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Inheritance law in Scotland - 2025 update

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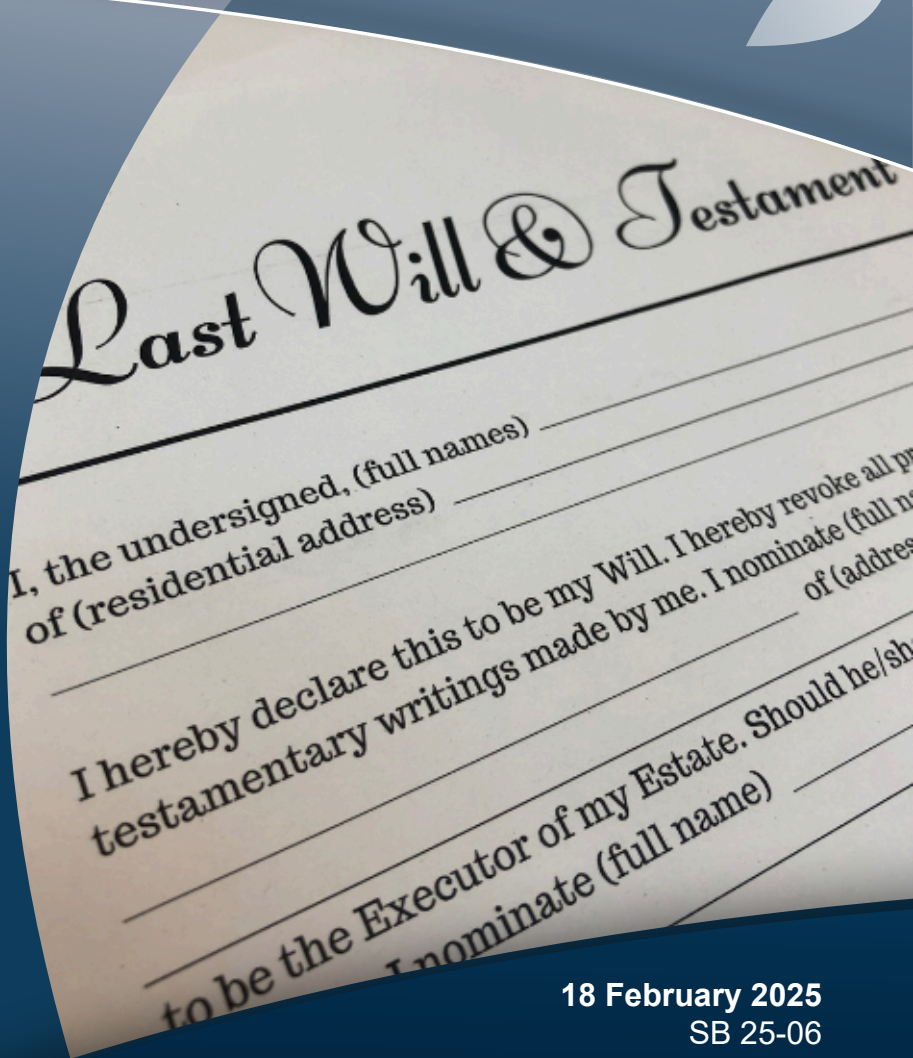
Inheritance law, also known as succession law, provides the rules about what happens to a person's property, money and possessions when they die. This briefing summarises the current law in this area. It describes some recent, but relatively limited, legislative reforms. The briefing also explores the unsuccessful attempts to reform the law more fundamentally.



18 February 2025
SB 25-06

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Executive summary

Inheritance law, also called **succession law**, says who should inherit someone's money, property and possessions in the event of that person's death. The law sets out the rules both where a person has died leaving a valid will (known as **dying testate**) and where a person has died without making such a valid will (known as **dying intestate**).

The deceased person's money, investments, property and possessions are called their **estate**.

The current law in Scotland

Where a will has been made, the intention may be to leave nothing from the estate to a spouse, civil partner or child of the deceased person. However, in Scotland, it is not possible to **disinherit** (leave nothing to) these relatives, including where any children concerned are now adults.

Instead, the law gives spouses, civil partners and children a fixed share of the deceased person's estate through the (slightly oddly named) concept of **legal rights**. Significantly, the family home, as well as other land and buildings, are excluded from the scope of this protection from disinheritance. On the other hand, other types of property (such as money, investments, cars, furniture, jewellery and other personal items) are included in the scope of legal rights.

There is a detailed statutory scheme for the situation where someone dies without leaving a will, which has been amended several times. The scheme focuses on spouses and civil partners and provides some protection for the children of the deceased person, including adult children. The legislation also gives some much more limited protection to someone who was cohabiting with the deceased person at the time of their death (**a cohabitant**).

The main piece of legislation covering the situation where someone dies without a will is now sixty years old. There is a strong feeling that, overall, this law does not match the variety of family structures which exist in Scotland today. For example, 'blended families', where there is a current partner and children from an earlier relationship, can raise difficult questions about what is fair for everyone concerned.

Attempts to reform inheritance law in Scotland in previous parliamentary sessions

Efforts to reform inheritance law have a long history, including a wide-ranging Scottish Government consultation in 2015, [1] based on earlier work by the Scottish Law Commission ('the Commission'). [2] There was also a further, more focused, Scottish Government consultation in 2019. [3]

There have been limited legislative reforms to date. The Succession (Scotland) Act 2016, explored in more detail in this briefing, covered the more technical aspects of the law. The Trusts and Succession (Scotland) Act 2024, also discussed in this briefing, made a handful of further changes. However, a range of big policy issues remain untouched.

On the law which applies where a will has been made, some difficult policy topics were explored in the various consultations referred to above. For example, both the Commission and the Scottish Government considered whether protection from disinheritance should

continue to apply to adult children. If so, they also considered whether that protection should be greater or less than the current law. The Commission and the Government also considered whether that protection from disinheritance should be extended to a cohabitant of the deceased. No set of proposals attracted majority support on consultation. **Attempts to reform the law have been abandoned.**

The law which applies where no will has been made is still being considered by the Scottish Government. After two rounds of consultation, two, sometimes overlapping, issues are still causing difficulty. One issue is what the correct approach should be to 'blended families', the other (sometimes overlapping) issue is how the law should treat cohabitants. In 2020, the Government acknowledged that there was no consensus around any key proposal produced to date. [4] It committed to further evidence gathering and research, which is still ongoing.

In summary, more fundamental reforms to the law are still a long way off.

What this briefing does

As noted earlier, this briefing provides an introduction to inheritance law in Scotland, also known as **succession law** or the **law of succession**.

The briefing has two goals. First, it is intended to help MSPs and their constituency offices with casework relating to issues which arise with inheritance. Second, the briefing aims to be useful to those with a general interest in inheritance law as a policy area in Scotland.

The briefing is divided into three parts:

- a short section on making a will and on the practical issues which usually need to be sorted out after a death (this signposts to more detailed resources on these topics)
- a description of the current law and practice, including key provisions of the Succession (Scotland) Act 2016 and the Trusts and Succession (Scotland) Act 2024
- a description of the several previous Government consultations on more fundamental reforms to the law, which have not been progressed.

Note that SPICe can only provide general information relating to the law of Scotland. For legal advice on the circumstances of an individual case, a constituent should consult a solicitor. Constituents could be referred to the SPICe Briefing, Legal Advice - where to go and how to pay. [5]

There is also some specific information on using a solicitor to make a will later in this briefing.

