



A new incentive for charitable legacies

A lower rate of inheritance tax when
leaving 10% of an estate to charity

Consultation document

Publication date: 10 June 2011

Closing date for comments: 31 August 2011

Subject of this consultation:	Budget 2011 announced that the Government will introduce a lower rate of inheritance tax (IHT) where people leave a charitable legacy of 10% or more of their estate when they die. The 10% charitable legacy will be based on the value of the estate after deducting IHT reliefs and exemptions. This change is expected to apply for deaths on or after 6 April 2012.
Scope of this consultation:	This consultation will inform aspects of the policy detail that have not yet been decided and how HM Revenue & Customs (HMRC) can best implement the policy.
Who should read this:	This change will affect people considering leaving a charitable legacy when they die, or who are making or amending a will that provides for a charitable legacy. It may also affect beneficiaries and personal representatives of an estate of a person who has died. We welcome views from anyone who has an interest in this area. In particular, we welcome comments from charities and people who advise on Wills and IHT and their representative groups.
Duration:	The consultation will run for 12 weeks from 10 June 2011. The closing date for responses is 31 August 2011.
Enquiries:	Enquiries should be directed by e-mail to: ihandtrustsconsult.car@hmrc.gsi.gov.uk . Alternatively, please contact Danka Wigley on 020 7147 3674
How to respond:	Responses should be sent by e-mail to: ihandtrustsconsult.car@hmrc.gsi.gov.uk , or by post to: "Consultation on the IHT incentive for charitable legacies" Rooms G45 – G48, 100, Parliament Street, London, SW1A 2BQ.
Additional ways to be involved:	HMRC's consultation team welcome contact from groups with an interest in meeting to discuss technical aspects of the policy on incentivising charitable legacies. Please e-mail the team at the address above to register interest in attending meetings or seeing draft forms or guidance.
After the consultation:	The Government will consider responses to this consultation when it is developing the detail of the policy for encouraging charitable legacies. This will form the basis for draft legislation to be published for further consultation before Budget 2012. A summary of responses will be published on the HMRC website later in the year.
Getting to this stage:	This is the first public consultation on the IHT incentive for charitable legacies since the Budget announcement on 23 March 2011.
Previous engagement:	This consultation document has been informed by informal discussions with representative groups and charities.

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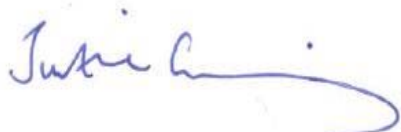
Foreword

The Coalition Government is committed to encouraging charitable giving and building a more socially conscious society. This is part of our vision for the Big Society. Key to this is our aim of encouraging social action, of building a stronger culture of giving, so that more people donate time, money, their assets, knowledge and skills, to support good causes and to help make life better for all of us.

At the Budget earlier this year, my colleague the Chancellor of the Exchequer set out a series of substantial reforms to support this cultural shift. These reforms are aimed at encouraging giving by donors at all stages of life, from the largest donors to those who give money through charity bucket donations. This summer we are consulting further on the details for this package of reforms, which represent the most radical and generous reforms to charitable giving for more than twenty years.

The package of measures, including a simplification of the Gift Aid regime, tax incentives to encourage the donation of pre-eminent works of art and historical objects and the inheritance tax incentive, are aimed at helping to raise the profile of philanthropy and make it the norm to give whatever you can.

This consultation document is focussed on the changes the Chancellor announced to the inheritance tax regime for those who leave 10% or more of their net estate to charity. I hope you will read the proposals set out in this consultation paper with interest, and work with us to ensure that this measure is a success.

A handwritten signature in blue ink, appearing to read 'Justine Greening', with a long, sweeping underline.

Justine Greening MP
Economic Secretary to the Treasury

1. Introduction

- 1.1 The Coalition Government is committed to encouraging charitable giving and building a more socially conscious society. At Budget 2011 the Government announced a package of measures to support philanthropy, encourage charitable giving and reduce the administrative burdens on charities. These measures support the Government's wider vision of building a Big Society, as set out in the Giving White Paper, published on 23 May 2010 (<http://www.cabinetoffice.gov.uk/resource-library/giving-white-paper>).
- 1.2 The Budget 2011 measures encourage philanthropic and charitable giving across the whole of society and at all life stages:
- under the new Gift Aid Small Donations Scheme, to be introduced in April 2013, the Government will pay charities a top up equivalent to Gift Aid on up to £5,000 of small donations of money made without a Gift Aid declaration. This means that donations made by people who do not pay tax will be able to benefit from a top up, supporting smaller charities in particular;
 - from April 2011 the upper limit on benefits that charities may provide to Gift Aid donors will be increased from £500 to £2,500 to enable charities to better recognise the contributions of their largest donors;
 - the Government will be consulting in summer 2011 on a scheme to provide a tax reduction to people who, during their lifetime, donate works of art or historical objects of pre-eminent importance to the nation; and
 - for deaths occurring from 6 April 2012, a reduced rate of inheritance tax (IHT) of 36% where 10% or more of a deceased's net estate (after deducting IHT exemptions, reliefs and the nil-rate band) is left to charity.
- 1.3 This consultation concerns the reduced rate of IHT for those leaving 10% or more of their estate to charity. More details of the full Budget package can be found at http://www.hm-treasury.gov.uk/2011budget_documents.htm.

Inheritance tax (IHT) and giving to charity – the basics

- 1.4 When someone dies, IHT is due from estates whose value is more than the IHT threshold or 'nil-rate band' (currently £325,000). The IHT rules mean that as well as the assets directly owned by the deceased, this value also includes certain assets held in trust and any assets the deceased had given away but from which they continue to benefit (gifts with reservation of benefit).
- 1.5 The amount of nil-rate band available for use by the deceased's estate may be affected by earlier events.
- 1.6 For married couples and registered civil partners a higher nil-rate band may apply when the surviving partner dies. Their personal representatives may transfer any unused IHT nil-rate band remaining after the first death to the estate of the surviving spouse or civil partner when they die. This can increase the nil-rate band on the second death to as much as £650,000 (2011-12).

