

What are your children's inheritance rights?

April 2022

When drafting a will, one of the key things you will need to consider is who you want to inherit your estate.

Usually this will be a person's spouse/partner, children and possibly other family members, but that may not always be the case.

Under English law, a person may give their estate to whomever they chose and so whilst it may seem logical that children inherit something from their parents, there is no legal obligation on a parent to do so. For anyone who is familiar with the inheritance rules of other countries, this may seem strange as other jurisdictions have rules dictating how an estate should be divided which includes leaving a percentage to your children. However English Law upholds a concept known as testamentary freedom.

Who comes under the definition of 'children'?

As society develops, 'blended' families are becoming much more common and with this, the question of who should be entitled to inherit has raised more questions.

Previously, the legal definition of children had meant only legitimate children who are born through marriage. The legal definition of children today includes legitimate and illegitimate children (an unfortunate term referring to those born outside of marriage) and adopted children but does not include stepchildren unless the stepchild has been adopted by the stepparent. It should also be noted that for adopted children, they are taken to be the children of their adoptive parents only, and the legal connection to their natural parents is severed by the adoption order.

Different ways children can inherit and their rights

When a person has died without making a will, their estate will be dealt with in accordance with the [intestacy rules](#)

which makes provision for various persons set out in a ladder of priority, starting with a person's spouse or civil partner and children.

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'Partner' in the context of the intestacy rules refers to one's civil partner only and not a domestic partner who has not entered into a formal marriage or civil partnership.

If a person has a spouse/partner, the first £270,000 of their estate is given to the spouse/partner, with the remainder of the estate being divided between the spouse/partner and the children in equal shares. If there is no spouse/partner, the estate is divided equally between the children. If there are no children, then wider family members may inherit.

Under a will there is more flexibility. Whilst the definition of children remains the same, a testator could if they choose, make an express provision in their will that children should be defined to include their stepchildren. They could also do the opposite, and state that they only want children to mean their legitimate children, thereby excluding any illegitimate and adopted children from any inheritance under the will.

Not only does a will offer flexibility in terms of who will inherit, but the testator also controls how much they will inherit. For example, you may wish your children to receive unequal amounts for whatever reason, which is

not available under the intestacy rules. You may wish to make specific provisions for a disabled or vulnerable child.

As mentioned, children have no legal right to inherit. Despite this, there are a number of ways a child may receive an inheritance by making a claim against the estate.

A child of a person who has died or a person who was treated as a "child of the family" of the deceased, may make a claim for an award out of the estate if the will does not make 'reasonable financial provision' for them under [The Inheritance \(Provision for Family and Dependants\) Act 1975](#).

A child will not automatically be entitled to an award and the court will look at a variety of factors in making their decision such as the child's financial needs and resources and the relationship between the parent and the child and what caused the parent to make their decision. This may also be applicable for stepchildren, who are not included in the definition of children, but could be considered a person who is treated like a child of the deceased, especially if the stepchild depended on them.

Conclusion

If you die without a will, you will have no control over who receives your estate.

If you would like to exclude a child from receiving inheritance or dictate the share which each child should receive, it is strongly recommended that you write a will to retain control over your estate. The vacuum caused by the lack of a will often results in claims being made against the estate which could have been avoided by careful express provision in a well-considered will.

Speak to private client lawyer, [James McMullan](#), today if you would like specific advice based on your circumstances and a will drafted to meet your family's needs.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

