatives.

Capacity to make a will.

[1837 (c. 26) s. 7 amended]

77.—(1) To be valid a will shall be made by a person who—

(*a*) has attained the age of eighteen years or is or has been married, and

(*b*) is of sound disposing mind.

[1964 (No. 7) s. 7 (7)]

(2) A person who is entitled to appoint a guardian of an infant may make the appointment by will notwithstanding that he is not a person to whom paragraph (*a*) of subsection (1) applies.

Signing and witnessing will.

[1837 (c. 26) s. 9 and 1852 (c. 24) s. 1]

78.—To be valid a will shall be in writing and be executed in accordance with the following rules:

1. It shall be signed at the foot or end thereof by the testator, or by some person in his presence and by his direction.

2. Such signature shall be made or acknowledged by the testator in the presence of each of two or more witnesses, present at the same time, and each witness shall attest by his signature the signature of the testator in the presence of the testator, but no form of attestation shall be necessary nor shall it be necessary for the witnesses to sign in the presence of each other.

3. So far as concerns the position of the signature of the testator or of the person signing for him under rule 1, it is sufficient if the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will.

4. No such will shall be affected by the circumstances—

(*a*) that the signature does not follow or is not immediately after the foot or end of the will; or

(*b*) that a blank space intervenes between the concluding word of the will and the signature; or

(*c*) that the signature is placed among the words of the testimonium clause or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows or is after, or under, or beside the names or one of the names of the attesting witnesses; or

(*d*) that the signature is on a side or page or other portion of the paper or papers containing the will on which no clause or paragraph or disposing part of the will is written above the signature; or

(*e*) that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature;

and the enumeration of the above circumstances shall not restrict the generality of rule 1.

5. A signature shall not be operative to give effect to any disposition or direction inserted after the signature is made.

Appointments by will.

[1837 (c. 26) s. 10]

79.—(1) An appointment made by will, in exercise of any power, shall not be valid unless it is executed in accordance with this Act.

(2) Every will so executed shall, so far as concerns its execution and attestation, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

Publication of will not necessary.

[1837 (c. 26) s. 13]

80.—Every will executed in accordance with this Act shall be valid without any other publication thereof.

Will not void on account of incompetency of witness.

[1837 (c. 26) s. 14]

81.—If a person who attests the execution of a will is, at the time of execution or at any time afterwards, incompetent to be admitted a witness to prove the execution, the will shall not on that account be invalid.

Gifts to an attesting witness, or spouse of witness, to be void.

[1837 (c. 26) s. 15]

82.—(1) If a person attests the execution of a will, and any devise, bequest, estate, interest, gift, or appointment, of or affecting any property (other than charges and directions for the payment of any debt or debts) is given or made by the will to that person or his spouse F47**[**or civil partner**]**, that devise, bequest, estate, interest, gift, or appointment shall, so far only as concerns the person attesting the execution of the will, or the spouse F47**[**or civil partner**]** of that person, or any person claiming under that person or spouse F47**[**or civil partner**]**, be utterly null and void.

(2) The person so attesting shall be admitted as a witness to prove the execution of the will, or to prove the validity or invalidity thereof, notwithstanding such devise, bequest, estate, interest, gift, or appointment.

Creditor attesting will charging estate with debts admissible as witness.

[1837 (c. 26) s. 16]

83.—If by will any estate is charged with any debt or debts, and a creditor, or the spouse F48**[**or civil partner**]** of a creditor, whose debt is so charged, attests the execution of the will, the creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

Executor admissible as witness.

[1837 (c. 26) s. 17]

84.—A person shall not, by reason only of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of the will, or a witness to prove the validity or invalidity thereof.

Revocation of will.

[New. Cf. 1837 (c. 26) s. 18]

85.—(1) A will shall be revoked by the subsequent marriage F49**[**or entry into a civil partnership**]** of the testator, except a will made in contemplation of that marriage F49**[**or entry into a civil partnership**]**, whether so expressed in the will or not.

F50**[**(1A) Notwithstanding subsection (1), where the parties to a subsisting civil partnership with each other marry each other, a will made in contemplation of entry into the civil partnership or during the civil partnership by a testator who is a party to the marriage shall not be revoked by that marriage and a reference in the will to the testator's civil partner shall be construed as a reference to the testator's spouse.**]**

[1837 (c. 26) ss. 19, 20]

(2) Subject to subsection (1), no will, or any part thereof, shall be revoked except by another will or codicil duly executed, or by some writing declaring an intention to revoke it and executed in the manner in which a will is required to be executed, or by the burning, tearing, or destruction of it by the testator, or by some person in his presence and by his direction, with the intention of revoking it.

Alterations in will after execution.

[1837 (c. 26) s. 21]

86.—An obliteration, interlineation, or other alteration made in a will after execution shall not be valid or have any effect, unless such alteration is executed as is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the signature of each witness is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end of some other part of the will.