- 1.7 In addition, if someone dies within seven years of giving assets away, the value of the gifts made may reduce the nil-rate band so the amount available for use by the estate is reduced.
- 1.8 IHT is payable at 40% on the amount over the available nil-rate band.
- 1.9 Even where the value of the estate exceeds the available nil-rate band, assets may be passed on without any charge to IHT due to other exemptions and reliefs. The main ones are:
- *Spouse or Civil Partner Exemption*: IHT is not due on anything left to a spouse or civil partner who has their permanent home in the UK;
 - *Business, Woodland, Heritage and Agricultural Relief*: various reliefs and exemptions are available for certain types of business, farms, woodland or National Heritage property; and
 - *Charity Exemption*: gifts made to qualifying charities are exempt from IHT.
- 1.10 After applying the IHT threshold and the various exemptions and reliefs most estates are not liable to IHT. In 2010-11 it is projected that of 552,000 deaths only 3% (or 16,000) of estates will pay IHT.
- 1.11 The existing Charity Exemption means that any gifts left to charity do not suffer IHT. So where an estate is liable to IHT, every £100 left to charity will reduce the amount remaining for the beneficiaries but will also typically reduce the IHT due on the estate by £40 – so the effective cost of the legacy to the remaining beneficiaries is £60.

Outline of the incentive

- 1.12 For deaths on or after 6 April 2012, estates that include charitable legacies of at least 10% of the net estate will benefit from a 36% rate of IHT (compared with the main IHT rate of 40%).
- 1.13 Whether or not the 10% threshold has been met (*'the 10% test'*) will be determined by comparing:
- the total value of charitable legacies for IHT purposes; and
 - the value of the net estate for IHT purposes as reduced by:
 - any available nil-rate band;
 - the value of assets passing to a surviving spouse or civil partner; and
 - other IHT reliefs and exemptions (e.g. business or agricultural property relief) - apart from the charitable legacy itself.
- If the 10% test is passed, the estate will qualify for the reduced rate of IHT.
- 1.14 Example 1 shows how the minimum charitable legacy to pass the 10% test would be calculated, and how the incentive will work. It compares the effects of that legacy on the IHT liability, and its impact on the amount remaining for other beneficiaries, at present and under the new regime proposed from April 2012.

1.15 The example also shows how leaving a charitable legacy under the new rules will still result in an overall cost to the beneficiaries compared to not leaving anything at all to a charity in a Will.

Example 1

An estate is valued at £850,000 and the available nil-rate band is £325,000. The minimum charitable legacy to pass the 10% test would be calculated as follows:

	Now	From April 2012
Estate value	£850,000	£850,000
/ess charitable legacy	-£52,500	
/ess available nil-rate band	-£325,000	<u>-£325,000</u>
net estate for 10% test purposes		£525,000
/ess minimum charitable legacy to pass 10% test		<u>-£52,500</u>
taxable estate	£472,500	£472,500
IHT due	@40% £189,000	@36% £170,100

The amount left for distribution to non-charitable beneficiaries, (i.e. the estate value less any charitable legacy and IHT due) would be:

£608,500	£627,400
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With no charitable legacy, the amount available for beneficiaries would be £640,000 (the estate value less IHT due (£210,000) on the estate). The charitable legacy results in a reduction in the amount left to other beneficiaries of:

£31,500	£12,600
60%	24%

1.16 As explained above, under the current rules the effective cost of a charitable legacy of £100 to the remaining beneficiaries is £60. Following the introduction of the charitable legacy incentive, where an estate qualifies for the reduced rate of 36% the effective cost of a charitable gift will fall. For example, where exactly 10% of the net estate is given to charity, each £100 of that legacy will reduce the IHT due on the estate by £76 – so the effective cost of the charitable legacy to the remaining beneficiaries is only £24.

1.17 As now, a charitable legacy will still result in an overall cost to the beneficiaries compared to not leaving anything at all to a charity in a Will. The measure will reduce that cost but not to such an extent that the reduction in IHT would exceed the amount of the charitable legacy.

1.18 Because the benefit of the reduced IHT rate will be dependent on whether or not the amount of the charitable legacy is sufficient for the estate to pass the 10% test there will be a 'cliff edge' effect. Where the amount of the charitable legacy is close to the critical 10% point, a small difference to the amount of the legacy could have a much larger impact on the estate's IHT liability. There are no plans to apply any taper or other mechanism to mitigate this.

- 1.19 The types of recipient of legacies qualifying for the 10% test will follow the existing IHT Charity Exemption rules. The legacy will need to be:
- left to a body that is a charity for UK tax purposes, that is, a charity or other organisation in the UK, European Union Member State, Iceland or Norway that would be a charity under the law of England and Wales (if it were located in England or Wales); or
 - settled in trust to be used for charitable purposes only; or
 - left to a Community Amateur Sports Club.

Scope of consultation

1.20 The key principles of this incentive were set out at the Budget and this consultation concentrates on some of the policy details.

1.21 This consultation document covers the following areas:

- Application of the 10% test and the reduced IHT rate – whether the reduced rate should be limited to the free estate or extended to other components of the estate;
- The nature of the legacy – some practical issues around valuation of assets, types of charitable legacies, claims, and avoidance;
- Instruments of Variation – notifying charities about legacies;
- Administrative issues – issues connected with forms, guidance and Wills;
- Other issues – mainly applicable to specific situations; and
- The impacts of the policy – comments and information about the assumptions made about impacts and level of take up.

These are considered in full in chapters 3, 4 and 5.

1.22 The following details have already been decided and so are not the subjects of this consultation:

- the level of the reduced IHT rate;
- the expected commencement date;
- the minimum proportion of the net estate that must be left to charity.

1.23 In addition there are other aspects which are not being considered under this consultation:

- the overall policy of introducing a reduced rate of IHT to encourage charitable legacies;
- the range of entities, legacies to which will contribute to passing the 10% test;
- the reliefs and exemptions which will be deducted to arrive at the 'net estate'.

2. The 10% test and application of the reduced IHT rate

Applying the 10% test

2.1 The 36% IHT rate will apply to estates that include charitable legacies of at least 10% of the value of the net estate. For many estates the amounts charged to IHT are based solely on the value of assets owned by the deceased at the time of death. But for other estates the amount charged to IHT include a range of assets wider than those within the free estate. This Chapter first explains how the 10% test and reduced rate will apply in the simpler cases before moving on to consider how they might apply to the more complex estates.