Practical matters

This section of the briefing covers how to make a will and how to sort out the affairs of someone who has died.

A separate SPICe Briefing on adults with incapacity (dated November 2024) covers the related topic of how to create a power of attorney. [6]

The creation of a power of attorney is often done at the same time as when a person makes a will. In certain circumstances, an attorney can make decisions about a person's welfare or their financial affairs.

Making a will

If a person dies without making a will, everything that that person owns will largely be divided up according to statutory rules set out later in this briefing. This distribution may or may not be what the person wanted to happen.

If a person wants to make their wishes known in advance of their death, they should **make a will.**

A person can make a will on their own (a single will) or make a joint or **mirror will**.

Mirror wills

A pair of mirror wills contain very similar terms and are usually prepared with a person's spouse or other long-term partner. The intention is that all the assets are left in the first place to the surviving spouse or partner, and then, on their death, will pass to other named people, such as any children of the couple.

Note that there is the possibility that the terms of the mirror will can be changed, particularly after the death of one spouse or partner. Accordingly, there is no guarantee that the estate will be distributed according to the terms originally agreed between the couple.

While not compulsory, it is recommended that a person **consults a solicitor** to make a will or change an existing will. Otherwise, as Citizens Advice Scotland explains:

> " it is easy to make mistakes and if there are errors in the will this can cause complex problems after your death. Sorting out misunderstandings and disputes may result in considerable legal costs which will reduce the amount of money in the estate."

Will-writing services are also available in books and online. These services may or may not understand that inheritance law in Scotland differs significantly from the law in other parts of the UK.

These services are also **not regulated** so there are few safeguards if things go wrong. The Legal Services (Scotland) Act 2010 would have regulated the will-writing industry.

However, the relevant part of the Act (Part 3) was never brought into force.

Using a solicitor to make a will

As explained in the SPICe Briefing on obtaining and paying for legal advice, [5] the Law Society of Scotland's Find a Solicitor webpage allows a person to search for an individual solicitor or firm of solicitors. Searches can be done by geographical area and by legal specialism. For the relevant specialism, select **wills, executries and trusts**.

Sometimes a person might be eligible for a free or discounted will prepared by a solicitor specialising in Scots law through an **insurance policy**, an **employer** or a **trade union**.

It is common for solicitors to charge a **fixed fee** for drafting a will. However, a solicitor may choose to charge differently (for example, per hour's work), particularly if a person's circumstances and will are more complicated. Charging arrangements should be checked in advance with the solicitor concerned.

Some solicitors waive their usual fees for drawing up wills at certain times of the year when a person donates to charity or leaves a donation in their will. For example:

- **Free Wills Month** is a charity scheme that runs every **March** and **October**. See the Free Wills Month website.
- **Will Aid** runs every **November**. See the Will Aid website. Suggested minimum donations are £80 for a single basic will and £120 for a pair of basic mirror wills.
- More than 150 charities are signed up to the National Free Wills Network. They offer free simple wills written or updated by a solicitor.

A person might be able to get help with the legal costs of making a will via **legal aid** if a) a solicitor considers that they need advice on Scots law before they can make the type of will they need; and b) they are financially eligible. On the details of the legal aid system, see the SPICe Briefing, Legal Aid - how it works.

Other resources

For more detail on the process of making a will see, for example:

- Wills (Citizens Advice Scotland)
- Making a will, including a consumer checklist (Scottish Legal Complaints Commission)
- Making a will (the Law Society of Scotland).

What to do after a death in Scotland

The mygov.scot website has comprehensive information on death and bereavement which is very useful in the initial period after a death. Topics covered include but are not limited to:

- bereavement support and advice
- an introduction to inheritance tax
- information on benefits, money and the home
- what to do if someone dies outside Scotland.

The Scottish Government also has a 2016 publication called What to do after a death in Scotland [7] . Although not up to date in all respects, it covers in detail what happens during the period from the time of death to the funeral and beyond.

Some issues or topics which are relevant during the initial period after the death include:

- **the possibility of donating body parts for transplantation**. Note that, at the time of writing, the Government's 2016 publication does not reflect the new law on organ and tissue donation which came into effect on 26 March 2021. This changed the system to one where a deceased person's consent to donation will be presumed unless they have indicated otherwise.
- **the requirement to obtain a medical certificate** stating the cause of death before a person can be buried or cremated.
- **the Procurator Fiscal's role** in investigating all sudden, suspicious, accidental, unexpected and unexplained deaths, as well as any deaths occurring in circumstances that give rise to serious public concern. Detailed information on this is available on the website of the Crown Office and Procurator Fiscal Service.
- **the need to register the death** - this must happen within **eight days** of the death. It must also take place before a burial or cremation can happen. Various people can register a death, including any relative of a deceased.
- **how to plan a funeral** - including the costs and possible sources of financial help to pay for it. Note that the final funeral arrangements, involving fixing a date, cannot be made until it is certain the death does not have to be reported to the Procurator Fiscal.

Tell us Once is a useful service which allows a person to report a death to a range of government organisations in one go.

Organisations contacted by this service include HM Passport Office, HM Revenue and Customs, the Driver and Vehicle Licensing Agency and the UK Government Department for Work and Pensions. The person's local council can also be informed in this way.

The service does **not** contact certain organisations, such as banks and building societies and the NHS (although the service does contact pension schemes for NHS staff).

The current law and practice

This section of the briefing provides an overview of current inheritance law, covering the following general topics:

- the main legal terms and concepts
- the role of a key person called **the executor**
- the general law which applies when someone dies without leaving a will
- conversely, the general law which applies when someone has made a will.

Finally, this section also covers three discrete, specialist topics in inheritance law, as follows:

- cross-border estates, that is those estates connected to more than one country or legal system, such as the legal system of England and Wales
- special destinations, which are effectively 'mini' wills relating to land and buildings. These sometimes appear in the official ownership documents associated with land and buildings
- unlawful killers - specifically, what happens when an unlawful killer of a deceased person stands to inherit, or be the executor of, their victim's estate.

Some key terms and concepts

At the outset, it is helpful to be familiar with some key terms and concepts.

This section covers inheritance law. It also provides a brief introduction to trust law, a related area of law of which it is useful to be aware.

Inheritance law

The legal term for a person who has died and left a will is a **testator**.

As explained earlier, the deceased person's money, investments, property and possessions are usually referred to as the **estate**. The people or organisations that will benefit from the estate when it is distributed are called the **beneficiaries**.

When someone dies, the **executor** is the person who gathers in the estate, pays any debts and taxes due and distributes the remainder of the estate to the beneficiaries. There is nothing which stops an executor also being a beneficiary. In fact, in practice, it is very common for this to happen.

When a will aims to prevent a particular person from inheriting, the will aims to **disinherit** that person. Complete disinheritance of someone's spouse, civil partner or children, including their adult children, is not possible in Scotland.

If a person dies without leaving a valid will, then, on their death, that person is described as **intestate**, as is their estate. Statutory rules then determine what should happen to the

estate.

Conversely, if a person dies having left a valid will, then, on their death, that person is described as **testate**, and this term also applies to their estate.

A **cohabitant** is a person who lived with the deceased before their death as part of a couple. Where no will has been made, some cohabitants may have limited statutory rights on the death of their partner. Alternatively, a deceased person might have a made a will benefiting their cohabitant.

