



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### PART II

#### LEGAL AND OTHER PRIOR RIGHTS IN ESTATES OF DECEASED PERSONS

#### 11 Representation in, and division of, legitim.

- (1) Subject to the next following subsection, where a person (hereinafter in this section referred to as “the deceased”) dies [<sup>F1</sup>in circumstances where a child who has failed to survive the deceased] has left issue who survive the deceased, and the child would, if he had survived the deceased, have been entitled <sup>F2</sup>. . . to legitim out of the deceased’s estate, such issue shall have the like right to legitim as the child would have had if he had survived the deceased.

<sup>F3</sup> .....

- (2) If, by virtue of the foregoing subsection or otherwise, there are two or more persons having right among them to legitim, then the legitim shall—
- (a) if all of those persons are in the same degree of relationship to the deceased, 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 deceased (in this paragraph referred to as “the nearest surviving relatives”) and
    - (ii) any other persons who were related to the deceased in that degree and who (if they had survived him) would have been entitled to legitim out of his estate, but who have [<sup>F4</sup>failed to survive] him leaving issue who survive him and are entitled to legitim out of his estate;

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>F5</sup>persons who have failed to survive the deceased], being issue who are entitled as aforesaid.

<sup>F3</sup> .....

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**Changes to legislation:** Succession (Scotland) Act 1964, Section 11 is up to date with all changes known to be in force on or before 16 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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- (3) Nothing in the last foregoing subsection shall be construed as altering any rule of law as to collation of advances; and where any person is entitled to claim legitim out of the estate of a deceased person by virtue of subsection (1) of this section he shall be under the like duty to collate any advances made by the deceased to him, and the proportion appropriate to him of any advances so made to any person through whom he derives such entitlement, as if he had been entitled to claim such legitim otherwise than by virtue of the said subsection (1).
- (4) For the avoidance of doubt it is hereby declared that where any person is entitled by virtue of <sup>F6</sup> . . . subsection (1) of this section to legitim out of the estate of the deceased, and the deceased is not survived by any child, the proportion of the estate due to any surviving spouse in respect of *jus relict* or *jus relicta* shall be ascertained as if the deceased had been survived by a child.

#### Textual Amendments

- F1** Words in s. 11(1) substituted (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(4)(a)**; S.S.I. 2016/210, reg. 2(1)(a)(2)
- F2** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F3** 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**
- F4** Words in s. 11(2)(b) substituted (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(4)(b)(i)**; S.S.I. 2016/210, reg. 2(1)(a)(2)
- F5** Words in s. 11(2)(b) substituted (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(4)(b)(ii)**; S.S.I. 2016/210, reg. 2(1)(a)(2)
- F6** Words (which were inserted 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**

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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\(1\)\(a\)](#)