

AGRICULTURAL LAW ASSOCIATION

ALA Tax Committee

Technical Note: Legacies of Relievable Property from 5th April 2026

This note highlights risks and problems in will drafting caused by the reforms to APR/BPR introduced by the Finance Act 2026. Wills drafted prior to 5 April 2026 or based upon precedents that pre-date these reforms may now face difficulties of construction because of how they define gifts of relievable property.

The issues identified in this note are, in the main, caused by the application of s.124D IHTA 1984. This section applies where the value of chargeable assets passing at death (whether by will, intestacy or termination of a qualifying life interest) exceeds the 100% relief allowance, currently set at £2.5m.

We have provided deliberately poorly considered wording to illustrate these points so as to make the issues as clear as possible. This should not be taken as identifying specific precedents or forms of wording that are no longer effective. There will not be a problem with every will, nor even in the majority of cases where relief is claimed. Individual fact patterns, precedents and forms of wording will have to be considered on a case-by-case basis in light of the concerns raised here.

Over Funding of a “Nil Rate Band” Gift

This issue can arise on outright gifts of relievable property as well as in relation to gifts of property into trust.

Example 1

“I give all that property qualifying for a reduction in value of 100% due to the application of sections 104, 105, 115 and 116 of the Inheritance Tax Act 1984...”

In an estate that contains, for example, £5m of property potentially qualifying for relief at the 100% rate, there are now two possible constructions of such gifts.

First, the subject matter could extend to all property that actually achieves 100% relief, i.e. the first £2.5m. Whilst ‘common sense’ would seem to prefer this construction, it is difficult to sustain. The legacies of a will generally take effect simultaneously, so there is no “first £2.5m” in any circumstance where the other relievable assets over the 100% relief allowance pass to non-exempt recipients. s.124D compounds the problem by prorating the 100% relief allowance between all chargeable transfers occurring or deemed to occur at the date of death.

This means that where the chargeable estate exceeds the 100% relief allowance, there is no specific property that qualifies for 100% relief. Rather, the relief is apportioned across all chargeable transfers of relievable property at death.

Second, the subject matter could extend to all property potentially qualifying for the 100% relief allowance. In this example then, all £5m of property would pass via these gifts. In the case of a gift to a discretionary trust, that would result in the creation of a trust that was unintentionally taxable by the inclusion of additional property that could qualify for 100% relief but does not achieve such relief because of the £2.5m limit.

It may be objected here that property above the 100% relief allowance does not “qualify” for 100% relief and ought therefore to be excluded from the gift made above. That argument represents circular or defective reasoning. If there is £5m of “potentially relievable value” (s.124D(5)(a)), then in order for the 100% relief allowance to be exceeded, all of that £5m of value must qualify for the 100% rate of relief, but for the limit imposed by the 100% relief allowance. Otherwise, the 100% relief allowance threshold could never be passed.

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The existence of s.124D makes clear that establishing the extent of relief under APR/BPR is now a two-stage process. First, property that could qualify for 100% relief is identified. Second, the available 100% relief allowance is applied against that property. The application of the second stage of this process does not change the conclusions of the first.

Finally, it could be argued that due to the operation of s.124D there is no property at all that qualifies for 100% relief. Instead, there is in this case £5m of property which is reduced in value for IHT purposes by £3.75m (i.e. £2.5m of 100% relief allowance and £1.25m of 50% relief).

That means that the individual properties making up the £5m are each, in fact, reduced in value by 75%, meaning none of them satisfies the definitions above and the gift simply fails. This risk is explored further below.

Outright Failure

Example 2

"I give all that property in respect of which the deemed transfer of value taking effect on my death shall be treated as reduced in value by 100% by the application of sections 104, 105, 115 and 116 of the Inheritance Tax Act 1984 to my Trustees..."

As explained above, where the available allowance is insufficient to cover all chargeable transfers in the estate, s.124D does not select particular assets and confer 100% relief on those assets alone. Rather, it apportions the allowance proportionately across the qualifying chargeable assets.

As a consequence, there is no individual asset whose value is "reduced by 100%". The gift above should therefore fail entirely unless one is prepared to depart from any kind of common understanding of mathematics altogether in suggesting that reducing a £5m asset by £2.5m represents a 100% reduction of 50% of the asset's value!

Fully Exempt Residuary Estates

Between the publication of draft legislation and the enactment of Finance Act 2026, representations were made by the ALA and others (in particular STEP) in relation to the interaction of s.124D with relievable property forming part of a residuary estate passing via the spouse exemption.