Inheritance law makes a distinction for various purposes between how it treats **heritable property** and **moveable property**. Heritable property, is generally land and buildings, such as the family home. Moveable property is everything else. For example, moveable property includes money, investments, cars, furniture, jewellery and other personal items.

As explored in more detail later in the briefing, at one stage, there were proposals to abolish the distinction between heritable and moveable property in relation to inheritance law. These proposals proved to be controversial and have now been abandoned.

Trust law

A **trust** is a specific legal device for managing assets.

In the context of inheritance law it is helpful to have a basic understanding of how trusts work. This is because a trust can take assets which would otherwise have formed part of the deceased person's estate - and would have been distributed according to the normal rules of inheritance law - and treat those assets separately.

A trust enables assets to be legally owned by one person or entity (**the trustee**) while a different individual, entity or section of the general public benefits from those assets in practice (the **beneficiaries**).

Trusts can be set up for a wide range of purposes. For example, they can be set up to benefit a family member, such as a child (often on reaching a specified age) or an adult with incapacity. They can be set up for charitable purposes. They can also be the legal device underpinning investment vehicles, such as pensions, unit trusts and life assurance policies.

A trust can actually be created in a will, taking effect on a person's death. It can also be created in a separate legal document (a **trust deed**). Under a trust deed, a trust can take effect on a person's death, or during that person's lifetime, depending on the terms of the particular trust deed.

Assets in a trust are managed under the terms of the trust deed and in accordance with the rules of trust law. Other areas of law, such as charities law and pensions law, may also apply, depending on the nature of the trust.

Trust law was substantially reformed by Part 1 of the Trusts and Succession (Scotland) Act 2024. However, at the time of writing, most of Part 1 is not yet in force.

The role of the executor

The briefing now returns to its focus on inheritance law. This section considers the role of the **executor**, that is to say the person who gathers in and distributes the deceased person's estate under inheritance law. The section covers:

- how it is decided which person should be appointed to the role
- the process by which the executor obtains the legal authority to undertake the tasks associated with the role.

Who will be the executor?

A person may name somebody in their will that they wish to be the executor (**an executor nominate**). On the other hand, an executor can be appointed by the court (**an executor dative**).

Appointing an executor dative will be necessary if there is no will. However, it may also be required in other circumstances, for example, if there is a will but the executor named in it is unable or unwilling to undertake the role.

The law provides a set order of people entitled to apply to be appointed executor dative. It is usually the deceased person's spouse or civil partner who will be appointed by the court. Indeed, where there is no will and the spouse or civil partner is entitled to inherit the whole estate, they will be **the only person** entitled to be appointed in that role.[i]

Where there is no spouse or civil partner, the court will usually appoint another person entitled to inherit the estate.

Potential competition for the role of an executor dative is legally complex and the advice of a solicitor is recommended in those circumstances.

How the executor obtains the authority to deal with an estate

Executors usually get their authority to carry out their role from a legal document known as the **confirmation**. This can be obtained from the local sheriff court.

Confirmation may not be needed where bodies holding money belonging to the estate, such as banks, are prepared to release funds without it.

Separately, there is a streamlined procedure for obtaining confirmation to small estates.

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i Succession (Scotland) Act 1964, section 9(4).

These have a total value of **£36,000 or less**.[ii] In calculating the total value, one should **not** deduct any debts due by the deceased, such as the mortgage on a house.

Small estates procedure can be used without legal advice, although the executor is still liable for any mistakes. It may be helpful to talk to a Citizens Advice Bureau or solicitor on specific points. See also the Scottish Court and Tribunal Service's guidance on small estates. [8] Note that an official known as the **sheriff clerk** (of the sheriff court in the area where the deceased last lived) will help prepare the forms for confirmation.

Small estates procedure is only regarded as suitable for the least complicated estates. Examples of estates where the procedure is not suitable are:

- where there is competition among individuals for the role of executor
- where there is a legal challenge to the validity of the will
- where the deceased died while permanently living somewhere other than Scotland - see later in the briefing on the complexities of estates with a cross-border dimension
- where the deceased had no fixed permanent address. [9]

When someone dies without leaving a will

This section of the briefing considers the legal rules that determine who benefits when someone dies without leaving a will.

Key legislation

The Succession (Scotland) Act 1964 ('the 1964 Act') sets out the **main rules** on who benefits and how an estate should be divided up between them when there is no will.

Section 29 of the Family Law (Scotland) Act 2006 ('the 2006 Act') has specific rules relating to **cohabitants** of people who have died without leaving a will.

As set out in more detail later in this section, both the 1964 Act and section 29 of the 2006 Act have been recently amended by the Trusts and Succession (Scotland) Act 2024. At the time of writing, only the provision relating to the 1964 Act is currently in force.

The stages of distributing a person's estate

There are various stages an executor must go through when distributing the estate of a person who has died without leaving a will. They must be carried out in a set order.

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ii Intestates Widows and Children (Scotland) Act 1875 and Small Testate Estates (Scotland) Act 1876, both as amended by the Confirmation to Small Estates (Scotland) Act 1979; Confirmation to Small Estates (Scotland) Order SSI 2011/435, article 2(a).

In the first place, the executor has to **pay debts** and **meet certain liabilities** from the deceased person's estate. Specific beneficiaries then have rights to claim from the deceased person's estate.

- Prior rights in favour of the deceased person's spouse or civil partner must be satisfied first.
- The next priority is the legal rights of any spouse or civil partner.
- The legal rights of any children of the deceased person are the third-ranked priority under the current rules. Grown up children can claim legal rights.
- Finally, the remaining estate, called **the free estate**, must be distributed according to a list of potential beneficiaries contained in the 1964 Act.

Separately, under the Family Law (Scotland) Act 2006, any cohabitant of the deceased person can apply to the court within a specified timescale and the court has **discretion** to make a financial award to this person.[iii]

A note on children and remoter descendants

Sometimes for simplicity, we refer to **children** in the context of inheritance law. However, strictly speaking, the law is often focused on **issue**. This is a broader legal term referring to both children and remoter descendants, such as grandchildren and great-grandchildren.

The law is interested in the wider category of people because of the possible situation where a child has died before their parent. When their parent then later dies, their remoter descendants (for example, their grandchildren) may inherit what the child would have received had they lived.

This applies both in relation to legal rights and, with some qualifications, the division of the free estate.[iv]

This briefing will now explore the different categories of rights available to the beneficiaries in more detail.

The prior rights of the surviving spouse or civil partner

Prior rights are a first claim on the estate. They exist in favour of the deceased person's **spouse** or **civil partner**, if they had one.

The rights are to a share of the deceased person's **house**, **furniture** and **money**. These shares are subject to maximum financial limits, revised from time to time by secondary legislation.[v]

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iii Family Law (Scotland) Act 2006, section 29 as amended by the Trusts and Succession (Scotland) Act 2024, section 78.

iv Succession (Scotland) Act 1964, sections 5(1) and 11.

v Succession (Scotland) Act 1964, sections 8 and 9; Prior Rights of Surviving Spouse and Civil Partner (Scotland) Order

At present, the deceased person's spouse or civil partner has a right to the following:

- the deceased person's share of a house up to the value of **£473,000**
- the deceased person's share of the furniture and furnishings associated with the house up to a value of **£29,000**
- money up to **£50,000** (if there are surviving children of the deceased person) or **£89,000** (if there are no surviving children).