Revoked will not revived otherwise than by re-execution or codicil.

[1837 (c. 26) s. 22]

87.—No will or any part thereof, which is in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil duly executed and showing an intention to revive it; and when any will or codicil which is partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

Subsequent conveyance or other act not to prevent operation of will.

[1837 (c. 26) s. 23]

88.—Where, subsequently to the execution of a will, a conveyance or other act is made or done relating to any estate comprised in the will, except an act by which the will is revoked, the conveyance or act shall not prevent the operation of the will with respect to any estate or interest in the property which the testator has power to dispose of by will at the time of his death.

Will to speak from death of testator.

[1837 (c. 26) s. 24 extended so as to overrule *Wild's Case* (1599) 6 Co. Rep. 16b]

89.—Every will shall, with reference to all estate comprised in the will and every devise or bequest contained in it, be construed to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the will.

Extrinsic evidence as to will.

[New]

90.—Extrinsic evidence shall be admissible to show the intention of the testator and to assist in the construction of, or to explain any contradiction in, a will.

Residuary devise or bequest to include estate comprised in lapsed and void gifts.

[1837 (c. 26) s. 25]

91.—Unless a contrary intention appears from the will, any estate comprised or intended to be comprised in any devise or bequest contained in the will which fails or is void by reason of the fact that the devisee or legatee did not survive the testator, or by reason of the devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in any residuary devise or bequest, as the case may be, contained in the will.

General devise of land to include leasehold as well as freehold.

[1837 (c. 26) s. 26]

92.—A general devise of land shall be construed to include leasehold interests as well as freehold estates, unless a contrary intention appears from the will.

General gift of realty or personalty to include property over which testator has general power of appointment.

[1837 (c. 26) s. 27]

93.—A general devise of land shall be construed to include any land which the testator may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears from the will; and in like manner a general bequest of the personal estate (other than land) of the testator shall be construed to include any such estate which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears from the will.

Devise of real estate without words of limitation to pass whole estate.

[1837 (c. 26) ss. 28, 30, 31]

94.—Where real estate is devised to a person (including a trustee or executor) without any words of limitation, the devise shall be construed to pass the whole estate or interest which the testator had power to dispose of by will in the real estate, unless a contrary intention appears from the will.

Creation of estates tail.

[New. Overrules *Wild's Case* (1599) 6 Co. Rep. 16b]

95.—F51**[...]**

Meaning of "die without issue".

[1837 (c. 26) s. 29]

96.—In a devise or bequest of real or personal estate, the words "die without issue", or "die without leaving issue", or "have no issue", or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at the time of his death, and not an indefinite failure of his issue, unless a contrary intention appears from the will.

Devise of estate tail not to lapse where inheritable issue survives.

[1837 (c. 26) s. 32]

97.—F52**[...]**

Gifts to children or other issue who leave issue living at testator's death.

[1837 (c. 26) s. 33 extended to cover appointments under special powers and class gifts]

98.—Where a person, being a child or other issue of the testator to whom any property is given (whether by a devise or bequest or by the exercise by will of any power of appointment, and whether as a gift to that person as an individual or as a member of a class) for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator leaving issue, and any such issue of that person is living at the time of the death of the testator, the gift shall not lapse, but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention appears from the will.

Interpretation of devise or bequest in case of doubt.

[New]

99.—If the purport of a devise or bequest admits of more than one interpretation, then, in case of doubt, the interpretation according to which the devise or bequest will be operative shall be preferred.

Restriction on executory limitations.

[See 1882 (c. 39) s. 10]

100.—Where a person is entitled under a will to—

(*a*) land for an estate in fee simple or for any lesser estate or interest not being an estate tail, or

(*b*) any interest in other property,

with an executory limitation over in default or failure of any of his issue, whether within a specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue of the class in default or failure of which the limitation over was to take effect.

PART VIII

CONFLICT OF LAWS RELATING TO TESTAMENTARY DISPOSITIONS

"Testamentary disposition".

101.—In this Part, "testamentary disposition" means any will or other testamentary instrument or act.

Validity as regards form.

[Hague Convention, Arts. 1, 2. As to existing law, see 1861 (c. 114) ss. 1, 2]

102.—(1) A testamentary disposition shall be valid as regards form if its form complies with the internal law—

(*a*) of the place where the testator made it, or

(*b*) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or

(*c*) of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or

(*d*) of the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or

(*e*) so far as immovables are concerned, of the place where they are situated.

(2) Without prejudice to subsection (1), a testamentary disposition revoking an earlier testamentary disposition shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under that subsection, the testamentary disposition that has been revoked was valid.

(3) For the purposes of this Part, if a national law consists of a non-unified system, the law to be applied shall be determined by the rules in force in that system and, failing any such rules, by the most real connexion which the testator had with any one of the various laws within that system.

