



Family Law (Scotland) Act 2006

2006 asp 2

Cohabitation

29 Application to court by survivor for provision on intestacy

- (1) This section applies where—
 - (a) a cohabitant (the “deceased”) dies intestate; and
 - (b) immediately before the death the deceased was—
 - (i) domiciled in Scotland; and
 - (ii) cohabiting with another cohabitant (the “survivor”).
- (2) Subject to subsection (4), on the application of the survivor, the court may—
 - (a) after having regard to the matters mentioned in subsection (3), make an order—
 - (i) for payment to the survivor out of the deceased’s net intestate estate of a capital sum of such amount as may be specified in the order;
 - (ii) for transfer to the survivor of such property (whether heritable or moveable) from that estate as may be so specified;
 - (b) make such interim order as it thinks fit.
- (3) Those matters are—
 - (a) the size and nature of the deceased’s net intestate estate;
 - (b) any benefit received, or to be received, by the survivor—
 - (i) on, or in consequence of, the deceased’s death; and
 - (ii) from somewhere other than the deceased’s net intestate estate;
 - (c) the nature and extent of any other rights against, or claims on, the deceased’s net intestate estate; and
 - (d) any other matter the court considers appropriate.
- (4) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor an amount which would exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased.
- (5) An application under this section may be made to—
 - (a) the Court of Session;

Status: This is the original version (as it was originally enacted).

- (b) a sheriff in the sheriffdom in which the deceased was habitually resident at the date of death;
 - (c) if at the date of death it is uncertain in which sheriffdom the deceased was habitually resident, the sheriff at Edinburgh.
- (6) Any application under this section shall be made before the expiry of the period of 6 months beginning with the day on which the deceased died.
- (7) In making an order under paragraph (a)(i) of subsection (2), the court may specify that the capital sum shall be payable—
 - (a) on such date as may be specified;
 - (b) in instalments.
- (8) In making an order under paragraph (a)(ii) of subsection (2), the court may specify that the transfer shall be effective on such date as may be specified.
- (9) If the court makes an order in accordance with subsection (7), it may, on an application by any party having an interest, vary the date or method of payment of the capital sum.
- (10) In this section—
 - “intestate” shall be construed in accordance with section 36(1) of the Succession (Scotland) Act 1964 (c. 41);
 - “legal rights” has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c. 41);
 - “net intestate estate” means so much of the intestate estate as remains after provision for the satisfaction of—
 - (a) inheritance tax;
 - (b) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse or surviving civil partner; and
 - (c) the legal rights, and the prior rights, of any surviving spouse or surviving civil partner; and
 - “prior rights” has the meaning given by section 36(1) of the Succession (Scotland) Act 1964 (c. 41).