In relation to the last bullet point, note that the sum of money can be generated from all types of available asset in the estate. For example, shares could be sold to raise the necessary cash.

The prior rights of the spouse or civil partner have the potential to use up the deceased person's estate. Indeed, this is common in practice. This means that it may not be possible for any cohabitant or children of the deceased person to make a claim on the estate.

The legal rights of the surviving spouse or civil partner

The legal rights of the spouse or civil partner are to a share of the deceased person's moveable property (for example, money, investments and personal possessions).

Heritable property, such as the family home or the family farm, is excluded.

A surviving spouse or civil partner is entitled to:

- **one third** of the remaining moveable estate, if the deceased person left surviving children or remoter descendants
- **one half** of the remaining moveable estate, if the deceased person did not leave surviving children or remoter descendants.

The legal rights of any children of the deceased person

The surviving children (or remoter descendants)[vi] are entitled to:

- **one third** of the remaining moveable estate split between them, if the deceased person left a spouse or civil partner
- **one half** of the remaining moveable estate split between them, if the deceased person did not leave a spouse or civil partner.

SSI 2011/436.

vi Succession (Scotland) Act 1964, section 11.

Legal rights do not make a distinction relating to gender or birth order. For instance, brothers do not rank before sisters; elder sisters do not rank before younger ones. As already mentioned, adult children can claim legal rights, as well as children under 16.

The free estate

Under the 1964 Act, the free estate is the estate remaining **after** the prior rights and legal rights are satisfied.

Where there is no spouse or civil partner, children, grandchildren or remoter descendants of the deceased, the free estate is the whole of the deceased person's estate.

The categories of relatives who can potentially inherit

For the free estate, the **categories of relatives of the deceased person** who can potentially inherit are, in order of priority, as follows:[vii]

1. Children
2. Spouse or civil partner (if no children or remoter descendants of those children)
3. Parents **and** brothers or sisters. If someone survives from both classes each class takes half the free estate
4. Brothers and sisters (if no parents are alive)
5. Parents (if no brothers and sisters are alive)
6. Uncles and aunts (on either parent's side)
7. Grandparents (on either parent's side)
8. Brothers and sisters of the grandparents (on either parent's side)
9. Ancestors of the deceased person more distant than grandparents (on either parent's side)
10. The Crown.

Once there is a beneficiary on a particular level of the list identified, that is the point when you know which level of beneficiary will inherit the free estate. There is no requirement to explore the possible existence of individuals lower down the list.

As the list shows:

- where the deceased person is survived by a spouse or civil partner **and** children, **the**

vii Succession (Scotland) Act 1964, section 2(1), as amended by the Trusts and Succession (Scotland) Act 2024, section 77.

children will inherit the free estate.[viii]

- if the deceased person is survived by a spouse or civil partner and **no children**, the **spouse or civil partner** will inherit the free estate.[ix]

Spouses and civil partners

Section 77 of the Trusts and Succession (Scotland) Act 2024 (which is in force) amended the 1964 Act to move the deceased person's spouse or civil partner further up the list relating to the free estate.

Under the previous law, the deceased person's spouse or civil partner ranked below siblings and parents.

As explained earlier in the briefing, spouses and civil partners also benefit under **prior rights**. They are also the only beneficiaries of **legal rights** if there are no children or remoter descendants of the deceased person. The final piece of the jigsaw is the rule about **the free estate** relating to spouses or civil partners described above.

A key point is that the collective effect of the various rules is that the spouse or civil partner now inherits the **whole estate** when there are no children (or remoter descendants) of the deceased person.

Note that **categories 3 and 4** on the list associated with the free estate can include **half siblings**. However, if there are whole siblings of the deceased, **the whole siblings will inherit in preference to half-siblings**.[x]

As discussed earlier, someone who would have fallen into a category on the above list might have died before the deceased person whose estate is now under consideration. Unless the person on the list was a parent, spouse or civil partner, then that person's children (or remoter descendants) can inherit in their place.[xi]

Under **category 10**, if the executor cannot trace any of the deceased person's relatives, the estate may pass to **the Crown** as the ultimate heir. The person in Scotland who acts for the Crown in this capacity is the King's and Lord Treasurer's Remembrancer (KLTR). The money raised by the sale of property falling to the Crown used to go the UK Treasury. However, since Scottish devolution, it has gone to the Scottish Government.

The cohabitant's claim on the estate

Under section 29 of the Family Law (Scotland) Act 2006, a cohabitant of the deceased person currently has **six months** from the date of death to apply to the court to ask it to exercise its discretion and give them a share of the deceased person's estate.[xii]

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viii Succession (Scotland) Act 1964, section 2(1)(a).

ix Succession (Scotland) Act 1964, section 2(1)(ab).

x Succession (Scotland) Act 1964, section 2(2) and (3).

xi Succession (Scotland) Act 1964, section 5(1).

Section 78 of the Trusts and Succession (Scotland) Act 2024 would amend this aspect of the 2006 Act so the cohabitant has **twelve months** to make their claim. However, at the time of writing, this provision is **not yet in force**.

Not everyone who lived with a deceased person as part of a couple will qualify as a cohabitant of the deceased under the legislation. The 2006 Act says the court should consider various factors in deciding whether someone is a cohabitant, including their financial arrangements and the length of time they have been living together.[xiii]

As the Scottish Government consultation in 2015 noted, the law on cohabitants has been criticised for not providing clear guidance on what factors are relevant in deciding what the size of the cohabitant's share of the estate should be. [10]

Where there is both a cohabitant and a spouse and civil partner

Sometimes there is both a cohabitant **and** a spouse or civil partner for inheritance law purposes. This happens if the deceased was separated from the spouse or civil partner, but legally the marriage or civil partnership had not ended.

The general rule in the statute is that an award in favour of a cohabitant comes out of the estate which remains **after** the prior rights and legal rights in favour of a spouse or civil partner are met.[xiv]

However, this issue is sometimes dealt with in advance for a particular couple in a **separation agreement**. This sets out the arrangements for a couple for the period after separation but before divorce or dissolution of the civil partnership. Here the deceased person and their spouse or civil partner can agree to give up their inheritance rights at the time of separation.

The cohabitant's claim compared to the rights of children and other relatives

Separately, there is the issue of how the cohabitant's claim ranks compared to those of other relatives.

Section 29(10) of the Family Law (Scotland) Act 2006 suggests that the cohabitant's award can be taken out of the estate **before** 1) the legal rights of the children; and 2) relatives' rights relating to the free estate; have been satisfied.

On the other hand, other parts of section 29 say that the court should take into account **other potential claims** against the deceased's estate in exercising its discretion.[xv]

Arguably, overall, the section does not provide clear guidance on how the cohabitant's

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xii Family Law (Scotland) Act 2006, sections 25 and 26.
xiii Family Law (Scotland) Act 2006, section 25(2).

xiv Family Law (Scotland) Act 2006, section 29(1).

xv Family Law (Scotland) Act 2006, section 29(2)(a) and (3)(c).

claim should rank, compared to the claims of children and other relatives. Legal advice is recommended in individual cases.

The wording of section 29 has particular implications for 'blended families', where the deceased person has both children from an earlier relationship **and** a cohabitant.

As explored in more detail in the second part of this briefing, this type of family was a focal point for the Scottish Government's consultation in 2019.

Where someone dies leaving a will

This part of the briefing considers various aspects of the law associated with making a will, as well as what happens when someone dies having left a will.