(4) The determination of whether or not the testator had his domicile in a particular place shall be governed by the law of that place.

Dispositions made on board vessel or aircraft.

[New]

103.—Without prejudice to section 102, a testamentary disposition made on board a vessel or aircraft shall also be valid as regards form if its form complies with the internal law of the place with which, having regard to its registration (if any) and any other relevant circumstances, the vessel or aircraft may be taken to have had the most real connexion.

Exercise of power of appointment.

[New]

104.—(1) Without prejudice to section 102, a testamentary disposition shall also be valid as regards form so far as it exercises a power of appointment, if its form complies with the law governing the essential validity of the power.

(2) A testamentary disposition so far as it exercises a power of appointment shall not be treated as invalid as regards form by reason only that its form is not in accordance with any formal requirements contained in the instrument creating the power.

Joint dispositions.

[Hague Convention, Art. 4]

105.—This Part shall also apply to the form of testamentary dispositions made by two or more persons in one document.

Effect of restrictions on capacity.

[Hague Convention, Art. 5]

106.—(1) For the purposes of this Part, any provision of law which limits the permitted forms of testamentary dispositions by reference to the age, nationality or other personal conditions of the testator shall be deemed to pertain to matters of form.

(2) The same rule shall apply to the qualifications that must be possessed by witnesses required for the validity of a testamentary disposition and to the provisions of section 82.

Construction of testamentary disposition.

[1861 (c. 114) s. 3]

[New]

107.—(1) The construction of a testamentary disposition shall not be altered by reason of any change in the testator's domicile after the making of the disposition.

(2) In determining whether or not a testamentary disposition complies with a particular law, regard shall be had to the requirements of that law at the time of making the disposition, but this shall not prevent account being taken of an alteration of law affecting testamentary dispositions made at that time if the alteration enables the disposition to be treated as valid.

Effect of testamentary disposition under Part VII.

[New]

108.—A testamentary disposition which under this Part is valid as regards form shall have the same effect as if it were a will executed in compliance with Part VII.

PART IX

Legal Right of Testator's Spouse and Provision for Children

Application of Part IX.

[New]

109.—(1) Where, after the commencement of this Act, a person dies wholly or partly testate leaving a spouse F53**[**or civil partner**]** or children or both spouse F53**[**or civil partner**]** and children, the provisions of this Part shall have effect.

(2) In this Part, references to the estate of the testator are to all estate to which he was beneficially entitled for an estate or interest not ceasing on his death and remaining after payment of all expenses, debts, and liabilities (other than estate duty) properly payable thereout.

Legitimated, illegitimate and adopted persons.

[New]

110.—F54**[**...**]**

Right of surviving spouse.

[New]

111.—(1) If the testator leaves a spouse and no children, the spouse shall have a right to one-half of the estate.

(2) If the testator leaves a spouse and children, the spouse shall have a right to one-third of the estate.

F55**[Right of surviving civil partner.**

111A.— (1) If the testator leaves a civil partner and no children, the civil partner shall have a right to one-half of the estate.

(2) Subject to section 117(3A), if the testator leaves a civil partner and children, the civil partner shall have a right to one-third of the estate.**]**

Priority of legal right.

[New]

112.—The right of a spouse under section 111 F56**[**or the right of a civil partner under section 111A**]** (which shall be known as a legal right) shall have priority over devises, bequests and shares on intestacy.

Renunciation of legal right.

[New]

113.—The legal right of a spouse may be renounced in an ante-nuptial contract made in writing between the parties to an intended marriage or may be renounced in writing by the spouse after marriage and during the lifetime of the testator.

F57**[Renunciation of legal right.**

113A.—The legal right of a civil partner may be renounced in an ante-civil-partnership-registration contract made in writing between the parties to an intended civil partnership or may be renounced in writing by the civil partner after registration and during the lifetime of the testator.**]**

Effect of devise or bequest to spouse F58**[**or civil partner**]**.

[New]

114.—(1) Where property is devised or bequeathed in a will to a spouse F58**[**or civil partner**]** and the devise or bequest is expressed in the will to be in addition to the share as a legal right of the spouse F58**[**or civil partner**]**, the testator shall be deemed to have made by the will a gift to the spouse F58**[**or civil partner**]** consisting of—

(*a*) a sum equal to the value of the share as a legal right of the spouse F58**[**or civil partner**]**, and

(*b*) the property so devised or bequeathed.

(2) In any other case, a devise or bequest in a will to a spouse F58**[**or civil partner**]** shall be deemed to have been intended by the testator to be in satisfaction of the share as a legal right of the spouse F58**[**or civil partner**]**.

Election between legal right and rights under a will and on partial intestacy.

