The Inheritance and Trustee Powers Act 2014

In December’s CPD paper we are revisiting the Inheritance and Trustee’s Powers Act 2014 (ITPA 2014) and the discussing the main changes this Act introduced.

The ITPA 2014 received royal assent on the 14th of May 2014 and has been in force since the 1st of October 2014. The Act brought significant changes which relate to estate planning; mainly in relation to the intestacy rules, family provision claims and the trustees’ powers of advancement under the Trustee Act 1925.

This paper will look mainly at the amendments the ITPA 2014 made to the following legislation:

1) Administration of Estates Act 1925 (AEA 1925)
2) Trustee Act 1925 (TA 1925)

In summary, these amendments aimed to simplify the sharing of assets upon an intestate’s estate and recognise more modern family structures upon intestacy, revised the definition of a ‘personal chattel’ and amended the powers granted to trustees in relation to how they apply income and capital for the benefit of trust beneficiaries.

For the purposes of this paper any reference to a spouse refer also to a civil partner.

Intestacy Rules

The first change was with regard to the Intestacy rules which are mainly governed by the Administration of Estate Act 1925 sections 46-48. The distribution of the estate upon an intestacy is set out in a table at section 46 of the Administration of Estate Act 1925 (AoEA 1925). The ITPA 2014 simplified this distribution in the following ways:

The first amendments to be introduced under the ITPA 2014 focused on the amount a surviving spouse would receive on their spouse’s death if they died intestate. Changes were made to the distribution of the estate where a person left behind a spouse and no children and also where they left behind a spouse and children.

Prior to 1st October 2014 if a person died intestate leaving a spouse but no issue their surviving spouse would only receive their entire estate if it was under £450,000 or if they had no surviving parents or siblings of the whole blood, or issue of siblings. If the intestate’s estate was valued at over £450,000 their surviving spouse would take the first £450,000, the personal chattels absolutely, and one half of the balance absolutely. The surviving parents or siblings would receive the other half of the remainder absolutely.

Section 1 of the ITPA 2014 amended section 46 of the AoEA 1925 to remove an intestate’s parents and siblings from the equation if they died leaving behind a spouse. For deaths on or after 1st October 2014 if a person dies leaving a spouse but no children their entire estate
will pass to their surviving spouse. This change means a surviving spouse will inherit all of their spouse’s estate through the current rules of intestacy and will retain a full TRNB from the deceased estate, whereas before this would have been reduced by the value of the estate passing to parents or siblings.

The second amendments apply where a person dies intestate leaving a spouse and children. Under the previous rules the surviving spouse would receive a statutory legacy of £250,000, all personal chattels, and a life interest in half of the remainder. The children would receive the other half of the remainder absolutely, and would receive the half held on a life interest for the surviving spouse after their death.

The ITPA 2014 changed the distribution here so that it is largely as before however the surviving spouse now takes their half of the residue absolutely rather than subject to a life interest.

The £250,000 statutory legacy to the spouse may be altered by the Lord Chancellor from time to time and the ITPA 2014 introduced rules that require him to review the statutory legacy every five years.

The ITPA 2014 also made changes that addressed potential unfairness towards certain beneficiaries under the old intestacy rules. The previous rules disadvantaged unmarried fathers of children who died intestate as where the deceased’s parents were unmarried there was a rebuttable presumption that the deceased’s father and father’s family did not survive the deceased. The ITPA 2014 amended section 18(2) of the Family Law Reform Act 1987 to remove the distinction between married and unmarried fathers, disregarding this presumption where a person is recorded on the child’s birth certificate as a parent other than the mother.

This being the case an individual with two female parents as a result of fertility treatment born on or after 6th April 2009 would have rights under an intestacy that they would not otherwise have had.

Section 4 of the ITPA 2014 also made amendments to protect children from losing their inheritance to which they are already entitled, before their adoption, or a contingent basis if they are adopted after the death of the parent.

**Personal Chattels**

With the introduction of the Inheritance and Trustees’ Powers Act 2014, there has also been a simplification of the definition of the terms chattels, which previously was fairly archaic.

Prior to the introduction of the ITPA 2014 chattels were defined by s55(1)(x) of the AoEA 1925 as being:

“Personal chattels” mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic
animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money”

Section 3 of the ITPA 2014 replaced this definition entirely with the following, which is much more straightforward:

“(x) Personal chattels” means tangible movable property, other than any such property which—

- consists of money or securities for money, or
- was used at the death of the intestate solely or mainly for business purposes, or
- was held at the death of the intestate solely as an investment:“.

Where a will was executed before the ITPA 2014 came into force and made reference to a gift of personal chattels the old definition will apply subject to any contrary intention. For Wills executed after 1st October 2014 the new definition as amended by the ITPA 2014 will apply. The new definition also applies to the gift of personal chattels under an intestacy.

The type of examples which fall under the excluded personal chattels within the new definition will be items used mainly for the deceased’s business or held solely as an investment; this may occasionally cause contention.