Cases where the IHT estate is limited to the free estate

2.2 The free estate is made up of the value of assets owned by the deceased at the time of death which fall under the control of the personal representatives to realise or distribute according to the terms of the Will.

2.3 In cases where the estate's IHT liability is based only on assets within the free estate we expect the 10% test to operate as follows:

1. Identify the amount of the estate that is charged to IHT (this will be the net value of the estate after deducting all available exemptions and reliefs and any available nil-rate band).
2. Add back the value of the charitable legacies. The result is the '**baseline**' for the 10% test.
3. Compare the baseline amount with the value of the charitable legacy.

2.4 If the value of the charitable legacy is at least 10% of the baseline the entire estate will be charged to IHT at the reduced rate. See Example 1 on page 7.

Nil-rate band reduced by lifetime gifts

2.5 The value of gifts made in the seven years prior to death may reduce the nil-rate band available to the estate on death and there are no plans to change that. But a reduced nil-rate band will increase the baseline for the 10% test as shown in Example 2 below.

2.6 Anyone making a Will with the intention of leaving sufficient charitable legacies for their estate to qualify for the reduced rate will need to bear in mind that any reduction to the available nil-rate band will increase the baseline for the 10% test, and therefore a greater charitable legacy will be needed to achieve the 10% threshold.

Example 2

An estate is valued at £850,000 at death. Two years before the death, the deceased made a substantial gift of £400,000. The Will provides for a charitable legacy sufficient for the estate to qualify for the reduced rate.

The available nil-rate band at death is reduced by the lifetime gift and is therefore £0 (£325,000 minus £400,000). The 10% test is:

Net free estate	£850,000
less available nil-rate band	<u>£0</u>
net estate for 10% test purposes	£850,000
less minimum charitable legacy to pass 10% test	<u>- £85,000</u>
taxable estate	£765,000
IHT due @ 36%	£275,400

The minimum charitable legacy needed to pass the 10% test is £85,000 and is greater than the amount of £52,500 shown in Example 1 even though the value of the estate at death is the same. The lifetime gift within seven years of death has eliminated any nil-rate band that may otherwise have been available.

The lifetime gift is not part of the estate at death. Any excess over the nil-rate band (£75,000) is taxable at 40% on the recipient of the gift.

Cases where the IHT estate includes more than the free estate

2.7 The estate of someone who has died may be treated for IHT purposes as including more than just assets that are available to distribute under the terms of their will (the free estate). This can happen where:

- property was jointly owned by the deceased and on death their share of that property passes automatically to the other joint owner(s);
- the deceased had a reservation of benefit in property they had given away; or
- the deceased had a qualifying interest in possession (QIIP) in a trust.

2.8 In these more complicated cases, the 'IHT estate' (or aggregate estate) is wider than those assets that are available to distribute under the terms of the Will. This raises issues around how the 10% test should apply and which assets should benefit from the reduced rate.

2.9 The remainder of this chapter discusses the possible ways in which the 10% test and reduced IHT rate could be applied in cases where the IHT estate is wider than the free estate.

2.10 Example 3 shows how the baseline for the 10% test can vary, and an estate with a fixed charitable legacy may or may not qualify for the reduced rate, depending on whether the free estate or aggregate estate were to be used as the starting point.

Example 3

A brother and sister have a joint bank account. The brother dies with other assets of £250,000 and his share of the bank account, worth £750,000, passes to his surviving sister. His Will leaves a legacy to charity of £20,000. The available nil-rate band is £325,000.

Estate for IHT purposes comprises:

Free estate	£250,000
Share of property passing by survivorship	<u>£750,000</u>
Aggregate value of estate	£1,000,000

If the aggregate estate charged to IHT is used as a starting point the 10% test would be:

Aggregate estate less charitable legacy (£1m - £20,000)	£980,000
less available nil-rate band	<u>-£325,000</u>
	£655,000
Add back charitable legacy	<u>£20,000</u>
Baseline for 10% test	£675,000

Minimum charitable legacy to secure reduced rate £67,500

The £20,000 charitable legacy **would not** qualify the estate for the reduced rate.

If the free estate charged to IHT is used as a starting point the 10% test would be:

Free estate less charitable legacy (£250,000 - £20,000)	£230,000
less apportioned available nil-rate band (£325,000 x £230,000/£980,000)	<u>-£76,276</u>
	£153,724
Add back charitable legacy	<u>£20,000</u>
Baseline for 10% test	£173,724

Minimum charitable legacy to secure reduced rate £17,372

The £20,000 charitable legacy **would** qualify the estate for the reduced rate

2.11 The aim of the policy is to encourage people to leave 10% to charity. To ensure that the incentive is as wide as possible, the baseline for the 10% test for all estates could be the value of assets in the free estate. Applying the test to the free estate provides a lower baseline for the test than if the basis was the aggregate estate or total chargeable to IHT.

Restricting the application of the reduced IHT rate

2.12 The Government does not want it to be possible for the reduced rate of IHT to result in excessive benefit for non-charitable beneficiaries. For instance, in Example 3 it would clearly be inconsistent with the policy aim for a £20,000 legacy to secure a reduced rate of IHT based on the total value of assets chargeable to IHT (£980,000).

2.13 So there will have to be a degree of correlation between the value on which the 10% test is based and assets that benefit from the reduced rate of IHT.

2.14 One of the simplest ways of achieving this correlation would be to require that:

- the starting point in calculating the baseline for the 10% test is the value of the net free estate (adjusted for reliefs, exemptions, the nil-rate band but with the charitable legacy added back); and
- the reduced rate is only to be applied to assets in the free estate.

This approach is illustrated in Example 4.

Example 4

The scenario is the same as in Example 3. If the baseline was limited to the free estate for the 10% test, the free estate would then be eligible for the reduced rate. The joint bank account component of the estate would still be charged at the normal rate of 40%.

