



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### PART II

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

#### **8 Prior rights of surviving spouse, on intestacy, in dwelling house and furniture.**

- (1) Where a person dies intestate leaving a spouse, and the intestate estate includes a relevant interest in a dwelling house to which this section applies, the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) where the value of the relevant interest does not exceed [<sup>F1</sup>£30,000 or such larger amount as may from time to time be fixed by order of the Secretary of State]—
    - (i) if subsection (2) of this section does not apply, the relevant interest;
    - (ii) if the said subsection (2) applies, a sum equal to the value of the relevant interest;
  - (b) in any other case, the sum of [<sup>F1</sup>£30,000 or such larger amount as may from time to time be fixed by order of the Secretary of State]:

Provided that, if the intestate estate comprises a relevant interest in two or more dwelling houses to which this section applies, this subsection shall have effect only in relation to such one of them as the surviving spouse may elect for the purposes of this subsection within six months of the date of death of the intestate.

- (2) This subsection shall apply for the purposes of paragraph (a) of the foregoing subsection if—
- (a) the dwelling house forms part only of the subjects comprised in one tenancy or lease under which the intestate was the tenant; or
  - (b) the dwelling house forms the whole or part of subjects an interest in which is comprised in the intestate estate and which were used by the intestate for carrying on a trade, profession or occupation, and the value of the estate as a whole would be likely to be substantially diminished if the dwelling house were disposed of otherwise than with the assets of the trade, profession or occupation.

*Status: Point in time view as at 26/11/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part II. (See end of Document for details)*

- (3) Where a person dies intestate leaving a spouse, and the intestate estate includes the furniture and plenishings of a dwelling house to which this section applies (whether or not the dwelling house is comprised in the intestate estate), the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) where the value of the furniture and plenishings does not exceed [<sup>F1</sup>£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], the whole thereof;
  - (b) in any other case, such part of the furniture and plenishings, to a value not exceeding [<sup>F1</sup>£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], as may be chosen by the surviving spouse:

Provided that, if the intestate estate comprises the furniture and plenishings of two or more such dwelling houses, this subsection shall have effect only in relation to the furniture and plenishings of such one of them as the surviving spouse may elect for the purposes of this subsection within six months of the date of death of the intestate.

- (4) This section applies, in the case of any intestate, to any dwelling house in which the surviving spouse of the intestate was ordinarily resident at the date of death of the intestate.
- (5) Where any question arises as to the value of any furniture or plenishings, or of any interest in a dwelling house, for the purposes of any provision of this section the question shall be determined by arbitration by a single arbiter appointed, in default of agreement, by the sheriff of the county in which the intestate was domiciled at the date of his death or, if that county is uncertain or the intestate was domiciled furth of Scotland, the sheriff of the Lothians and Peebles at Edinburgh.
- (6) In this section—
- (a) “dwelling house” includes a part of a building occupied (at the date of death of the intestate) as a separate dwelling; and any reference to a dwelling house shall be construed as including any garden or portion of ground attached to, and usually occupied with, the dwelling house or otherwise required for the amenity or convenience of the dwelling house;
  - (b) “furniture and plenishings” includes garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, articles of household use and consumable stores; but does not include any article or animal used at the date of death of the intestate for business purposes, or money or securities for money, or any heirloom;
  - (c) “heirloom”, in relation to an intestate estate, means any article which has associations with the intestate’s family of such nature and extent that it ought to pass to some member of that family other than the surviving spouse of the intestate;
  - (d) “relevant interest”, in relation to a dwelling house, means the interest therein of an owner, or the interest therein of a tenant, subject in either case to any heritable debt secured over the interest; and for the purposes of this definition “tenant” means a tenant under a tenancy or lease (whether of the dwelling house alone or of the dwelling house together with other subjects) which is not a tenancy to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply.

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#### Textual Amendments

F1 Words substituted by [Succession \(Scotland\) Act 1973 \(c. 25\), s. 1\(1\)\(a\)](#)

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

- C1 [S. 8](#) saved (25.7.1976) by [Prescription and Limitation \(Scotland\) Act 1973 \(c. 52\), s. 6\(2\), Sch. 1 para. 2\(f\)](#)
- C2 [S. 8\(1\)\(a\)\(b\)](#): it is provided that the fixed amount shall be £110,000 (26.11.1993) by [S.I. 1993/2690, art. 2](#) (which S.I. was revoked (1.4.1999) by [S.I. 1999/445, art. 3](#))
- C3 [S. 8\(3\)\(a\)\(b\)](#): it is provided that the fixed amount shall be £20,000 (26.11.1993) by [S.I. 1993/2690, art. 2](#) (which S.I. was revoked (1.4.1999) by [S.I. 1999/445, art. 3](#))

