



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### PART I

#### INTESTATE SUCCESSION

##### Modifications etc. (not altering text)

- C1** Pt. I applied (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991](#) (c. 55, SIF 2:3), **ss. 11(8), 89(2)** (with **ss. 45(3), 51(1), Sch. 12 para. 3**)  
Pt. I applied (5.1.1994) by [1993 c. 44](#), **ss. 10(5), 11(1), 64(2)** (with **ss. 30(5), 58(1)(4), Sch. 6 para. 4**).
- C2** Pt. I applied by [1991 c. 55](#), s. 12C(3) (as inserted (23.12.2016) by [Land Reform \(Scotland\) Act 2016](#) (asp 18), **ss. 109(4), 130(1)** (with s. 128); [S.S.I. 2016/365](#), reg. 2, sch. (with regs. 5-8))

#### **1 Assimilation of heritage to moveables for purpose of devolution on intestacy.**

(1) The whole of the intestate estate of any person dying after the commencement of this Act (so far as it is estate the succession to which falls to be regulated by the law of Scotland) shall devolve, without distinction as between heritable and moveable property, in accordance with—

- (a) the provisions of this Part of this Act, and
- (b) any enactment or rule of law in force immediately before the commencement of this Act which is not inconsistent with those provisions and which, apart from this section, would apply to that person's moveable intestate estate, if any;

and, subject to section 37 of this Act, any enactment or rule of law in force immediately before the commencement of this Act with respect to the succession to intestate estates shall, in so far as it is inconsistent with the provisions of this Part of this Act, cease to have effect.

(2) Nothing in this Part of this Act shall affect legal rights or the prior rights of a surviving spouse [<sup>F1</sup>or civil partner]; and accordingly any reference in this Part of this Act to an intestate estate shall be construed as a reference to so much of the net intestate estate

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*Changes to legislation: Succession (Scotland) Act 1964, Part I is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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as remains after the satisfaction of those rights, or the proportion thereof properly attributable to the intestate estate.

#### Textual Amendments

**F1** Words in s. 1(2) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), [Sch. 28 para. 1](#); [S.S.I. 2005/604](#), {art. (2)(c)}

## 2 Rights of succession to intestate estate.

(1) Subject to the following provisions of this Part of this Act—

- (a) where an intestate is survived by children, they shall have right to the whole of the intestate estate;
- (b) where an intestate is survived by either of, or both, his parents and is also survived by brothers or sisters, but is not survived by any prior relative, the surviving parent or parents shall have right to one half of the intestate estate and the surviving brothers and sisters to the other half thereof;
- (c) where an intestate is survived by brothers or sisters, but is not survived by any prior relative, the surviving brothers and sisters shall have right to the whole of the intestate estate;
- (d) where an intestate is survived by either of, or both, his parents, but is not survived by any prior relative, the surviving parent or parents shall have right to the whole of the intestate estate;
- (e) where an intestate is survived by a husband [<sup>F2</sup> wife or civil partner], but is not survived by any prior relative, the surviving spouse [<sup>F3</sup> or civil partner] shall have right to the whole of the intestate estate;
- (f) where an intestate is survived by uncles or aunts (being brothers or sisters of either parent of the intestate), but is not survived by any prior relative, the surviving uncles and aunts shall have right to the whole of the intestate estate;
- (g) where an intestate is survived by a grandparent or grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, the surviving grandparent or grandparents shall have right to the whole of the intestate estate;
- (h) where an intestate is survived by brothers or sisters of any of his grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, those surviving brothers and sisters shall have right to the whole of the intestate estate;
- (i) where an intestate is not survived by any prior relative, the ancestors of the intestate (being remoter than grandparents) generation by generation successively, without distinction between the paternal and maternal lines, shall have right to the whole of the intestate estate; so however that, failing ancestors of any generation, the brothers and sisters of any of those ancestors shall have right thereto before ancestors of the next more remote generation.