		Free estate	Joint account
Aggregate estate	£1,000,000	£250,000	£750,000
less charitable legacy	<u>-£20,000</u>	<u>-£20,000</u>	
chargeable estate	£980,000	£230,000	
less apportioned nil rate band		<u>-£76,276</u>	<u>-£248,724</u>
taxable estate		£153,724	£501,276
IHT chargeable at 36%		£55,340	
IHT chargeable at 40%			£200,510

2.15 However, limiting the application of the reduced rate to assets within the free estate could be seen as discouraging potentially larger charitable legacies. For example, some people might be prepared to give more than 10% of their free estate to charity to secure a reduced IHT rate on *all* amounts chargeable to IHT as a result of their death. This could be particularly relevant where the remaining beneficiaries of the free estate are the same people to whom property is passing on survivorship, or are the beneficiaries of, for example, trusts in which the deceased had a qualifying interest in possession, or who own the assets in which the deceased had reserved a benefit.

2.16 This could be addressed by allowing personal representatives, in conjunction with the other beneficiaries concerned, a choice between basing the 10% test on:

- the value of assets in the free estate alone; or
- the value of assets in the free estate combined with other components of the aggregated estate for IHT purposes,

with the benefit of the reduced rate being applied to the same components of the IHT estate as those on which the 10% test is based.

2.17 Example 5 shows how this approach might apply in an estate that included jointly owned property.

Example 5

The scenario is similar to that in Example 3 but the beneficiaries under the Will and the surviving sister are different people. The sister wants to reduce the rate of IHT against the joint bank account. An Instrument of Variation is executed to leave a charitable legacy representing 10% of the 'baseline' of the component of the estate represented by the survivorship property (in this example the charitable legacy would be £50,542).

		Free estate	Joint account
aggregate estate	£1,000,000	£250,000	£750,000
less charitable legacy	<u>-£70,542</u>	<u>-£20,000</u>	<u>-£50,542</u>
chargeable estate	£929,458	£230,000	£699,458
less apportioned nil-rate band	<u>-£325,000</u>	<u>-£80,423</u>	<u>-£244,577</u>
taxable estate	£604,458	£149,577	£454,881
IHT chargeable at 36%		£53,848	£163,757

Question 1

Should the reduced IHT rate be available only to assets within the free estate; or should it be possible to extend its availability, by election, to other assets on which IHT is due following a death?

Question 2

If the reduced rate can be applied to assets outside the free estate,

- a) should all other components of the IHT estate be considered eligible for the reduced rate or should eligibility be limited to particular components (for example, joint property) only?**
- b) who should be party to any election to extend the application of the reduced rate?**
- c) how should the benefit of the reduced rate be applied in cases where charitable legacies were sufficiently high to successfully pass the 10% tests for more than one component of the estate, but not high enough to pass the 10% test for all components?**

3. Implementation and other issues

Nature of the legacy: practicalities

- 3.1 The existing Charity Exemption exempts all forms of legacy left to charity from IHT – whether bequests of pecuniary amounts, specific non-pecuniary legacies or a proportion of the residue of the estate. There are no plans to change that.
- 3.2 As far as possible we would want any legacy that qualified under the existing Charity Exemption rule to count towards the 10% test that determines whether the estate qualifies for the reduced rate (see Chapter 2). But this approach raises issues around:
- valuation of some non-monetary assets;
 - impact on charities;
 - claiming or disclaiming the reduced rate;
 - avoidance.
- These are discussed further below.

Valuation

- 3.3 HMRC takes a risk based-approach in targeting enquiries to check that the correct tax is paid. Under current rules the IHT Charity Exemption means that there is generally little or no risk of tax loss associated with the valuation of an asset that is left to charity as a specific bequest. The value given to that asset does not affect the value of the remainder of the estate and hence any IHT liability due on the estate. The introduction of the new IHT incentive for charitable legacies will change this: the 10% test will mean that the value of a specific charitable bequest may affect the amount of IHT due from the estate.
- 3.4 So the introduction of the reduced rate will, in some cases, mean that HMRC and personal representatives have to invest a greater amount of time and care in establishing and agreeing the value of assets left to charity. Inevitably, there will be a greater administrative burden for personal representatives of some estates that pass the 10% test where a charitable legacy includes assets which are difficult to value such as unquoted shares or chattels.
- 3.5 It is possible that, in a small number of cases, the overall increased costs for personal representatives and HMRC of valuing such 'hard to value' assets included in charitable legacies may be greater than the benefit to charities from increases in such legacies.

Impact on Charities

- 3.6 Allowing any type of asset to be included in the 10% test would give the greatest flexibility in what could be left to charity. However, charities could be left with assets that were of little or no value, either because they were genuinely not worth much, or their value had been manipulated (see below), or that were difficult to sell.

- 3.7 Including assets which are difficult to value in the 10% test would increase administrative burdens associated with valuation and may discourage some people from leaving such assets to charity in their Wills.

Question 3

Should the new charitable legacy incentive encourage all forms of legacy for the purposes of the 10% test; or would charities prefer to encourage legacies of more easily realised assets (such as cash, quoted shares or real property)?

Question 4

How could the administrative burdens on personal representatives and HMRC be minimised where a charitable legacy includes assets other than cash, quoted shares and real property?

Claiming or disclaiming the reduced rate

- 3.8 The computations submitted as part of an IHT account will make it apparent whether the IHT reduced rate is due. Introducing a requirement for personal representatives to claim the reduced rate may appear unnecessary – the claim could be taken as implicit in their IHT return and calculation.
- 3.9 But making the entitlement to the reduced IHT rate automatic where a charitable legacy meets the 10% test may not give the best outcome in every case.
- 3.10 If the property counted towards the 10% test is unrestricted, legacies to charity that included 'hard to value' assets could impose administrative burdens on the estate that were perceived to exceed the potential benefits of the reduced rate. So an **automatic** entitlement to the reduced rate of IHT where a charitable legacy met the 10% requirement could in some cases deter people from making charitable legacies.
- 3.11 This potential problem could be avoided if personal representatives could disclaim any entitlement to the reduced rate for estates where the potential reduction in IHT due would be smaller than the cost of valuations and administrative burdens.

Question 5

Should the entitlement to the reduced rate of IHT where there is a charitable legacy of 10% be automatic, or should provision be made for personal representatives to disclaim any entitlement to the reduced IHT rate?

Avoidance

- 3.12 Few assets have a fixed value: natural fluctuations in the relevant market will mean that the value of a non-pecuniary charitable legacy may change between the date of death and the time the charity receives the bequest or is able to dispose of the assets.