[New]

115.—(1) (*a*) Where, under the will of a deceased person who dies wholly testate, there is a devise or bequest to a spouse F59**[**or civil partner**]**, the spouse F59**[**or civil partner**]** may elect to take either that devise or bequest or the share to which he is entitled as a legal right.

(*b*) In default of election, the spouse F59**[**or civil partner**]** shall be entitled to take under the will, and he shall not be entitled to take any share as a legal right.

(2) (*a*) Where a person dies partly testate and partly intestate, a spouse F59**[**or civil partner**]** may elect to take either—

(i) his share as a legal right, or

(ii) his share under the intestacy, together with any devise or bequest to him under the will of the deceased.

(*b*) In default of election, the spouse F59**[**or civil partner**]** shall be entitled to take his share under the intestacy, together with any devise or bequest to him under the will, and he shall not be entitled to take any share as a legal right.

(3) A spouse F59**[**or civil partner**]**, in electing to take his share as a legal right, may further elect to take any devise or bequest to him less in value than the share in partial satisfaction thereof.

(4) It shall be the duty of the personal representatives to notify the spouse F59**[**or civil partner**]** in writing of the right of election conferred by this section. The right shall not be exercisable after the expiration of six months from the receipt by the spouse F59**[**or civil partner**]** of such notification or one year from the first taking out of representation of the deceased's estate, whichever is the later.

(5) Where the surviving spouse F59**[**or civil partner**]** is a person of unsound mind, the right of election conferred by this section may, if there is a committee of the spouse's F59**[**or civil partner's**]** estate, be exercised on behalf of the spouse F59**[**or civil partner**]** by the committee by leave of the court which has appointed the committee or, if there is no committee, be exercised by the High Court or, in a case within the jurisdiction of the Circuit Court, by that Court.

(6) In this section, but only in its application to a case to which subsection (1) of section 114 applies, "devise or bequest" means a gift deemed under that subsection to have been made by the will of the testator.

Provision in satisfaction of legal right.

116.—(1) Where a testator, during his lifetime, has made permanent provision for his spouse, whether under contract or otherwise, all property which is the subject of such provision (other than periodical payments made for her maintenance during his lifetime) shall be taken as being given in or towards satisfaction of the share as a legal right of the surviving spouse.

(2) The value of the property shall be reckoned as at the date of the making of the provision.

(3) If the value of the property is equal to or greater than the share of the spouse as a legal right, the spouse shall not be entitled to take any share as a legal right.

(4) If the value of the property is less than the share of the spouse as a legal right, the spouse shall be entitled to receive in satisfaction of such share so much only of the estate as, when added to the value of the property, is sufficient, as nearly as can be estimated, to make up the full amount of that share.

(5) This section shall apply only to a provision made before the commencement of this Act.

Provision for children.

[New]

117.—(1) Where, on application by or on behalf of a child of a testator, the court is of opinion that the testator has failed in his moral duty to make proper provision for the child in accordance with his means, whether by his will or otherwise, the court may order that such provision shall be made for the child out of the estate as the court thinks just.

F60**[**(1A) (*a*) An application made under this section by virtue of Part V of the Status of Children Act, 1987, shall be considered in accordance with subsection (2) irrespective of whether the testator executed his will before or after the commencement of the said Part V.

(*b*) Nothing in paragraph (*a*) shall be construed as conferring a right to apply under this section in respect of a testator who dies before the commencement of the said Part V.**]**

(2) The court shall consider the application from the point of view of a prudent and just parent, taking into account the position of each of the children of the testator and any other circumstances which the court may consider of assistance in arriving at a decision that will be as fair as possible to the child to whom the application relates and to the other children.

(3) An order under this section shall not affect the legal right of a surviving spouse or, if the surviving spouse is the mother or father of the child, any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy.

F61**[**(3A) An order under this section—

(a) where the surviving civil partner is a parent of the child, shall not affect the legal right of that surviving civil partner or any devise or bequest to the civil partner or any share to which the civil partner is entitled on intestacy, or

(b) where the surviving civil partner is not a parent of the child, shall not affect the legal right of the surviving civil partner unless the court, after consideration of all the circumstances, including the testator's financial circumstances and his or her obligations to the surviving civil partner, is of the opinion that it would be unjust not to make the order.**]**

(4) Rules of court shall provide for the conduct of proceedings under this section in a summary manner.

(5) The costs in the proceedings shall be at the discretion of the court.

(6) An order under this section shall not be made except on an application made within F62**[**6 months**]** from the first taking out of representation of the deceased's estate.

Estate duty.

[New]

118.—Property representing the share of a person as a legal right and property which is the subject of an order under section 117 shall bear their due proportions of the estate duty payable on the estate of the deceased.

Proceedings to be in chambers.

119.—All proceedings in relation to this Part shall be heard in chambers.

PART X

Unworthiness to Succeed and Disinheritance

Exclusion of persons from succession.