(2) References in the foregoing subsection to brothers or sisters include respectively brothers and sisters of the half blood as well as of the whole blood; and in the said subsection “prior relative”, in relation to any class of person mentioned in any paragraph of that subsection, means a person of any other class who, if he had survived the intestate, would have had right to the intestate estate or any of it by virtue of an earlier paragraph of that subsection or by virtue of any such paragraph and section 5 of this Act.

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#### Textual Amendments

- F2 Words in s. 2(1)(e) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), [Sch. 28 para. 2\(a\)](#); S.S.I. 2005/604, {art. (2)(c)}
- F3 Words in s. 2(1)(e) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), [Sch. 28 para. 2\(b\)](#); S.S.I. 2005/604, {art. (2)(c)}

### 3 Succession of collaterals.

Subject to section 5 of this Act, where brothers and sisters of an intestate or of an ancestor of an intestate (in this section referred to as “collaterals”) have right to the whole, or, in a case to which subsection (1)(b) of the last foregoing section applies, to a half, of the intestate estate, the collaterals of the whole blood shall be entitled to succeed thereto in preference to the collaterals of the half blood; but where the collaterals of the half blood have right as aforesaid they shall rank without distinction as between those related to the intestate, or, as the case may be, the ancestor, through their father and those so related through their mother.

### 4 ..... F4

#### Textual Amendments

- F4 S. 4 repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(2), [Sch. 2](#)

### 5 Representation.

- (1) Subject to section 6 of this Act, where a person who, if he had survived an intestate, would, by virtue of any of the foregoing provisions of this Part of this Act, have had right (otherwise than as a parent [<sup>F5</sup> spouse or civil partner] of the intestate) to the whole or to any part of the intestate estate has [<sup>F6</sup> failed to survive] the intestate, but has left issue who survive the intestate, such issue shall have the like right to the whole or to that part of the intestate estate as the said person would have had if he had survived the intestate.
- (2) The right of any issue entitled to share in an intestate estate by virtue of the foregoing subsection to be appointed to the office of executor on the intestate estate shall be postponed to the right thereto of any person who succeeds to the whole or part of the intestate estate by virtue of the foregoing provisions of this Act apart from this section and who applies for appointment to that office.

#### Textual Amendments

- F5 Words in s. 5(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), [Sch. 28 para. 3](#); S.S.I. 2005/604, {art. (2)(c)}
- F6 Words in s. 5(1) substituted (1.11.2016) by [Succession \(Scotland\) Act 2016 \(asp 7\)](#), s. 31(2), [sch. para. 1\(2\)](#); S.S.I. 2016/210, reg. 2(1)(a)(2)

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## 6 Division of intestate estate among those having right thereto.

If, by virtue of the foregoing provisions of this Part of this Act, there are two or more persons having right among them to the whole, or, in a case to which section 2(1)(b) of this Act relates, to a half, of an intestate estate, then the said estate, or, as the case may be, that half thereof, shall—

- (a) if all of those persons are in the same degree of relationship to the intestate, be divided among them equally, and
- (b) in any other case, be divided equally into a number of parts equal to the aggregate of—
  - (i) those of the said persons who are nearest in degree of relationship to the intestate (in this section referred to as “the nearest surviving relatives”) and
  - (ii) any other persons who were related to the intestate in that degree, but who have [<sup>F7</sup>failed to survive] him leaving issue who survive him;
 and, of those parts, one shall be taken by each of the nearest surviving relatives, and one shall be taken *per stirpes* by the issue of each of the said [<sup>F8</sup>persons who have failed to survive the deceased].

<sup>F9</sup> .....

### Textual Amendments

- F7** Words in s. 6(b) substituted (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(3)(a)**; S.S.I. 2016/210, reg. 2(1)(a)(2)
- F8** Words in s. 6(b) substituted (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(3)(b)**; S.S.I. 2016/210, reg. 2(1)(a)(2)
- F9** Words (which were added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

## 7 Saving of right of Crown *asultimus haeres*.

Nothing in this Part of this Act shall be held to affect the right of the Crown *asultimus haeresto* any estate to which no person is entitled by virtue of this Act to succeed.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 2(1)(ab) inserted by [2024 asp 2 s. 77\(1\)\(a\)](#)