As already mentioned, the person who makes a will is sometimes referred to as **a testator**.

Requirements for a valid will

The legal requirements for a valid will are found in the Age of Legal Capacity (Scotland) Act 1991, the Requirements of Writing (Scotland) Act 1995 and in the law set out in the decisions of judges in individual cases (**case law**).

The capacity of the person making the will

In order for a will to be valid, it must be made by a person with **legal capacity** to do so. This has several elements to it.

First of all, it must be made by a person who is **twelve years old or over**.[xvi] In practice though, it is thought very few young people make a will.

Second, it must be made by **a person of sound mind**. This means the person must be fully aware of the nature of the document being written or signed, the property involved and the identity of the people who may inherit.

The requirement for writing and further requirements relating to signatures

A valid will must be **in writing**. It must also be **signed by the person making the will** at the bottom of the last page (a process known as **subscription**).[xvii]

In addition, as standard practice, a solicitor will aim to have his or her client make a **probative** or **self-proving will**. Additional requirements must be satisfied for a will to be probative.

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xvi Age of Legal Capacity (Scotland) Act 1991, section 2(2).

xvii Requirements of Writing (Scotland) Act 1995, sections 1(2)(c) and 2(1).

A probative will is **presumed in law** to be validly executed. In other words, this is the starting point for any court.

Furthermore, a court cannot overturn the presumption in an individual case unless enough evidence is produced by a person challenging the will to rebut (that is, disprove) the presumption.

In the event of a legal dispute, a probative will can be very helpful to the person relying on it. On the other hand, if a will is valid but not probative, then, for example, an executor relying on that will to take out a grant of confirmation must first prove that the will was validly executed. So that person must (as a first step) produce, to the court, sworn written evidence (**an affidavit**) related to the deceased person's handwriting.

The **first column** of the diagram below summarises the requirements for a valid will. The **second column** summarises the various requirements for a probative will:[xviii]

The requirements for a valid will and the requirements for a probative will

Requirements for a **valid will**		Requirements for a **probative will**
✓	In writing	✓
✓	Signed by the testator	✓
✗	Appears to have been signed at the bottom of every separate sheet of paper by the testator	✓
✗	Appears to have been signed by someone who witnessed the testator's signature at the bottom of the page Name and address of that witness must be given in the will	✓
✗	Nothing else in the document showing it was not actually signed by the testator or validly witnessed	✓

Source: SPICe

xviii Requirements of Writing (Scotland) Act 1995, sections 1(2)(c), 2(1), 3(1)(a), 3(1)(b) and 3(2).

Other possible grounds for challenge

The law recognises two further potential grounds on which a will can be challenged:

- if it was not made voluntarily, that is to say where there been **undue influence** from another person
- if affected by **facility and circumvention**.

Facility and circumvention is where a person has suffered some degree of mental deterioration, such as can sometimes happen in old age or illness. It is not sufficiently severe to prevent them from having capacity to write a will but it leaves them easily imposed on by others. In some circumstances, it can exist alongside a person exercising undue influence on a vulnerable person.

Common aspects of wills

A key feature of a will is that it identifies all the people or organisations the testator wishes to benefit from their will and what the testator wishes them to receive. The parts of a will which achieve this are referred to as **legacies** or **bequests**. Other common (but not essential) features of a will include:

- who the testator wants to be their executor or executors
- who the testator wants to look after any of their children who are under 16
- the testator's wishes for their funeral
- whether the testator wants to donate all or part of their body to medical research or for transplant purposes.

On the last bullet point, note that the recommended way for a person to record an organ or tissue donation decision during their lifetime is via the NHS Organ Donor Register.

If they do not register a donation decision this way, then, with some exceptions, it will be considered that they agree to donate certain organs and tissue for transplantation in the event of their death.

There are separate bequest registers for those who wish to donate their body to medical science. These are held by the five Universities with Anatomy departments. More information on this can be found in the Scottish Government guidance on Body Donation.

Cancelling or changing a will

A person who has made a will may wish to cancel (**revoke**) an existing will. The normal method of doing this is to physically destroy it.

A will prepared by a solicitor will almost invariably have a section in it saying that any previous will is revoked. This cancels an earlier will, even if it is not destroyed.

When a current will is revoked but no new will made it its place, it used to be the case that any earlier will could take effect again (**revive**). However, the Succession (Scotland) Act 2016 ('the 2016 Act') states that revocation of a will does **not** revive an earlier will.[xix]

The 2016 Act also sets out that a **divorce or dissolution of a civil partnership** means that the part of a will benefiting the testator's former spouse or civil partner will **not** apply. The 2016 Act also says that the testator can choose in the will for this general statutory rule not to apply.[xx]

A will can also be amended by the use of a **codicil**, that is to say a later document referring to the earlier will but varying its provisions. Because of potential difficulties in practice of working out the combined effect of these two documents, solicitors usually recommend destroying the old will and making a new one instead.

Protection from disinheritance

Even if a person makes a will, there is not complete freedom in Scotland to leave their estate to whomsoever they choose.

Spouses, civil partners and children (including adult children) are protected from complete disinheritance by the concept of **legal rights**.

> Cohabitants, on the other hand, do **not** benefit from any protection from disinheritance.

An overview

Legal rights operate differently where there is a will, compared to how they operate where there is not a will. Legal rights **partially override the provisions of the will**, rather than taking second place to any other type of right, as they do in relation to prior rights where there is no will.

If a spouse, civil partner or child of the deceased person is entitled to inherit as a result of a legacy in the will, the spouse, civil partner or child cannot have both their entitlement under the will and their entitlement under legal rights. **They must make a choice.**

As with the situation where there is no will, where there is a will, legal rights still only apply to **moveable property**, that is to say property other than land and buildings.

Furthermore, the proportions of the moveable property that any spouse, civil partner or any children are entitled to inherit under legal rights is the same, regardless of whether a will is left or not. The relevant proportions were outlined earlier in this briefing in The legal rights of the surviving spouse or civil partner and The legal rights of any children of the deceased

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xix Succession (Scotland) Act 2016, section 5.

xx Succession (Scotland) Act 2016, section 1.

person.

While the proportions associated with legal rights are the same, regardless of whether there is a will or not, **the value of the estate** available for legal rights is not necessarily the same in both scenarios.

Where there is no will, it is the moveable property left **after** prior rights are satisfied which are available for legal rights. This may be none of it. Where a will has been made, **all** the deceased person's moveable property is eligible for legal rights.

The practical effect of the restriction of legal rights to moveable property

The current restriction of legal rights to moveable property limits their effect in practice. They exclude what is many people's main asset, that is to say the **family home.**

They would also exclude, for example, **a family farm** where it has been owned directly by the deceased person (as opposed to by, for example, a family-run company).

The restriction of legal rights to moveable property does provide a determined (and well-advised) individual with the opportunity to further limit the impact of legal rights. This would be done by attempting to convert as much of an individual's assets into heritable property prior to the individual's death.

Some specialist topics in inheritance law

This section on the current inheritance law concludes by looking at three specialist topics in inheritance law, as follows:

- cross-border estates, that is those estates connected to more than one country or legal system
- special destinations, which relate to who might inherit land or buildings in certain circumstances
- the status of an unlawful killer of a deceased person in inheritance law.

Estates with a cross-border element

The focus of this briefing is on wills made under, and estates governed by, Scottish inheritance law.

