

Farm intestacy problems under Covid-19 restrictions

By [Julie Butler](#)

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In [Wills](#)

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There is increased pressure on updated Wills due to the pandemic worries.

Even if a Will exists, if gifts within the Will fail and there is not clarity as to how the failed gift is treated, that part of the estate will be partially intestate.

The intestacy rules do not cater for farmers choosing to leave legacies, either pecuniary or 'specific' (e.g. a particular item), to friends or certain family members, nor do they allow gifts to be made to charity.

Where a farmer dies owning a farm, it is not only his family who are likely to be affected by the intestacy, but also his employees, and it is quite common to see these people remembered in a farmer's Will, often with the proviso that the gift is only to take place if the individual is still in the deceased's employment at the date of his death.

Gifts can be made either 'free of tax', in which case the tax (if any) will be borne by the residuary estate, or 'subject to tax', in which case the recipient of the gift will have to pay tax on it at the rate of 40% to the extent that the value of this and other gifts exceeds the nil-rate band.

Whilst farmers and their advisers are considering Covid-19 approval complications, they must focus too on their Will and indeed full succession planning within the farming community.

Many farmers would argue that they prefer the protection of physical live witnesses to the signing of their Wills as the farm values are so high and the disputes are so prolific.

Covid-19 has led to increased pressure on costs, challenging access to face-to-face legal advice and putting practical obstacles in the way of formalising agreements. However, it is important to note that the pandemic will not constitute a 'free pass' for non-compliance with the required legal formalities. To achieve certainty in all legal transactions it is important to take extra care in Covid-19 times.

The application of the intestacy rules is surprisingly common in the farming industry due to farmers simply not having Wills. The rules were amended by the Inheritance and Trustees' Powers Act 2014 and these rules apply for all deaths on or after 1 October 2014.

Where a farmer dies intestate with a surviving spouse/civil partner and children, the intestacy rules now allow the surviving spouse/civil partner to receive a 'statutory legacy' of £270,000 (assuming the estate is worth more than this amount). In farming cases the estate is often worth considerably more than this. In addition, the surviving spouse/civil partner receives any personal chattels outright, with a half share of the remaining assets also outright. The children will inherit the remaining half share of the assets on statutory trusts (i.e. dividing the assets equally between them and giving them a right to inherit at 18).

Where there are no lineal descendants and the death occurs on or after 1 October 2014, the surviving spouse/civil partner will inherit the entire estate outright. In the context of a family farm which is co-owned between siblings as tenants in common, intestacy could give rise to an unintended result with children owning part of the share of the farm not in the way it was intended. Lockdown is a fine opportunity to remind farming clients of the need to consider Wills as part of full tax planning.

[covid-19](#), [Farm](#), [Wills](#)



[Julie Butler](#)

Julie Butler F.C.A. - Butler & Co, Bennett House, The Dean, Alresford, Hampshire, SO24 9BH - Tel: 01962-735544 Email: j.butler@butler-co.co.uk | Website: www.butler-co.co.uk Julie Butler F.C.A. qualified as a Chartered Accountant in 1980 and started Butler & Co in 1986. Julie is a farm and equine tax expert and is the author of Tax Planning for Farm and Land Diversification (Bloomsbury Professional), Equine Tax Planning ISBN: 0406966540, and Stanley: Taxation of Farmers and Landowners (LexisNexis).