3.13 For the purposes of the 10% test we expect a charitable legacy to be valued at the date of death. That value may be different to the value of the asset in the hands of the charity. There seems no reason for any special rules to deal with any 'natural' movement in the value of a charitable legacy.

3.14 But if the assets that contribute to the 10% test can include all types of asset, charitable legacies could include assets whose values could be artificially manipulated to ensure a high value for the purposes of the 10% test, but with value 'stripped out' to the benefit of non-charitable beneficiaries (for example, by taking cash out of family controlled investment companies to reduce the value of shares left to charity) before the asset is passed to, or can be realised by, the charity.

Question 6

What is the potential extent of avoidance based on manipulation of the value of charitable legacies, and what is the nature of any particularly risky assets or arrangements?

Question 7

Where do respondents see the balance lying between ensuring that as wide a range of assets as possible count towards the 10% test and the possible need for anti-avoidance rules to prevent manipulation of asset values?

Instruments of Variation

3.15 Not all charitable legacies are provided for directly in Wills. Some charitable legacies are made when the beneficiaries decide they would like to make a charitable donation from their inheritance. It is possible for the beneficiaries of a Will or intestacy to execute an Instrument of Variation (IoV) to make a charitable legacy. Such a legacy is treated by HMRC as though it was made under the terms of the Will or intestacy and may enable the estate to benefit from the IHT incentive. It is also possible for a beneficiary inheriting joint property by survivorship to divert all or part of that property to charity. Similarly where a discretionary trust is set up by Will and there are charitable beneficiaries, a distribution within 2 years of death to charity will be treated by HMRC as though it was a legacy made under the Will.

3.16 A number of groups have told us they expect the IHT incentive to increase the number of cases in which charitable legacies are made, or adjusted, through an IoV. For example, where a charitable legacy in a Will is insufficient to pass the 10% test, the beneficiaries could decide to increase the amount of the charitable legacy through an IoV so that they can benefit from the reduced rate. This would be acceptable since it meets the aim of the incentive to increase charitable legacies.

3.17 Charities sometimes use publicly available information, including Wills, to help ensure that they receive the legacies due to them. Unlike Wills, IoVs are not public documents, so charities may have concerns about identifying legacies effected through IoVs. Although HMRC risk-based compliance activity may focus on cases where the risk of a legacy not actually reaching the charity is highest, it

will not extend to ensuring that legacies provided in all IoVs are followed through, or notifying charities of the existence of an IoV.

Question 8

Where the reduced rate is dependent on the execution of an IoV, should it be conditional on HMRC receiving confirmation that the charity is aware that the IoV has been effected? How should such confirmations be given to HMRC to minimise administrative costs?

Administrative issues

3.18 In developing the detail of the policy for the IHT incentive for charitable legacies and how it will be delivered HMRC is conscious that it should be simple for customers and their advisers to understand and for HMRC to deliver. Simple and straightforward tax rules are easier for people to comply with and to get right. That saves time for customers and reduces the need for HMRC to commit its resources to identify and correct mistakes made by customers or its own staff.

Forms and guidance

3.19 HMRC will adapt current forms or design new ones to reflect the final decisions on the detail of the new incentive. HMRC will also develop guidance for customers and for its own staff to help them understand the incentive and, respectively, benefit from it or operate it. Once HMRC has drafts of the forms and guidance, following the decisions being made on the detail of aspects of the policy, it will discuss the drafts with groups with a relevant interest in them.

Wills and advising clients

3.20 Most people who want to leave a legacy to charity will provide for it in their Will. People who make a Will either do so with professional advice or prepare their own, possibly on the basis of a standard Will form they have bought. The professions that advise clients about Wills, legacies and tax will be interested in ensuring the policy and related rules are straightforward for their clients to understand. The groups that represent these advisers will be interested in helping their members provide advice that is in their clients' best interests. These bodies may also establish a consensus view on whether a standard approach is appropriate to introduce a provision in Wills that ensures that the estates of clients who wish to benefit from the reduced rate meet the 10% test.

Question 9

Although the drafting of Wills and professional advice are not areas where HMRC have a direct interest, will there be any significant difficulties in drawing up Wills or advising clients on how to benefit from the reduced rate which might affect take up or influence policy design?

Other issues

Deferred IHT charges

3.21 In a relatively small number of cases, some reliefs (Conditional Exemption and Woodland Relief) defer an IHT charge on all or part of an estate for as long as conditions continue to be met or against some event happening. To avoid complexity and to provide a lower baseline, the 10% test could be based on the part of the estate that is not being deferred. If the test was satisfied, the reduced rate would just apply to the non-deferred IHT charge. Any subsequent IHT becoming due after the conditions are no longer met would be charged at the full rate. This approach would provide an appropriate match between the value of the charitable legacy and the size of benefit from the reduction in the IHT due.

Question 10

Would basing the 10% test and applying the reduced rate to the non-deferred part of the estate and IHT charge be the most suitable method for dealing with deferred IHT liabilities? If not, what alternative approach is preferred?

Amendments to IHT liability

3.22 We expect the 10% test to be based on the values of the net estate (including assets included in the charitable legacy) at the date of death. But there are circumstances where these values are subsequently changed for the purpose of IHT calculations – for example if the sale proceeds of shares or land are less than that originally returned.

3.23 There may also be other situations, such as claims to prior or legal rights or under legitim in Scotland or where a relevant property trust has been set up by a Will, which can affect the distribution of an estate and hence the 10% test calculation and the IHT due.

Question 11

HMRC expects that existing processes to deal with amendments to the IHT liability will apply to the new policy. Would this approach give rise to any issues?

Non domiciles

3.24 Overseas property is excluded from the scope of IHT for non-UK domiciles. In these cases it would be logical to limit the basis for 10% minimum legacy test to assets that are liable to IHT. This would lower the baseline for the test and encourage non-domiciles to leave at least 10% of their UK assets to charity.

Question 12

Would limiting the basis for the 10% test for non-UK domiciled people to assets on which they are liable to IHT present any difficulties?

Allocation of exemptions

3.25 Where an estate includes

- legacies that are left 'free of tax', or
- both specific bequests and assets that qualify for agricultural or business property relief

the amounts on which the final IHT computation is based can be different from the amounts that feature in the Will.