[New]

120.—(1) A sane person who has been guilty of the murder, attempted murder or manslaughter of another shall be precluded from taking any share in the estate of that other, except a share arising under a will made after the act constituting the offence, and shall not be entitled to make an application under section 117.

(2) A spouse F63**[**...**]** guilty of desertion which has continued up to the death for two years or more shall be precluded from taking any share in the estate of the deceased as a legal right or on intestacy.

F64**[**(2A) A deceased's civil partner who has deserted the deceased is precluded from taking any share in the deceased's estate as a legal right or on intestacy if the desertion continued up to the death for two years or more.**]**

(3) A spouse who was guilty of conduct which justified the deceased in separating and living apart from him shall be deemed to be guilty of desertion within the meaning of subsection (2).

F64**[**(3A) A civil partner who was guilty of conduct which justified the deceased in separating and living apart from him or her is deemed to be guilty of desertion within the meaning of subsection (2A).**]**

(4) A person who has been found guilty of an offence against the deceased, or against the spouse F64**[**or civil partner**]** or any child of the deceased (including a child adopted under the Adoption Acts, 1952 and 1964, and a person to whom the deceased was *in loco parentis* at the time of the offence), punishable by imprisonment for a maximum period of at least two years or by a more severe penalty, shall be precluded from taking any share in the estate as a legal right or from making an application under section 117.

(5) Any share which a person is precluded from taking under this section shall be distributed as if that person had died before the deceased.

Dispositions for purpose of disinheriting spouse or children.

[New]

121.—(1) This section applies to a disposition of property (other than a testamentary disposition or a disposition to a purchaser) under which the beneficial ownership of the property vests in possession in the donee within three years before the death of the person who made it or on his death or later.

(2) If the court is satisfied that a disposition to which this section applies was made for the purpose of defeating or substantially diminishing the share of the disponer's spouse F65**[**or civil partner**]**, whether as a legal right or on intestacy, or the intestate share of any of his children, or of leaving any of his children insufficiently provided for, then, whether the disponer died testate or intestate, the court may order that the disposition shall, in whole or in part, be deemed, for the purposes of Parts VI and IX, to be a devise or bequest made by him by will and to form part of his estate, and to have had no other effect.

(3) To the extent to which the court so orders, the disposition shall be deemed never to have had effect as such and the donee of the property, or any person representing or deriving title under him, shall be a debtor of the estate for such amount as the court may direct accordingly.

(4) The court may make such further order in relation to the matter as may appear to the court to be just and equitable having regard to the provisions and the spirit of this Act and to all the circumstances.

(5) Subject to subsections (6) and (7), an order may be made under this section—

(*a*) in the interest of the spouse F65**[**or civil partner**]**, on the application of the spouse F65**[**or civil partner**]** or the personal representative of the deceased, made within one year from the first taking out of representation,

(*b*) in the interest of a child, on an application under section 117.

(6) In the case of a disposition made in favour of the F66**[**spouse or civil partner, as the case may be,**]** of the disponer, an order shall not be made under this section on an application by or on behalf of a child of the disponer who is also a child of the F66**[**spouse or civil partner, as the case may be**]**.

(7) An order shall not be made under this section affecting a disposition made in favour of any child of the disponer, if—

(*a*) the spouse F65**[**or civil partner**]** of the disponer was dead when the disposition was made, or

(*b*) the spouse F65**[**or civil partner**]** was alive when the disposition was made but was a person who, if the disponer had then died, would have been precluded under any of the provisions of section 120 from taking a share in his estate, or

(*c*) the spouse F65**[**or civil partner**]** was alive when the disposition was made and consented in writing to it.

(8) If the donee disposes of the property to a purchaser, this section shall cease to apply to the property and shall apply instead to the consideration given by the purchaser.

(9) Accrual by survivorship on the death of a joint tenant of property shall, for the purposes of this section, be deemed to be a vesting of the beneficial ownership of the entire property in the survivor.

(10) In this section "disposition" includes a *donatio mortis causa*.

Proceedings to be in chambers.

122.—All proceedings in relation to this Part shall be heard in chambers.

PART XI

Limitation of Actions

Personal representative, as such, not a trustee under Statute of Limitations, 1957.

[1959 (No. 8) s. 26]

123.—(1) A personal representative in the capacity of personal representative shall not, by reason only of section 10, be a trustee for the purposes of the Statute of Limitations, 1957.

(2) Subsection (1) is in substitution for paragraph (*d*) of subsection (2) of section 2 of the Statute of Limitations, 1957, repealed by this Act.

"Trustee" in Statute of Limitations, 1957, not to include a bailiff.

[New. Overrules *Rice v. Begley* [1920] 1 I.R. 243]

124.—Notwithstanding any rule of law, "trustee" in the Statute of Limitations, 1957, shall not include a person whose fiduciary relationship arises merely because he is in possession of property comprised in the estate of a deceased person in the capacity of bailiff for another person.