## 9 Prior right of surviving spouse to financial provision on intestacy.

- (1) Where a person dies intestate and is survived by a husband or wife, the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) if the intestate is survived by issue . . . <sup>F2</sup>the sum of [<sup>F3</sup>£4,000 or such larger amount as may from time to time be fixed by order of the Secretary of State, or]
- (b) if the intestate is not survived by issue . . . <sup>F2</sup>the sum of [<sup>F3</sup>£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], together with, in either case, interest at the rate of 4 per cent. per annum [<sup>F4</sup>or, at such rate as may from time to time be fixed by order of the Secretary of State,] on such sum from the date of the intestate's death until payment:
- Provided that where the surviving spouse is entitled to receive a legacy out of the estate of the intestate (other than a legacy of any dwelling house to which the last foregoing section applies or of any furniture and plenishings of any such dwelling house), he or she shall, unless he or she renounces the legacy, be entitled under this subsection to receive only such sum, if any, as remains after deducting from the sum [<sup>F3</sup>fixed by virtue of paragraph (a) of this subsection or the sum fixed by virtue of paragraph (b) of this subsection], as the case may be, the amount or value of the legacy.
- (2) Where the intestate estate is less than the amount which the surviving spouse is entitled to receive by virtue of subsection (1) of this section the right conferred by the said subsection on the surviving spouse shall be satisfied by the transfer to him or her of the whole of the intestate estate.
- (3) The amount which the surviving spouse is entitled to receive by virtue of subsection (1) of this section shall be borne by, and paid out of, the parts of the intestate estate consisting of heritable and moveable property respectively in proportion to the respective amounts of those parts.
- (4) Where by virtue of subsection (2) of this section a surviving spouse has right to the whole of the intestate estate, he or she shall have the right to be appointed executor.
- (5) The rights conferred by the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 on a surviving spouse in his or her deceased spouse's estate shall not be exigible out of the estate of any person dying after the commencement of this Act.
- (6) For the purposes of this section—

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- (a) the expression “intestate estate” means so much of the net intestate estate as remains after the satisfaction of any claims under the last foregoing section; and
- (b) the expression “legacy” includes any payment or benefit to which a surviving spouse becomes entitled by virtue of any testamentary disposition; and the amount or value of any legacy shall be ascertained as at the date of the intestate’s death.

#### Textual Amendments

- F2** 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**
- F3** Words substituted by Succession (Scotland) Act 1973 (c. 25), **s. 1(1)(b)**
- F4** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), **s. 4(a)**

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

- C4** S. 9 saved (25.7.1976) by Prescription and Limitation (Scotland) Act 1973 (c. 52), s. 6(2), **Sch. 1 para. 2(f)**
- C5** S. 9(1)(a): it is provided that the fixed amount shall be £30,000 (26.11.1993) by S.I. 1993/2690, art. 2, **Sch.** (which S.I. was revoked (1.4.1999) by S.I. 1999/445, **art. 3**)
- C6** S. 9(1)(b): it is provided that the fixed amount shall be £50,000 (26.11.1993) by S.I. 1993/2690, art. 2, **Sch.** (which S.I. was revoked (1.4.1999) by S.I. 1999/445, **art. 3**)

#### [<sup>F5</sup>9A. Provisions supplementary to ss. 8 and 9.

Any order of the Secretary of State, under section 8 or 9 of this Act, fixing an amount or rate—

- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) shall have effect in relation to the estate of any person dying after the coming into force of the order.]

#### Textual Amendments

- F5** S. 9A inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), **s. 4(b)**

### 10 Abolition of terce and courtesy, and calculation of legal rights.

- (1) The right of courtesy of a surviving husband in his deceased wife’s estate and the right of terce of a surviving wife in her deceased husband’s estate shall not be exigible out of the estate of a person dying after the commencement of this Act.
- (2) The amount of any claim *tojus relictī, jus relictæ* or legitim out of an estate shall be calculated by reference to so much of the net moveable estate as remains after the satisfaction of any claims thereon under the two last foregoing sections.

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**10A** ..... F6

**Textual Amendments**

**F6** S. 10A (which was added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) s. 2) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

**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 predeceased by a child who has left issue who survive the deceased, and the child would, if he had survived the deceased, have been entitled . . . <sup>F7</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.

..... F8

(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 predeceased 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 predeceased persons, being issue who are entitled as aforesaid.

..... F8

(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>F9</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 relictæ* shall be ascertained as if the deceased had been survived by a child.

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#### **Textual Amendments**

- F7** Words repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(2), **Sch. 2**
- F8** 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**
- F9** 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**

### **12 Legitim not to be discharged by ante-nuptial marriage contract.**

Nothing in any ante-nuptial contract of marriage executed after the commencement of this Act shall operate so as to exclude, on the occurrence of the death of either party to the marriage, the right of any child of the marriage (or of any issue of his coming in his place by virtue of the last foregoing section) to legitim out of the estate of that party unless such child or issue shall elect to accept in lieu of legitim the provision made in his favour under the contract.

### **13 Equitable compensation.**

Every testamentary disposition executed after the commencement of this Act by which provision is made in favour of the spouse or of any issue of the testator and which does not contain a declaration that the provision so made is in full and final satisfaction of the right to any share in the testator's estate to which the spouse or the issue, as the case may be, is entitled by virtue of *jus relictii*, *jus relictiae* or legitim, shall (unless the disposition contains an express provision to the contrary) have effect as if it contained such a declaration.

..... **F10**

#### **Textual Amendments**

- F10** 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**

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