3.26 Although few estates are affected, and it is a complicated area, people making Wills and their advisers will need to be aware of how these adjustments (known as 'grossing up' and 'interaction') impact on the 10% test. An estate that, at first sight, appears to qualify for the reduced IHT rate may in fact not qualify.

Grossing up

3.27 Grossing up is the process of calculating the chargeable estate when the partly-exempt transfer rules apply and a beneficiary takes a gift free of tax. For a chargeable estate, specific gifts which are free of tax are grossed up to a sum representing the value of the gift plus the tax on it. After the introduction of the reduced IHT rate there could be cases in which the result of the 10% test will itself turn on whether or not the chargeable legacies are grossed up at 40% or 36%.

Example 6

An estate is valued at £1,000,000. The Will leaves pecuniary legacies of £245,000 free of tax and 10% of the residue to charity. To qualify for the reduced rate of tax, the value of the share of residue passing to charity must equal or exceed £67,500 (£1,000,000 less £325,000 = £675,000 x 10%).

Initial residue (£1,000,000 - £245,000)	£755,000
less initial exempt residue £755,000 @10%	<u>-£75,500</u>
Initial chargeable residue	£679,500

Grossing up at 40%

Initial chargeable estate (£245,000 + £679,500)	£924,500
Tax on initial estate (£924,500 - £325,000) @40%	£239,800
Gross up gifts at estate rate £245,000 x (£924,500/(£924,500-£239,800))	£330,805
Final residue (£1,000,000 - £330,805)	£669,195
Share of residue passing to charity £669,195 @10%	£66,919

Grossing up at 36%

Initial chargeable estate – as above (£245,000 + £679,500)	£924,500
Tax on initial estate (£924,500 - £325,000) @36%	£215,820
Gross up gifts at estate rate £245,000 x (£924,500/(£924,500-£215,820))	£319,611
Final residue (£1,000,000 - £319,611)	£680,389
Share of residue passing to charity £680,389 @10%	£68,039

The share of residue passing to charity after grossing up at 40% would fail the 10% test, whereas after grossing up at only 36% the share would pass the test and the estate would qualify for the reduced IHT rate.

- 3.28 If it becomes more common for charitable bequests to be left as a share of the residue of an estate (rather than as a specific legacy with a fully chargeable residue remaining), the number of estates that will need to be grossed up will increase.
- 3.29 It will be difficult to plan for the effect of grossing up when drafting a Will. But it is always open to the beneficiaries to vary the Will so that the estate meets the 10% test.

Question 13

Where grossing up applies and the outcome of the 10% turns on the rate at which the chargeable assets are grossed up, the most favourable way to apply the 10% test to a share of the residue passing to charity appears to be to gross up at the reduced rate of IHT. Are there any problems anticipated with using this method?

Allocation of exemptions & relief (interaction)

- 3.30 A similar position can emerge where it is necessary to allocate exemptions and reliefs. Whilst this will often work in the taxpayer's favour by reducing the value of a chargeable legacy, here, though, it would be a legacy passing to charity that may be reduced if property that qualifies for Agricultural Property Relief or Business Property Relief falls into the chargeable residue of the estate. The numbers of estates likely to be affected are expected to be very small.

Example 7

An estate is valued at £1m. The Will leaves a pecuniary legacy of £80,000 to charity with the residue passing to chargeable beneficiaries which includes land qualifying for Agricultural Property Relief. To qualify for the reduced rate of tax, the value passing to charity must exceed £67,500 (£1,000,000 less £325,000 = £675,000 x 10%).

At first sight, the estate will qualify for the reduced rate of tax. However, like grossing up, the value of the agricultural land can affect the extent to which the charitable legacy is reduced.

If the agricultural land is valued at £200,000, the charitable legacy will be reduced to £64,000 as follows: $((£1,000,000 - £200,000)/£1,000,000) \times £80,000 = £64,000$.

This does not meet the 10% test and so the estate does not qualify.

Whereas if the agricultural land was valued at £150,000, the charitable legacy will be reduced to £68,000 as follows: $((£1,000,000 - £150,000)/£1,000,000) \times £80,000 = £68,000$

This passes the 10% test so the estate can qualify for the reduced rate.

- 3.31 Notwithstanding the reduction in the value of the legacy for IHT purposes, the charitable beneficiary will still receive a legacy of £80,000; which exceeds the 10% test. Although this proposal is generally focusing on the values that apply for IHT purposes, HMRC considers that where interaction applies, the 10% test should be applied to the unreduced value of the legacy as that is the amount that the charity will receive.

Question 14

Where interaction applies, would basing the 10% test on the actual value of the legacy before the application of those rules present any difficulties?

4. Taxes Impact Assessment

Summary of Impacts

- 4.1 It is difficult to fully quantify the potential costs, benefits and impacts until key areas of the policy are determined following this consultation. The Government acknowledges that impacts may vary depending on the final policy design and implementation.
- 4.2 This summary is based on a number of assumptions about how people will respond to the new charitable legacy incentive. These include the extent and speed of take-up.

Question 15

The Government is interested in receiving comments from people who have information that may help refine or improve those assumptions, and on what metrics could be used to assess the effectiveness of the policy.

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	0	- 25	- 75	- 125	- 170
	These figures were set out in Table 2.1 of Budget 2011 and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the 2011 Budget and which can be found at http://www.hm-treasury.gov.uk/d/2011budget_policycostings.pdf				
Economic impact	This measure is not expected to have significant economic impacts.				
Impact on individuals and households	<p>Most estates are not liable to IHT because the value of the estate after any reliefs and exemptions is less than the nil-rate band (as extended by any transferable nil-rate band) and so will not be directly affected by this measure.</p> <p>The measure may affect people who are considering leaving a charitable legacy when they die, or who have already left an amount to charity in their Will, and whose estates may be liable to IHT. Such individuals will need to be aware of the proposed changes when they are making their Will, or if they wish to amend an existing Will. To benefit from the reduced IHT rate introduced by this measure, some Wills might need to be changed, with associated administrative costs to testators, although Wills may be reviewed anyway for other reasons and changed as part of that review.</p> <p>The measure may also affect executors, personal representatives, and beneficiaries of a deceased's estate where IHT is due. Beneficiaries may want to consider submitting Instruments of Variation (see page 16) to take advantage of the reduced rate of IHT.</p>				