Persons entitled to shares in land.

[New. Cf. *Ward v. Ward* (1871) L.R. 6 Ch. 789, *Coyle v. MC Fadden* [1901] 1 I.R. 298, *Smith v. Savage* [1906] 1 I.R. 469]

125.—(1) Where each of two or more persons is entitled to any share in land comprised in the estate of a deceased person, whether such shares are equal or unequal, and any or all of them enter into possession of the land, then, notwithstanding any rule of law to the contrary, those who enter shall (as between themselves and as between themselves and those (if any) who do not enter) be deemed, for the purposes of the Statute of Limitations, 1957, to have entered and to acquire title by possession as joint tenants (and not as tenants in common) as regards their own respective shares and also as regards the respective shares of those (if any) who do not enter.

(2) Subsection (1) shall apply whether or not any such person entered into possession as personal representative of the deceased, or having entered, was subsequently granted representation to the estate of the deceased.

Actions in respect of estates of deceased persons.

[New]

126.—The Statute of Limitations, 1957, is hereby amended by the substitution of the following section for section 45:

"45. (1) Subject to section 71, no action in respect of any claim to the estate of a deceased person or to any share or interest in such estate, whether under a will, on intestacy or under section 111 of the Succession Act, 1965, shall be brought after the expiration of six years from the date when the right to receive the share or interest accrued.

(2) No action to recover arrears of interest in respect of any legacy or damages in respect of such arrears shall be brought after the expiration of three years from the date on which the interest became due."

Limitation period in case of disability.

[New]

127.—Section 49 of the Statute of Limitations, 1957, which extends the periods of limitation fixed by that Act where the person to whom a right of action accrued was under a disability, shall have effect in relation to an action in respect of a claim to the estate of a deceased person or to any share in such estate, whether under a will, on intestacy or as a legal right, as if the period of three years were substituted for the period of six years mentioned in subsection (1) of that section.

PART XII

Provisions relating to Probate Office and District Probate Registries

Assistant Probate Officer.

[1959 (No. 8) s. 25.

128.—(1) In this section "the Assistant Probate Officer" means the officer employed in the Probate Office who is next in rank to the Probate Officer and is qualified to be appointed to be Probate Officer.

(2) The powers, authorities, duties and functions exercisable or performable by the Probate Officer may, subject to any restrictions which the President of the High Court may think fit to impose, be exercised or performed by the Assistant Probate Officer.

District probate registries.

[1857 (c. 79) ss. 16, 17; 1926 (No. 27) s. 56]

129.—(1) There shall be district probate registries for such districts and at such places as the Minister may by order appoint.

(2) The Minister may by order—

(*a*) alter the district served by a district probate registry;

(*b*) add to or reduce the number of such districts;

(*c*) direct that any district probate registry may be at such place within the district as he thinks fit;

(*d*) close any district probate registry.

(3) Whenever the Minister makes an order closing a district probate registry, the Minister may by that order make provision for enabling applications for representation, in cases in which the deceased, at the time of his death, had a fixed place of abode within the district previously served by that registry, to be lodged with the county registrar for the area in which that place of abode was situate and for the transmission of the applications by the county registrar to the Probate Office and the transmission of the grants (if and when issued) from the Probate Office to the said county registrar for delivery to the person entitled thereto.

(4) Until provision is otherwise made under this section, the district probate registries existing at the commencement of this Act shall continue to function for the districts and at the places theretofore appointed by law.

Fees to be taken at district probate registries.

[1959 (No. 8) s. 24 (1)]

S.I. No. 251 of 1956.

130.—(1) In this section, "the Act of 1936" means the Courts of Justice Act, 1936.

(2) For the purposes of section 65 (which empowers the Minister to prescribe court fees) of the Act of 1936, every district probate registry shall be deemed to be an office established by the Court Officers Act, 1926.

(3) The Supreme Court and High Court (Fees) Order, 1956, as modified by section 24 of the Administration of Estates Act, 1959, shall, notwithstanding the repeal of that Act by this Act, continue to apply in respect of each district probate registry and each district probate registrar.

Acting district probate registrars.

[1959 (No. 8) s. 24 (2)]

131.—Where a person (in this section referred to as the acting district probate registrar) is for the time being required and authorised by the Minister under section 9 of the Court Officers Act, 1945, as amended by section 5 of the Court Officers Act, 1951, to perform the duties of district probate registrar for the district served by a particular district probate registry, the Minister may authorise a specified officer serving in that district probate registry or in the circuit court office which serves the area within which such district probate registry is located to execute, during the temporary absence or temporary incapacity through illness of the acting district probate registrar, the office of district probate registrar for that district and, if the Minister does so, then, such officer shall, during any such temporary absence or temporary incapacity, have and exercise all the powers and fulfil all the duties of the district probate registrar for that district unless and until the Minister otherwise directs.