However, there may well be **a cross-border dimension** to a person's affairs. For example, the person might make a will in another country and later move to Scotland. Someone who is permanently resident in Scotland may die leaving a holiday home in Spain or a flat in England.

Note that cross-border estates are a particularly complex area. Legal advice in an individual case, including while the person with a cross-border element to their affairs is still alive, is recommended.

The role of private international law

Sometimes, because of a cross-border element to a person's affairs, there is the potential for more than one legal system to be involved in a particular case.

Each legal system has rules called the **rules of private international law** to try to deal with this. Despite the name, the rules can also be relevant in cases involving Scotland and another part of the UK.

The rules of private international law help resolve, for example:

1. which country's (or part of the UK's) inheritance law should apply to determine who inherits on a person's death, and in what order
2. which country's (or part of the UK's) courts have authority to consider and decide any disputes about a deceased person's estate.

Private international law is not to be confused with public international law. **Private international law** helps resolve the affairs of individuals (or other private entities) which have a cross-border dimension. **Public international law** covers relationships between countries.

Possible conflicts between different countries' rules of private international law

Although a very technical area, it is probably helpful to be aware that **there can be conflicts or clashes between different countries' or legal systems' rules of private international law**. They may set out conflicting answers to the questions typically resolved by private international law.

In particular, some countries or legal systems' rules of private international law make a distinction for some purposes between **the type of property at issue** when deciding which country's (or part of the UK's) inheritance law should apply to determine who inherits. For example, Scotland takes an approach based on the type of property at issue. [11]

For most types of property, the Scottish approach says it is the inheritance law of the country (or part of the UK) where the deceased person made their permanent home (their **domicile**) which applies. In contrast, for land and buildings (including parts of buildings, such as flats), the Scottish position is that it is the inheritance law of the country or part of the UK **where the property is situated** which applies. [11]

On the other hand, other countries or legal systems' rules of private international law say that the same country's inheritance law should apply to the distribution of the estate **regardless of the type of property concerned**. An example of this second approach can

be found in all the EU countries (except Denmark and Ireland).[xxi] [11]

As the above discussion hopefully helps highlight, sometimes when a person's affairs have a cross-border dimension the associated legal issues can be very complex. As noted earlier, specialist legal advice, including when the affected person is still alive, is recommended.

Special destinations: a specific approach for land and buildings

A **special destination**, also known as a **survivorship destination**, can apply to land or buildings or parts of buildings, such as flats. It is a legal clause which can appear in a property's official ownership documents, that is, the title documents or **the title deeds**.

Mention is made of a special destination in this briefing as a special destination functions **as a form of 'miniature will'.** Its existence means that the property in question will be treated separately on death. The property won't form part of the deceased person's estate, that is the part which is subject to the main rules of inheritance law.

A special destination is traditionally used where the family home is to be co-owned by a couple. However, it can be used for any type of property which takes the form of land and buildings. It can also be used in any type of co-ownership situation, for example, when property is co-owned by a parent and a child.

The destination says **one person automatically gets the other's share of the property on death**. A variety of people might have had a claim to that share in the normal scenario, but this is overridden by the special destination.

To get rid of a special destination (before death) you have to **evacuate it**, that is, complete a legal process to pre-emptively stop its legal effect. This might be important, for example, **if a couple later separate or divorce.**

Problems arose with special destinations in practice because the legal process (of evacuation) was not completed in circumstances where it should have been.

Accordingly, section 2 of the Succession (Scotland) Act 2016 ('the 2016 Act') says a special destination will cease to have effect **automatically** on divorce or dissolution of a civil partnership.

Improvements to the drafting of section 2 of the 2016 Act, in order to better achieve its policy aims, were recently made by section 76 of the Trusts and Succession (Scotland) Act 2024 (a provision which is already in force).

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xxi Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Unlawful killers

This section of the briefing considers the legal status of a person in inheritance law where that person has unlawfully killed another, for example, by committing murder or culpable homicide. Such a person is usually referred to in inheritance law as an **unlawful killer**.

There are two main issues which can arise with unlawful killers, considered in turn in this section of the briefing:

- whether an unlawful killer can inherit any of their victim's estate
- whether an unlawful killer can be an executor in respect of their victim's estate.

The second issue has attracted particular policy attention in recent years due to a high-profile case on the topic.

Inheritance

On whether an unlawful killer can inherit, there is **a rule of public policy**, developed by the courts and by statute,[xxii] which, in certain circumstances, prevents an unlawful killer from acquiring a benefit from the deceased person's estate as a result of that unlawful killing. The unlawful killer is said to **forfeit** their rights to inherit in this situation.

The rule of forfeiture applies when a will was made benefiting the unlawful killer. It also applies when the unlawful killer stands to benefit under the statutory rules which apply when no will has been made.

However, the Forfeiture Act 1982 ('the 1982 Act') allows a civil court, on application by the unlawful killer, to grant relief from the effect of the main rule, except in cases of murder. Broadly, the court will apply the 1982 Act to grant this relief where the interest of justice requires this.

The Succession (Scotland) Act 2016 ('the 2016 Act') made some technical changes to the law:[xxiii]

- First, the 2016 Act says that in circumstances where an unlawful killer has forfeited their rights to inherit they are to be treated as having **died before the deceased person**. [xxiv] This affects who then will inherit the estate instead of the unlawful killer.
- Second, the 2016 Act amends the 1982 Act so that the court can grant **100% relief** (rather than partial relief) from the effects of the main rule relating to unlawful killers.[xxv] This means that, in an individual case, the unlawful killer could receive everything to which they would ordinarily have been entitled if there had been no unlawful killing.

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xxii Parricide Act 1594 (now repealed); Forfeiture Act 1982; Succession (Scotland) Act 2016, sections 12-17.

xxiii Succession (Scotland) Act 2016, sections 12-17.

xxiv Succession (Scotland) Act 2016, section 12.

xxv Forfeiture Act 1982, section 2, as amended by the Succession (Scotland) Act 2016, section 15.

Being an executor

A further important policy issue is whether it is possible for an unlawful killer to be an executor of the victim's estate.

> As a reminder, the **executor** is the person responsible for winding up the deceased person's estate. For example, they pay debts associated with the estate and distribute any remaining estate to those entitled to benefit from it.

Prior to the Trusts and Succession (Scotland) Act 2024 ('the 2024 Act'), the law on unlawful killers as executors may have been somewhat uncertain. However, there was at least one example of a family of an unlawful killer having the person convicted later appointed executor.

The 2024 Act contains several sections clarifying and amending the law in this area.

Sections 7 and 8 of the 2024 Act (both in force) deal with the situation where someone has already been appointed executor of a deceased person's estate:

- **Section 7** empowers the court, on application to it, to remove someone who has been appointed executor (or is a trustee under a trust) where they are unfit to carry out their duties.
- **Section 8** says that an executor (or trustee under a trust) is to be treated as unfit to carry out their duties where the person in question has been convicted of, or is being prosecuted for, the murder or culpable homicide of the deceased person (or an equivalent offence in a different legal system).

Section 80 of the 2024 Act (also already in force) covers the situation where someone has applied to the court to be appointed as executor and the court is considering that application.

Section 80 inserts a new section into existing legislation on executors. The inserted section requires the court to refuse to appoint a person as executor where the court is satisfied that the person has been convicted of, or is being prosecuted for, the murder or culpable homicide of the deceased, or an equivalent offence in a different legal system.[xxvi]

xxvi Confirmation of Executors (Scotland) Act 1858, section 6A inserted by the Trusts and Succession (Scotland) Act 2024, section 80.