	<p>The proposals will also have an impact on solicitors, estate practitioners, accountants and other professional advisers who deal with or advise on estates, Wills and IHT.</p> <p>The number of estates that are expected to have an IHT liability over this period are relatively low and are forecast to be 16,000 in 2010-11 (see http://www.hmrc.gov.uk/stats/tax_receipts/table1-4.xls).</p> <p>The number of estates where the amount that is left to charity is changed as a result of this measure is highly uncertain. The assumption is that the number of estates where a person will die and increase the amount they leave to charity to 10% will be about 200 in 2012-13, increasing to about 1,000 in 2013-14, 2,000 in 2014-15, 3,000 in 2015-16, and eventually to about 5,000. The average increase in the amount left to charity is assumed to eventually be around £60,000. Many estates are assumed to be increasing their giving by a lot less than this but the average is higher due to a small number of large estates.</p> <p>The take up will depend on the extent to which the reduced rate is promoted by charities and by professional advisers.</p> <p><u>Question 16</u></p> <p>The Government would welcome information from advisers or their representative groups about how likely they are to promote this measure and what they expect the take up will be.</p>												
<p>Equalities impacts</p>	<p>For married couples, IHT is often due on the second death, which is more likely to be the wife. Around 60% of estates liable to IHT are left by women so in general more women than men may be able to take advantage of this incentive to leave charitable legacies. No direct impacts on any other equality group have been identified.</p>												
<p>Impact on businesses and Civic Society</p>	<p>No impacts on businesses are expected. Solicitors and other professional advisers are acting as agents for individuals, so any impact on them is captured under the impact on individuals above. There may be one off costs to them of familiarisation and training, the cost of which is unknown and may also be indirectly passed onto the individuals.</p> <p>The aim of the measure is to encourage people to leave more to charities in their Wills, so it is assumed that charities will benefit from this change. The additional revenue that this measure is expected to raise for charity is:</p> <table border="1" data-bbox="432 1805 1474 2022"> <thead> <tr> <th></th> <th>2011-12</th> <th>2012-13</th> <th>2013-14</th> <th>2014-15</th> <th>2015-16</th> </tr> </thead> <tbody> <tr> <td>Additional revenue for charities (£m)</td> <td></td> <td>15</td> <td>65</td> <td>120</td> <td>175</td> </tr> </tbody> </table>		2011-12	2012-13	2013-14	2014-15	2015-16	Additional revenue for charities (£m)		15	65	120	175
	2011-12	2012-13	2013-14	2014-15	2015-16								
Additional revenue for charities (£m)		15	65	120	175								

	<p>These estimates are based on our assessment of the number of estates which are assumed to increase their legacies to charity as a result of the measure, and so are also uncertain. As charities will not receive any additional revenue until after the estate has gone through probate and paid the tax, it will take longer for charities to receive the additional revenue than for the measure to impact on the Exchequer.</p> <p>There are over 300,000 charities in the UK. All of these could potentially benefit, although we do not know how many will be left additional legacies as a result of this measure in any given year. Some of these charities may wish to be aware of the change and understand the new rules so that they can encourage people to leave legacies in their Wills or increase the amount already left to charity. The expected additional revenue will depend partly on the extent that charities promote this measure to potential donors.</p> <p><u>Question 17</u></p> <p>The Government would welcome information from charities about how likely they are to promote this measure and what they expect take up to be.</p>												
<p>Impact on HMRC or other public sector delivery organisations</p>	<p>Changes are expected to be needed to IHT forms, guidance, and the IHT computer system. Additional contact is expected from customers to the IHT helpline and increased processing of Wills and IHT forms by staff. There may be increased risk assessment and compliance activity. Operational and IT change costs are estimated to be as shown below though these will be subject to change depending on final policy design.</p> <table border="1" data-bbox="432 1290 1469 1509"> <thead> <tr> <th></th> <th>2011-12</th> <th>2012-13</th> <th>2013-14</th> <th>2014-15</th> <th>2015-16</th> </tr> </thead> <tbody> <tr> <td>operational and IT change costs (£k)</td> <td>375</td> <td>650</td> <td>650</td> <td>650</td> <td>650</td> </tr> </tbody> </table>		2011-12	2012-13	2013-14	2014-15	2015-16	operational and IT change costs (£k)	375	650	650	650	650
	2011-12	2012-13	2013-14	2014-15	2015-16								
operational and IT change costs (£k)	375	650	650	650	650								
<p>Other impacts</p>	<p>No other impacts have been identified.</p>												

Monitoring and Evaluation

4.3 The impact of the reduced rate on the amount left to charity by IHT taxpayers will be assessed through monitoring the use of charity relief by estates.

5. Summary of Consultation Questions

The questions, as set out throughout this document, on which views are sought from interested parties are as follows:

The 10% test and application of the reduced IHT rate

1. Should the reduced IHT rate be available only to assets within the free estate; or should it be possible to extend its availability, by election, to other assets on which IHT is due following a death?
2. If the reduced rate can be applied to assets outside the free estate,
 - a) should all other components of the IHT estate be considered eligible for the reduced rate or should eligibility be limited to particular components (for example, joint property) only?
 - b) who should be party to any election to extend the application of the reduced rate?
 - c) how should the benefit of the reduced rate be applied in cases where charitable legacies were sufficiently high to successfully pass the 10% tests for more than one component of the estate, but not high enough to pass the 10% test for all components?

Nature of the legacy

3. Should the new charitable legacy incentive encourage all forms of legacy for the purposes of the 10% test, or would charities prefer to encourage legacies of more easily realised assets (such as cash, quoted shares or real property)?
4. How could the administrative burdens to personal representatives and HMRC be minimised where a charitable legacy includes assets other than cash, quoted shares and real property?
5. Should the entitlement to the reduced rate of IHT where there is a charitable legacy of 10% be automatic, or should provision be made for personal representatives to disclaim any entitlement to the reduced IHT rate?
6. What is the potential extent of avoidance based on manipulation of the value of charitable legacies, and what is the nature of any particularly risky assets or arrangements?
7. Where do respondents see the balance lying between ensuring that as wide a range of assets as possible count towards the 10% test and the possible need for anti-avoidance rules to prevent manipulation of asset values?