FIRST SCHEDULE

Rules as to Application of Assets

Part I

Rules as to payment of debts where the estate is insolvent

Section 46.

1. The funeral, testamentary and administration expenses have priority.

[New as to estates administered out of court]

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities, respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

3. In the application of the said rules the date of death shall be substituted for the date of adjudication in bankruptcy.

Part II

Order of application of assets where the estate is solvent

[New]

1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for, the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power, rateably according to value.

8. The following provisions shall also apply—

(*a*) The order of application may be varied by the will of the deceased.

(*b*) This Part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

Section 8.

SECOND SCHEDULE

Repeals

PART I

English Statutes

Session and Chapter	Short title or subject-matter	Extent of repeal
11 Hen. 3.	Curtesy Act, 1226.	The whole Act.
20 Hen. 3: (*Statutes of Merton*) (*1235*)		
c. 1.	Writ of dower.	The whole chapter.
c. 2.	Widow's right to bequeath corn.	The whole chapter.
c. 9.	Special bastardy.	The whole chapter.
13 Edw. 1:		
c. 19.	Administration of Estates Act, 1285.	The whole Act.
c. 34.	Dower Act, 1285.	The whole Act.
25 Edw. 1. c. 7.	Dower Act, 1297.	The whole Act.
31 Edw. 3.		
st. 1. c. 11.	Administration of Estates Act, 1357.	The whole Act.

PART II

Pre-Union Irish Statutes

Session and Chapter	Short Title	Extent of repeal
28 Hen. 8. c. 18.	Administration of Estates Act, 1537.	The whole Act.
10 Chas. 1. sess. 2. c. 1.	Statute of Uses, 1634.	Sections 5, 6 and 8.
10 Chas. 1. sess. 3. c. 10.	Administration of Estates Act, 1634.	The whole Act.
7 Will. 3:		
c. 6.	Statute of Distribution, 1695.	The whole Act.
c. 12.	Statute of Frauds, 1695.	In section 7, from "and if any cestuyque trust hereafter shall dye" to the end of the section. Sections 8, 19 and 20.
6 Anne c. 2.	Registration of Deeds Act, 1707.	The whole Act in so far as it relates to wills and devises.
10 Geo. 1. c. 5.	Mining Leases Act, 1723.	In section 1, from "and also to and for all and every person and persons" to "tenant in dower, or by the curtesie". In section 3, "tenants in dower, or by the curtesie". In section 9, "tenant in dower, or tenant by the curtesie".

PART III

British Statutes

Session and Chapter	Short Title	Extent of repeal
38 Geo. 3. c. 87.	Administration of Estates Act, 1798.	The whole Act.
58 Geo. 3. c. 81.	Infant Executors (Ireland) Act, 1818.	The whole Act.
11 Geo. 4 & 1 Will. 4 :		
c. 40.	Executors Act, 1830.	The whole Act.
c. 47.	Debts Recovery Act, 1830.	The whole Act.
3 & 4 Will. 4:		
c. 104.	Administration of Estates Act, 1833.	The whole Act.
c. 105.	Dower Act, 1833.	The whole Act.
c. 106.	Inheritance Act, 1833.	The whole Act, save so far as it may apply to the descent of an estate tail.
4 & 5 Will. 4.		
c. 92.	Fines and Recoveries (Ireland) Act, 1834.	In section 25, "no woman in respect of her dower, and".
5 & 6 Will. 4.		
c. 62.	Statutory Declarations Act, 1835.	Section 16.
7 Will. 4 & 1 Vict.		
c. 26.	Wills Act, 1837.	The whole Act.
1 & 2 Vict. c. 109.	Tithe Rentcharge (Ireland) Act, 1838.	In section 8, "and each tenant in dower or tenant by courtesy".
2 & 3 Vict. c. 60.	Debts Recovery Act, 1839.	The whole Act.
3 & 4 Vict. c. 105.	Debtors (Ireland) Act, 1840.	Sections 61 and 62.
5 & 6 Vict. c. 82.	Stamp Duties (Ireland Act), 1842.	In section 35, "personal".
11 & 12 Vict. c. 87.	Debts Recovery Act, 1848.	The whole Act.
12 & 13 Vict. c. 105.	Renewable Leasehold Conversion Act, 1849.	In section 9, from "to give dower or curtesy" to "such conversion, or". In section 35, "or as tenant in dower or by the curtesy".
14 & 15 Vict. c. 57.	Civil Bill Courts (Ireland) Act, 1851.	Sections 49 to 57, 108.
15 & 16 Vict. c. 24.	Wills Act Amendment Act, 1852.	The whole Act.
16 & 17 Vict. c. 113.	Common Law Procedure Amendment Act (Ireland), 1853.	Section 137.
17 & 18 Vict. c. 113.	Real Estate Charges Act, 1854.	The whole Act.
20 & 21 Vict. c. 79.	Probates and Letters of Administration Act (Ireland), 1857.	The whole Act.
22 & 23 Vict: c. 31.	Court of Probate Act (Ireland), 1859.	The whole Act.