The original draft legislation apportioned the 100% relief allowance between all property transferred at death, raising the possibility of the 100% relief allowance being apportioned to part of an exempt residuary gift. The saving words "so far as it is a chargeable transfer" were inserted in s.124D(6)(a), making clear that exempt transfers will not use up the 100% relief allowance.

We raise this point to make clear that the issues identified above should not arise in the more straightforward cases where relievable property beneath the 100% relief allowance passes via a gift (into trust or otherwise) on first death with all other assets passing to the surviving spouse. The problem remains, of course, of identifying what property will pass by such a gift on first death.

s.39A IHTA 1984

It has always been possible for complications to arise in relation to gifts of relievable property where a will includes chargeable or exempt specific legacies and relievable property falling within the residuary estate. This is due to the allocation rules in s.39A IHTA 1984.

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The 100% relief allowance will not, generally, produce a worse outcome. In cases where the residue passes entirely to an exempt spouse, this is because the 100% relief allowance is used up by only chargeable transfers (s.124D IHTA 1984), meaning any relievable property considered for the purposes of the s.39A calculation will be treated as subject to 50% relief, not reducing the allowance. It is also because both the legislation and HMRC are equally clear that the provisions of s.39A apply only to valuing specific and residuary gifts under ss.38 and 39 and must not be used for another purpose (IHTM26102).

Nevertheless, any wills that contain legacies taking effect on first death and that allow relievable property to pass via residue should likely be reviewed, as the expected outcome in terms of the s.39A calculation may have changed.

Possible Solutions:

We have set out a range of options to consider, with the potential difficulties that attend each.

Possible Solution	Issues to Consider
Specific gifts of identified properties with a value established at the time of drafting the will. E.g. the gift of specific parcels of farmland with a value calculated at or near the 100% relief allowance.	-Valuation uncertainty. -Necessitates frequent review of values and potentially frequent rewrites of the will. -Risks over or underutilising the 100% relief allowance.
A gift of relievable property to a non-residuary trust with trustees having the power to select or appropriate property up to the 100% relief allowance.	-Trustee risk in terms of selection of property. Could selection of the "wrong" property be a breach of trust? -If badly drafted, this could amount to a taxable cash legacy satisfied by appropriation of assets that happen to be relievable. -Is such a gift conditional on the subject matter achieving relief, and indeed relief at 100%? If so, does APR/BPR need to be determined before any appropriation? If not, how do the trustees/executors determine what qualifies for inclusion within the gift? -Issues of certainty/construction described above as to whether any property in an estate exceeding the 100% relief allowance contains any property that can be said to be fully relieved may remain, subject to the drafting of this trustee power.

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Possible Solution	Issues to Consider
A gift of all relievable property to a non-residuary discretionary trust with a view to appointing assets out within 2 years in reliance on s.144 IHTA 1984.	-No statutory read back for CGT purposes (unlike s.142 IHTA 1984), though again HMRC practice accepts that beneficiaries of such an appointment take as legatees if the estate has not been fully administered at the time of the appointment. -Is the 2-year deadline realistically achievable in light of current probate registry and HMRC delays? What if negotiations with HMRC Shares and Asset Valuation are ongoing at the 2-year mark? -Cash flow issues, as IHT will need to be paid in order to obtain the grant and then reclaimed after the appointment, limiting the trust assets to the 100% relief allowance.
Fully discretionary will i.e. discretionary trust of residue and no other legacies. Again, a view to appointing assets within 2 years in reliance on s.144 IHTA 1984 and the spouse exemption.	-Appointment of an IPDI in favour of a chargeable beneficiary over relievable assets up to the 100% relief allowance. The deceased's 100% trust relief allowance may be forfeited if unused. -Leave relievable assets up to the 100% relief in trust to the chargeable beneficiary, with remaining assets either appointed to the spouse absolutely or on IPDI. This risks issues with s.39A IHTA 1984 as the relievable property is not specifically gifted, and therefore is outside the terms of s.39A(2) IHTA 1984. -Trusteeship issues, including whether the spouse will agree to such appointments.

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Possible Solution	Issues to Consider
IPDI to spouse with overriding power of appointment to make PETs or CTs of relievable property or disclaimer.	-Deceased's 100% trust relief allowance may be wasted. -Trusteeship issues, including whether the spouse will agree to such appointments. - Exacerbates risk of failed PETs by surviving spouse.