Reform of inheritance law

This section discusses the reform of inheritance law.

- First, it looks at the policy case for reform to happen, as well as the challenges associated with such a move.
- Second, it summarises the Scottish Government's attempts at reform so far, where it failed to find a policy consensus among interested individuals and organisations on key proposals.

The case for reform - and the difficulties for policymakers

The main piece of legislation on inheritance in Scotland, the Succession (Scotland) Act 1964, is now sixty years old. The law is widely recognised as being overdue for reform, as society has changed significantly over the past half century.

People are living longer and many more people own their own homes. Families have changed too, with more 'blended families' and many people choosing to live with their partner, rather than marry. Just over a third of our population is single. Scotland's population is also ageing, with the percentage of those aged over 65 having increased fairly significantly.

There is a need for clear and fair laws which reflect modern society. In practice though, inheritance law is a difficult area to reform, particularly for minority governments concerned about policy controversy.

People disagree on many aspects of inheritance law, including how large a role governments should have in deciding what should happen to people's money and possessions on death. As the remainder of the briefing highlights, there are a range of key issues on which it is difficult to find public consensus.

The attempts to reform inheritance law (1986-2021)

This section of the briefing explores what happened when the Scottish Law Commission, and later the Scottish Government, tried to reform inheritance law.

First, **Table 2** below provides a high level summary of attempts to reform the law over the last thirty years or so. Later sections of the briefing consider what happened in more detail.

Table 2: Timeline of the attempts to reform Scottish inheritance law (1986-2021)

Date	Proposals
1986-1990	The Scottish Law Commission, the independent public body which makes recommendations for law reform, first published proposals on inheritance law. [12] They remain largely unimplemented.
2007-2009	Recognising that society had moved on since its previous work in the area, the Scottish Law Commission revisited the topic of inheritance law. The Commission published a report in 2009 recommending wide ranging reforms, covering both the situation where a will has been made and the situation where there is no will. [2]
2014	In **May 2014**, the Land Reform Review Group, an independent review group set up by the Scottish Government, published its final report. [13] Its wide-ranging report included a recommendation to abolish the distinction between heritable property (land and buildings) and moveable property (everything else) in inheritance law. Separately, in **August 2014**, the Scottish Government consulted on the more technical aspects of the Scottish Law Commission's 2009 report. [14]
2015	The Scottish Government launched its main consultation on the bulk of the Scottish Law Commission's 2009 report. [1]
2016	Following on from the 2014 consultation, [14] the Succession (Scotland) Act 2016 became law. It largely contains technical changes on which the Scottish Government had found policy consensus on consultation.
2018	In its response to the 2015 consultation, [15] the Scottish Government confirmed that, **on the law which applies when a will has been made**, it would not be progressing with its key proposals for reform. This was one of the most controversial policy areas from that consultation. **On the law which applies where there is no will**, the Government also acknowledged the absence of consensus on consultation on significant aspects of the 2015 reform proposals. The Government committed to further consultation.
2019	In the first half of 2019, the Scottish Government consulted on new proposals to reform the law which applies where a will had not been made. [3] The Government drew fresh inspiration from the law in Washington State and British Columbia (in Canada). [16]
2020	The Scottish Government published its response to the 2019 consultation. [4] The Government confirmed that, once again, it had been unable to achieve policy consensus on key aspects of its proposals. Significant reforms now seem some way off.
2024	The Trusts and Succession (Scotland) Act 2024 made a handful of further, relatively limited, changes to inheritance law.

What happened - in more detail

This section considers key reform proposals put forward by the Scottish Law Commission and the Scottish Government and why they failed to progress, even after several consultations.

The law which would apply when a will has been made

The Scottish Law Commission and the Government looked at the law which would apply where a will has been made aiming to exclude certain family members.

There were two key areas of controversy. First, whether protection from disinheritance should continue to apply to adult children and, second, whether the protection should be extended to cohabitants.

Should adult children still be protected from disinheritance?

The position of adult children proved a particularly tricky area for those involved in the reform efforts.

What was proposed

In 2009, the Commission suggested **two alternative replacement schemes** for the current law. [2]

- The first option would have **greatly increased** the freedom to disinherit adult children.
- The second option would have **decreased** that freedom.

Significant changes would have been introduced by either of the replacement schemes. However, most of the later media attention focused on the second option.

Under the **second option**, the Commission said that:

- Children, including adult children, should be able to inherit **a fixed share (25%)** of what they would have inherited if there had been no will.
- The distinction between **heritable property** (land and buildings) and **moveable property** (everything else) should be abolished.

Why was option 2 controversial?

Under **option 2**, the proposed **25% share** could be applied to land and buildings, including the family farm.

This contrasts with the current law, where farms which are directly owned by the deceased person (as **heritable property**) are outside the scope of legal rights. A farmer can safely make a will (and often does so) leaving the farm to the firstborn son.

It was the impact on the family farm that worried parts of the farming community. It lobbied the Government hard on this topic, arguing that if parts of farms had to be sold (to meet such claims) this would affect their commercial viability.

Other interested individuals and organisations had offered alternative views. For example, the report of the Land Reform Review Group (at para 16) considered it:

> “ should be a straightforward matter of social justice based on the current disadvantaged position of spouses and [the other] children”
>
> Land Reform Review Group, 2014[13]

What the outcome was

After a small flurry of related media headlines, it all went largely quiet on the Government side.

Finally, in late 2018, the Scottish Government confirmed what had long been suspected -

that any scheme to reform legal rights in this way had been abandoned. [15]

It seems it was not just the farming community that had concerns about what was planned – more generally, the Government had consulted and found the Scottish public divided. [17]

Should cohabitants be protected from disinheritance?

In 2009, the Commission had also recommended that, if a will was made which attempts to exclude a cohabitant, they should be protected from disinheritance. [2]

When the Scottish Government consulted in 2015, it heard mixed views on this idea. Some people argued that someone might have deliberately chosen not to marry to allow other people or organisations to benefit from the estate. For example, this might be the case where there were children from an earlier relationship who the testator wanted to benefit. [17]

In 2018, the Government also announced that it had decided to retain the current legal position. In other words, a person can make a will which does not leave anything to their cohabitant. [15]

The law which applies where no will was made

On consultation in 2015, the Scottish Government found more consensus around the idea of reforms to the law which applies when someone dies intestate, that is to say the law which applies where no will has been made. [17] However, in 2019, it had to consult again on two key issues from the first consultation. [3]

Issues faced by 'blended families'

One such issue was how to divide up the estate where there was a spouse or civil partner **and** children.

This has particular significance for 'blended families', where there are children from an earlier relationship. The Commission's original proposals here received some academic criticism. One concern was they had the effect of deceased person's step-children inheriting everything (via their surviving parent), at the expense of the children of the deceased person's earlier relationship. [18]

The Scottish Government suggested two new (alternative) proposals, [3] drawing inspiration from other countries. [16]

What should the law be for cohabitants?

In 2019, the Government also suggested alternatives to the original approach proposed for cohabitants in 2015. [3] The original approach retained the court's discretion on whether someone qualified as a cohabitant and how much they should get from the estate if they

did.

Some changes suggested by the Government in 2019 were aimed at creating a simpler scheme. The Government was also willing to revisit fundamental policy questions, such as whether cohabitants should have an automatic right to inherit and whether they should get as much as a spouse or civil partner.