c. 35.	Law of Property Amendment Act, 1859.	Sections 14 to 18. Sections 19 and 20, save in so far as they may apply to the descent of an estate tail.
		Section 29.
23 & 24 Vict. c. 154.	Landlord and Tenant Law Amendment Act, Ireland, 1860.	In section 9, from "and in case" to the end of the section.
24 & 25 Vict: c. 114.	Wills Act, 1861.	The whole Act.
c. 121.	Domicile Act, 1861.	The whole Act.
27 & 28 Vict. c. 99.	Civil Bill Courts Procedure Amendment Act (Ireland), 1864.	Section 42.
28 & 29 Vict. c. 72.	Navy and Marines (Wills) Act, 1865.	The whole Act.
30 & 31 Vict. c. 69.	Real Estate Charges Act, 1867.	The whole Act.
32 & 33 Vict. c. 46.	Administration of Estates Act, 1869.	The whole Act.
33 & 34 Vict: c. 46.	Landlord and Tenant (Ireland) Act, 1870.	Section 59.
c. 71.	National Debt Act, 1870.	Section 17. In section 73, "receipt of dividends and" and "and to receipt of dividends on stock standing in the names of infants or persons of unsound mind".
36 & 37 Vict. c. 52.	Intestates Act, 1873.	The whole Act.
38 & 39 Vict. c. 27.	Intestates Act, 1875.	The whole Act.
40 & 41 Vict: c. 18.	Settled Estates Act, 1877.	In section 46, "either in his own right or in right of his wife" and from "and also for" to "wife who is seised in fee".
c. 34.	Real Estate Charges Act, 1877.	In section 47, from "and in the case of" to the end of the section. The whole Act. Paragraph (*a*) of section 33.
c. 56.	County Officers and Courts (Ireland) Act, 1877.	Paragraph (*c*) of section 40. Sections 41, 46 and 47.
44 & 45 Vict:		
44 & 45 Vict: c. 12.	Customs and Inland Revenue Act, 1881.	Section 33.
c. 41.	Conveyancing Act, 1881.	Section 30.
45 & 46 Vict: c. 29.	Country Court Amendment (Ireland) Act, 1882.	Paragraph (*a*) of section 10.
c. 38.	Settled Land Act, 1882.	In subsection (1) of section 58, "(viii) A tenant by the curtesy".
c. 39.	Conveyancing Act, 1882.	Section 10 in so far as it applies to wills.
47 & 48 Vict: c. 18.	Settled Land Act, 1884.	Section 8.
c. 71.	Intestates Estates Act, 1884.	The whole Act.

56 & 57 Vict. c. 53.	Trustee Act, 1893.	Section 21 in so far as it applies to personal representatives.
57 & 58 Vict. c. 30.	Finance Act, 1894.	Section 16.
10 Edw. 7 & 1 Geo. 5. c. 8.	Finance (1909–10) Act, 1910.	Subsection (2) of section 61.
1 & 2 Geo. 5. c. 37.	Conveyancing Act, 1911.	Section 12.
5 & 6 Geo. 5. c. 17.	Navy and Marines (Wills) Act, 1914.	The whole Act.
7 & 8 Geo. 5. c. 58.	Wills (Soldiers and Sailors) Act, 1918.	The whole Act.

Part IV

Statutes of Saorstát Éireann and of the Oireachtas

Number and Year	Short Title	Extent of repeal
No. 27 of 1926.	Court Officers Act, 1926.	Section 56.
No. 9 of 1928.	Bodies Corporate (Executors and Administrators) Act, 1928.	The whole Act.
No. 12 of 1954.	Intestates' Estates Act, 1954.	The whole Act.
No. 6 of 1957.	Statute of Limitations, 1957.	Paragraph (*d*) of subsection (2) of section 2. In section 21 "co-parceners".
		Sections 22, 45 and 46.
No. 8 of 1959.	Administration of Estates Act, 1959.	The whole Act.
No. 44 of 1960.	Defence (Amendment) (No. 2) Act, 1960.	Section 5.
No. 39 of 1961.	Courts (Supplemental Provisions) Act, 1961.	In the Third Schedule, the entries set out at reference numbers 16 and 17.
No. 7 of 1964.	Guardianship of Infants Act, 1964.	Subsection (7) of section 7.
No. 16 of 1964.	Registration of Title Act, 1964.	Subsection (3) of section 61. Part IV.

Number 27 *of* 1965

SUCCESSION ACT 1965

REVISED

Updated to 1 November 2023

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.