Instruments of Variation

8. Where the reduced rate is dependent on the execution of an IoV, should it be conditional on HMRC receiving confirmation that the charity is aware that the IoV has been effected? How should such confirmations be given to HMRC to minimise administrative costs?

Administrative issues

9. Although the drafting of Wills and professional advice are not areas where HMRC have a direct interest, will there be any significant difficulties in drawing up Wills or advising clients on how to benefit from the reduced rate which might affect take up or influence policy design?

Other issues

10. Would basing the 10% test and applying the reduced rate to the non-deferred part of the estate and IHT charge be the most suitable method for dealing with deferred IHT liabilities? If not, what alternative approach is preferred?
11. HMRC expects that existing processes to deal with amendments to the IHT liability will apply to the new policy. Would this approach give rise to any issues?
12. Would limiting the basis for the 10% test for non-UK domiciled people to assets on which they are liable to IHT present any difficulties?
13. Where grossing up applies and the outcome of the 10% turns on the rate at which the chargeable assets are grossed up, the most favourable way to apply the 10% test to a share of the residue passing to charity appears to be to gross up at the reduced rate of IHT. Are there any problems anticipated with using this method?
14. Where interaction applies, would basing the 10% test on the actual value of the legacy before the application of those rules present any difficulties?

Taxes Impact Assessment

15. The Government is interested in receiving comments from people who have information that may help refine or improve those assumptions, and on what metrics could be used to assess the effectiveness of the policy.
16. The Government would welcome information from advisers or their representative groups about how likely they are to promote this measure and what they expect the take up will be.
17. The Government would welcome information from charities about how likely they are to promote this measure and what they expect take up to be.

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 5.

Responses should be sent by 31 August 2011 by e-mail to:

ihandtrustsconsult.car@hmrc.gsi.gov.uk

or by post to:

“Consultation on the IHT incentive for charitable legacies”

Rooms G45 – G48,
100, Parliament Street,
London,
SW1A 2BQ.

Telephone enquiries: Please contact Danka Wigley on 020 7147 3674

Paper copies of this document or copies in alternative languages and formats may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative group. In the case of representative groups please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annexe A.

Annexe A: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer,
Consultation Coordinator,
Better Regulation and Policy Team,
H M Revenue & Customs,
Room 3E13, 100 Parliament Street,
London, SWA 2BQ

020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Annexe B: Stakeholders involved in informal consultation

Informal discussions to inform the consultation document were held with the following tax and estate professional representative groups:

Chartered Institute of Taxation (CIOT)

Institute of Chartered Accountants in England & Wales (ICAEW)

Institute of Chartered Accountants in Scotland (ICAS)

Law Society of England & Wales

Law Society of Scotland

Society of Trust & Estate Practitioners (STEP)

The Association of Corporate Trustees (TACT)

In addition, the following members of the Charity Tax Forum were involved in discussions on the charity aspects:

Age UK

Cancer UK

Charities Aid Foundation (CAF)

Charity Law Association

Remember a Charity

Stewardship

Wellcome Trust

Annexe C: Glossary

Account

The IHT account (or 'return') delivered by personal representatives containing details of an estate

Aggregate estate

The total of the free estate plus any other assets included in an estate on which IHT is due

Beneficiary

A person (or organisation) that inherits assets following a death, or gets some benefit from a Will, intestacy or trust

Charity

A UK registered charity or other qualifying organisation in the UK or EEA that exists for the furtherance of charitable purposes

Charity Exemption

A transfer made to a charity or other qualifying organisation that is exempt from IHT (under section 23 of the Inheritance Tax Act 1984)

Discretionary trust

A trust where generally the trustees have the power to decide who should receive the capital or income from the trust

Estate

All the assets that an individual owns or is treated as owning for the purposes of calculating the liability to IHT

Executor

The person who carries out the provisions in the deceased's Will and is responsible for calling in and distributing the estate

Free estate

The assets which pass under the deceased's Will or intestacy

Inheritance tax (IHT) threshold

The amount above which IHT becomes payable. If the estate, including any assets held in trust and gifts made within seven years of death, is less than the threshold, no IHT will be due on it. See also 'Nil-rate band'.

Instrument of Variation

A document that alters the inheritance of the deceased's estate under a Will or intestacy after death if all of the beneficiaries agree

Intestacy

An estate where the person dies without making a Will (intestate)

Legacy

A gift or property left to someone by a Will

Lifetime gift

A gift made by a person whilst still alive

Net estate

The assets in an estate after deducting any liabilities such as debts

Nil-rate band (NRB)

The amount of an estate below which IHT is charged at 0%

Pecuniary legacy

A legacy of a sum of money

Personal representative

A person who administers a deceased person's estate. If there is a Will they are known as an executor. If there is no Will they are known as an administrator

Potentially exempt transfer (PET)

A lifetime gift made by an individual to another individual or to certain trusts which becomes exempt if the donor lives for seven years after the date of the gift

Property

For IHT purposes, property includes all types of asset, cash, stocks, shares, land, buildings and all rights and interests of any description that are legally enforceable

Qualifying interest in possession

An interest in possession in assets held in trust which are treated as forming part of the deceased's estate on death

Reservation of benefit

Assets that an individual has given away but from which they continue to benefit and which are treated as forming part of the deceased's estate on death

Residuary Estate

Strictly the residue is the estate after payment of legacies, costs, expenses and taxes. For IHT purposes only legacies are taken into account in determining the residue

Spouse or civil partner exemption

Exemption from IHT for assets that pass to the deceased's spouse or civil partner

Survivorship

Where property is owned jointly, on the death of one of the joint owners, the deceased's share of the joint property passes automatically to the surviving owner

Will

The legal document by which a person declares their intention as to what should happen to their estate after their death

Annexe D: Relevant (current) Government Legislation

The main relevant legislation is in Inheritance Act 1984 (IHTA 84)

S.7 Rates

S.23 Gifts to charities

S.33 Amount of charge under S.32 or 32A (Chargeable events or associated properties)

S.38 Attribution of value to specific gifts

S.39 Attribution of value to residuary gifts

S.39A Operation of S.38 and 39 in cases of business or agricultural relief

S.128 Rate of charge

Schedule 1 Table of rates of tax

Paragraph 4 Schedule 2 Disposal of trees etc following exemption on death

Paragraph 5 Schedule 2 Conditionally exempt transfers