

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1904](#): Change Scots law to disqualify estranged spouses from making claims on an estate, lodged by Christina Fisher

Brief overview of issues raised by the petition

Inheritance law (also known as ‘succession law’) treats divorce or dissolution of a civil partnership, rather than the point the couple separate, as the key date that associated rights to inherit from a spouse or partner’s estate stop applying. The position is outlined in more detail below.

Where a person has made a will

Where a person has made a will, section 1 of the [Succession \(Scotland\) Act 2016](#) sets out the general rule that, when that person gets divorced, or their civil partnership is dissolved, any provision in a will benefiting their former spouse or civil partner ceases to apply.

There is no equivalent statutory provision to section 1 covering the situation where the person is estranged from their spouse or civil partner but there has been no divorce or dissolution of the civil partnership.

There is also no equivalent statutory provision covering the situation where a person has made a will benefiting their cohabitant, but the cohabiting relationship later breaks down.

If a person makes a will which purports to disinherit (leave nothing to) a spouse or civil partner, the law says that, spouse or civil partner will still inherit a share of the deceased’s estate (other than

land or buildings). This rule against disinheritance still applies if the person is estranged from their spouse or civil partner. There is no equivalent protection from disinheritance for cohabitants.

Where a person does not make a will

If a person does not make a will, the [Succession \(Scotland\) Act 1964](#) applies to give the spouse or civil partner certain rights to the estate. These rules apply regardless of whether the person is estranged from their spouse or civil partner at the time of death.

Cohabitants do not have an automatic right to inherit a share of the estate. However, under section 29 of the [Family Law \(Scotland\) Act 2006](#), the court has discretion to award a cohabitant such a share, when an application is made to it by that cohabitant. Section 25 of the 2006 Act defines cohabitant for this purpose. In deciding whether someone is a cohabitant, section 25 requires the court to consider factors including:

- the length of the period during which the couple have been living together (or lived together);
- the nature of their relationship during that period; and
- the nature and extent of any financial arrangements subsisting, or which subsisted, during that period.

Separation agreements

A formal separation agreement (also known as a 'minute of agreement') is a legally binding document that sets out what a separating couple has agreed, including in relation to their finances and property.

Separation agreements can be used at the end of a cohabiting relationship or they can cover the period from the date of separation until divorce or dissolution of a civil partnership. If an agreement is registered, it is legally binding and can be enforced in the same way as a court order.

SPICe understands such agreements can contain provisions relating to the couple's rights to inherit from each other until a divorce or dissolution of a civil partnership is finalised. For example, a couple might agree to waive any rights they have in

relation to each other during that period. The Committee may wish to explore with the [Law Society of Scotland](#) or the [Family Law Association](#) how common and how effective such provisions are in practice.

Scottish Government consultations

[Scottish Government efforts to reform inheritance law have a long history](#), including government consultations in 2015 and 2019. On several important policy issues, there has been an absence of consensus, making it difficult for the Scottish Government to proceed with more fundamental, wide-ranging reforms.

In 2020, [the Government did highlight a variety of discrete proposals](#) which it thought could progress, with the Government aiming for some legislation at "the next available ...opportunity." There are no relevant commitments in this year's Programme for Government. None of these proposals address the issue raised by the petitioner.

Key Organisations and relevant links

[Law Society of Scotland](#)

[Family Law Association](#)

[Faculty of Advocates](#)

[Scottish Law Commission](#)

SPICe Briefing: [Inheritance Law](#) (June 2021)

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21/10/2021

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP