

Succession Law

This report [LRC 118-2017 Report on Section 117 of the Succession Act 1965: Aspects of Provision for Children](#), following on from the Commission's 2016 issues paper [LRC IP 9 2016 Issues Paper on section 117 of the Succession Act 1965](#) and forming part of the Commission's Fourth Programme of Law Reform, contains 19 recommendations for reform. The report also includes a draft Succession (Amendment) Bill intended to implement these reforms.

Section 117 provides that a child, including an adult child, of a deceased parent who has made a will may apply to court for a declaration that the parent failed in his or her "moral duty to make proper provision for the child" in accordance with the parent's means during the parent's lifetime, whether in the parent's will or otherwise. If the court agrees that the parent failed to comply with the duty to make proper provision for the child, it may make an order that such provision as it considers just should be made for the child out of the deceased parent's estate.

Key recommendations of the report include that:

1. Reforms should take account of changing family relationships and changing demographics since the Succession Act 1965 was enacted.

Important social changes since the 1960s have included the recognition of equal rights for all children in succession law and the introduction of divorce, which has meant that applications under section 117 often now involve more complex family settings. The Report also takes account of demographic changes since the 1960s which have affected what is called the "generational contract" that operated in the 20th century, under which the adult generation first cared for young people, then the young people grew up and they cared for their older parents.

2. Section 117 should be based on "proper provision" but not "moral duty"

The Commission recommends that section 117 should be amended by the removal of references to "moral duty" to simply provide that a deceased parent has a duty to make "proper provision" for a child. The phrase "moral duty" may unduly emphasise an expectation or entitlement to inherit, rather than an appropriate focus on the needs of a child, including an adult child.

3. There should be a presumption that parents have provided for their adult children, subject to 3 exceptions

Reflecting the approach that emphasises the needs of the child, the Commission recommends that section 117 does not require any further reform so far as it applies to children under the age of 18. However, for a child who is over the age of 18 (or over 23, if in full time education), the Commission recommends that it is appropriate to presume that a parent has already properly provided for them. Again, applying the needs test the Commission also recommends that this presumption should be subject to 3 specified exceptions:

- (a) where the adult child has a particular financial need arising from their health or decision making capacity;

- (b) where the estate contains an item of particular sentimental value to the adult child; or
- (c) where the adult child had provided care and support for the deceased.

4. *Section 117 should be extended to intestacy*

Under the current law where a parent dies without making a will (intestate), the estate is distributed in accordance with specific fixed shares in the Succession Act 1965. The courts may not vary these shares, even in cases of particular hardship, and under the current law an application under section 117 is not possible. In 1965 the Oireachtas decided not to extend section 117 to include intestacy because it might give rise to additional litigation. The Commission notes, however, that in other countries where such applications are available, there has been no increase in such claims. The Commission also considers that, in any event, it is preferable to allow for an application under section 117 in cases where injustice might otherwise arise.

5. *Ring-fencing the shares of surviving spouses*

While the fixed shares of a surviving spouse who is the parent of an applicant under section 117 are currently protected, the fixed shares of a surviving spouse who is not the parent of the applicant are not. The Commission recommends that, in making an order under section 117, the court may not reduce any spouse's share to less than the amount to which he or she would have been entitled had the deceased died and made a valid will (wholly testate).

6. *Current time limits should remain, but be clarified*

Section 117 specifies that an application must be brought within 6 months of taking out full probate or administration of the estate: this is usually between 9 to 15 months after death. The Commission recommends that this should remain the case: this is because any lengthening of the time limit would cause further delay in administering estates with the potential to create uncertainty over inheritance. The Commission recommends that section 117 could be clarified to allow a claim to be brought before full probate of the estate (which would reflect current practice).

7. *No duty to notify potential claimants*

The Report recommends there should be no change to the existing law, that executors or administrators of estates are not under a duty to notify potential claimants of the existence of section 117. This is because such a duty would conflict with their obligations to administer the estate efficiently. The Commission also recommends that personal representatives should not be under a more limited duty to notify potential claimants of the fact of death of the parent as this would give rise to similar difficulties.