

FAMILY LAW (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Cohabitation

Section 29: Application to court by survivor for provision on intestacy

46. This section makes provision to allow applications to be made to the court by the surviving partner on the death of a cohabitant when that person has died intestate. The surviving partner may make such an application for a share in the deceased partner's estate although this is qualified by subsection (4) which specifies that any such award cannot exceed the amount which the survivor would have been entitled to under statutory rules of intestacy had the survivor been the spouse or civil partner of the deceased.
47. Subsection (2) provides that, if appropriate, courts may award either a capital sum or a transfer of property from the estate. A capital sum may be paid either on a specified date or in instalments, as is specified at subsection (7). Subsection (3) describes the matters which courts may take into account when considering making an order under section 29. Such matters include the size of the deceased cohabitant's estate and the nature and extent of any other claims on the estate.
48. Subsection (6) specifies that an application to the court under section 29 must be made within 6 months of the date on which the deceased died. Subsection (10) provides definitions of certain expressions used in the section. This section applies equally to same sex partners.