The outcome of the 2019 consultation

This section of the briefing looks at the outcome of the 2019 consultation in more detail.

In terms of the Scottish Government's 2020 response to the consultation, [4] a distinction can be made between those policy areas in which there was no consensus among stakeholders and the public as to how to proceed and those policy areas where there was that consensus.

In summary, on the first category, fundamental reforms now seem a long way off. On the second category, there has been some progress, but several reforms remain outstanding.

A more detailed progress update is given in this final section of the briefing.

Key policy areas - no consensus on the way forward

> On key policy issues, such as how to treat 'blended families' and cohabitants where no will has been made, the overwhelming majority of respondents to the 2019 consultation agreed that the current law needs to be reformed.

Despite this, **the Government identified no clear consensus among those responding on the way forward**. This was both in terms of what the reforms should aim to achieve and, furthermore, how those aims should be delivered. [4]

In its 2020 response to the consultation, the Scottish Government said it would carry out **further research and evidence gathering** on areas of difficulty. [4]

On **2 September 2024**, the Scottish Government told SPICe that it had decided to work with the Scottish Civil Justice Hub (SCJH) to support research into aspects of inheritance law. [19] The SCJH is a venture led by Glasgow University's School of Law, in collaboration with the Scottish Government's Civil Law and Legal System Division. It has been in existence since 2021.

At the time of writing, there is no published information on any relevant research on the SCJH website. In September 2024, the Scottish Government said to SPICe:

> " We don't have a date yet for the completion of that work but it should help inform the next steps in due course."
>
> Scottish Government, 2024[19]

Back to the Scottish Law Commission again?

In its 2020 response to the consultation, the Scottish Government said that, once it had completed further research and evidence gathering, it would consider whether outstanding key policy issues should be referred as a law reform project to the Scottish Law Commission ('the Commission').

At this stage, it is hard to say whether this referral will happen. However, to place this in its wider policy context, if the Scottish Government does refer the topic to the Commission it will be at least fifteen years since the Commission last made recommendations to the Scottish Government on inheritance law. [2] It will be over thirty years since the Commission made its previous set of recommendations for reform of the area in 1990. [12]

Clearly, the law reform journey of inheritance law has the potential not to follow a linear path.

Areas where there was consensus among stakeholders

In 2020, the Government did also highlight a variety of discrete topics on which there was policy consensus and on which it said there would be further work. [4]

(Note that the Government was not entirely breaking new ground here, as some policy commitments mentioned in 2020 had first been made in 2018.) [15]

As discussed earlier in the briefing, two of these have now been made via the Trusts and Succession (Scotland) Act 2024. These are changes to the law where no will has been made, benefiting spouses and civil partners, and changes to the law on unlawful killers as executors.

Proposals which the Government identified in 2020 and which are still outstanding include: [4]

1. a review of the financial limits associated with the small estate procedure, the procedure that allows an estate to be wound up with less legal involvement than is required for larger estates
2. a consultation on raising the various financial thresholds associated with prior rights, which are relevant when someone dies without leaving a will
3. further consideration of what personal information about the deceased person and other family members should be publicly available from the documentation associated with the estate. Concerns about the risk of fraud have been raised with the current position.

In 2020, the Government said that, where legislation was necessary for reform here, it was committed to legislating at "the next available legislative opportunity." [4]

On points 1 and 2 above, the financial limits associated with the small estate procedure and the financial thresholds associated with prior rights can both be **amended by secondary legislation**.[xxvii] On point 3, the Scottish Government recently told SPICe it has not reached a view as to whether the issue could be dealt with by primary or secondary legislation. [20]

At the time of writing, no relevant consultations associated with possible primary or secondary legislation have been published by the Scottish Government.

xxvii Confirmation to Small Estates (Scotland) Act 1979, section 1(3); Succession (Scotland) Act 1964, sections 8 (1) and (3) & 9(1).

Bibliography

1 Scottish Government. (2015). Consultation on the Law of Succession. Retrieved from https://consult.gov.scot/civil-law-reform-unit/consultation-on-the-law-of-succession/

2 Scottish Law Commission. (2009). Report on Succession. Scot Law Com No 215. Retrieved from https://www.scotlawcom.gov.uk/files/7112/7989/7451/rep215.pdf

3 Scottish Government. (2019, February 17). Law of succession: consultation. Retrieved from https://www.gov.scot/publications/consultation-law-succession/

4 Scottish Government. (2020, May 19). Law of succession: consultation response. Retrieved from https://www.gov.scot/publications/scottish-government-response-consultation-law-succession/

5 Haley, L. (2024). Legal advice - where to go and how to pay, SPICe Briefing SB 24-24. Retrieved from https://bprcdn.parliament.scot/published/2024/5/16/3d4eb61f-2f9e-4078-98b6-b161db1a65c2/SB%2024-24.pdf

6 Haley, L. (2024, November 26). Adults with incapacity - 2024 update, SPICe Briefing SB24-54. Retrieved from https://digitalpublications.parliament.scot/ResearchBriefings/Report/2024/11/26/cee54472-779f-4332-9812-cb802ccfcd6b#9aeedf08-7f90-41fe-ab66-9c79b13d1b59.dita

7 Scottish Government. (2016, November 16). What to do after a death in Scotland - practical advice for times of bereavement: revised 11th edition. Retrieved from https://www.gov.scot/publications/death-scotland-practical-advice-times-bereavement-revised-11th-edition-2016-9781786522726/

8 Scottish Courts and Tribunal Service. (n.d.) Small Estate Guidance Notes. Retrieved from https://www.scotcourts.gov.uk/rules-and-practice/guidance-notes/dealing-with-a-deceased's-estate-guidance-notes

9 Scobbie, E.M. (2011). *Currie on Confirmation, para 11-11*. Edinburgh: W Green.

10 Scottish Government. (2015). Consultation on the Law of Succession, para 4.5.

11 Gretton , G.L., & Steven, A.J.M. (2024). *Property, Trusts and Succession, Fifth Edition, chapter 27, paras 27.62 and 27.63* . West Sussex: Bloomsbury Professional.

12 Scottish Law Commission . (1990). Report on Succession. Scot Law Com No 124. Retrieved from https://www.scotlawcom.gov.uk/files/6812/7989/6684/rep124.pdf

13 Land Reform Review Group. (2014). The Land of Scotland and the Common Good - Report of the Land Reform Review Group. Retrieved from https://www.gov.scot/publications/land-reform-review-group-final-report-land-scotland-common-good/documents/

14 Scottish Government. (2014). Consultation on Technical Issues Relating to Succession.

15 Scottish Government. (2018, October 18). Scottish Government response to the Consultation on the Law of Succession.

16 Scottish Government. (2018, November 21). Intestate succession in British Columbia and Washington State. Retrieved from https://www.gov.scot/publications/intestate-succession-in-british-columbia-and-washington-state/

17 Scottish Government. (2018). Analysis of Responses to the Consultation of the Law of Succession.

18 Reid, D. (2008, November 8). From the Cradle to the Grave: Politics, Families and Inheritance Law (2008). Edinburgh Law Review, 12 (3). pp. 391-417, 2008. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2925441

19 Scottish Government. (2024, September 2). Email from the Scottish Government to SPICe.

20 Scottish Government. (2025, January 23). Email from the Scottish Government to SPICe.

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