So, for example, if the deceased were a fisherman by trade the fishing boat used in his business would not pass to his wife on death if he was to die intestate, whereas if the boat were one owned purely for personal use this would pass to her under intestacy. This point was established in the case of Re MacCullochs Estate [1981] to establish how the court should interpret if chattels are actually business assets.

Alternatively, if the deceased had purchased a valuable bottle of wine in the hope that it would increase in value and so could be sold to realise a profit, this would be an item held as an investment and therefore would not pass to the surviving spouse. If the deceased had simply loved to drink wine for recreation and had not purchased it as an investment these will pass to the spouse on an intestacy.

Trustee Powers

The Law Commission also looked at the powers under the Trustee Act 1925 (TA 1925) with regard to both income and capital advancements as mandated under sections 31 and 32 of TA 1925. The amendments made to these sections mainly reflected the changes that practitioners already made to the sections to provide more flexibility when drafting wills and trusts.
Section 8 of the ITPA 2014 amended section 31 of TA 1925 – the statutory power of trustees to use the income of the trust fund for the maintenance, education or other benefit of a minor beneficiary of a trust who has an interest in those funds. The amendments apply only to wills and trusts created after the commencement of the Act.

Prior to the 2014 Act, section 31 allowed the trustees to pay income to a minor beneficiary’s parent or guardian, or apply for their maintenance, education or benefit “the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable.”

Section 8(a) of the ITPA 2014 removed the words “as may, in all the circumstances, be reasonable” and replaced this with “as the trustees think fit.” This makes it clear that how much income may be applied is now down to the trustees’ discretion and no longer applies an objective standard of reasonableness.

Section 8(b) removed the proviso to section 31(1) which listed the factors that a trustee should have regard to in exercising their discretion. These factors included the age of the beneficiary, their requirements, and what other income is available to the minor and applicable for the same purposes, for example where they were also the beneficiary of another trust where the income was payable for their maintenance, education or benefit. Although the proviso to section 31(1) has been removed the trustees’ statutory power to pay or apply income is still a fiduciary power and there is still a general requirement to consider all relevant factors when exercising this power.

Section 31(1) now reads:

“Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property

(i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as the trustees may think fit, whether or not there is—

(a) any other fund applicable to the same purpose; or

(b) any person bound by law to provide for his maintenance or education; and

(ii) if such person on attaining the age of eighteen years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest.”

Section 9 of the ITPA 2014 made amendments to extend the trustee’s statutory powers of advancement under section 32 of the TA 1925.
As originally enacted section 32 allowed trustees to advance capital for the advancement or benefit of a beneficiary who has an interest in the capital, but limited this power of advancement to a maximum of one half of the beneficiary’s presumptive share. It was common to amend this power in wills and trusts to remove the one half limit. The STEP standard provisions actually already made this amendment by stating that “the words ‘one half of’ in section 32(1)(a) shall be deleted”.

Section 9(3)(b) of the ITPA 2014 amended the statutory power so that it may be exercised over the whole of a beneficiary’s share, subject to the consent of any person with a prior interest. This applies to wills and trusts created after 1st October 2014.

ITPA made further changes to section 32 that apply to wills and trusts whenever created and not just those created after the commencement of the Act.

The first change addressed a problem with the wording of section 32(1)(a) which was identified in *Re Collard’s Will Trusts [1961]*. This section previously read:

“Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof…”

This suggested that the trustees could only advance cash to beneficiaries. The position has now been clarified so that it is now clear that the trustees may advance non-cash trust assets to a beneficiary, or may transfer non-cash assets to the trustees of a new trust if creating a new trust in favour of one of the beneficiaries. The section now reads:

“Trustees may at any time or times pay or apply any capital money subject to a trust, or transfer or apply any other property forming part of the capital of the trust property, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof...”

To compliment this, section 9(3)(a) of ITPA amended section 32(1)(a) to clarify that any advancements of cash or non-cash assets cannot exceed the beneficiary’s prospective share of the capital of the trust fund.

Furthermore, section 9(4) amended section 32(1)(b) to make it clear that advancements of non-cash assets must also be brought into account if and when the beneficiary becomes absolutely entitled, in the same way that advancements of cash must be brought into account.

**Conclusion**

The above is simply an overview of the main changes brought about by Inheritance and Trustee’s Powers Act 2014.
The overarching considerations to come from these changes are varied. However, there are some primary practical considerations to be borne in mind. The drafter should consider whether the definition of chattels falls within Administration of Estate Act 1925 and is sufficient to the end that the testator wishes to achieve – for example bearing in mind the illustrations of the fishing boat or the valuable wine given above, a testator would now need further drafting to achieve the application of those items should he wish them to pass alongside his other personal possessions.

Those without wills should consider whether they would be happy for their estate to be distributed in line with the new intestacy rules. Perhaps taking into account that, should their parents survive them, those parents would receive nothing should the deceased also leave a surviving spouse.