



November 2018

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Scottish succession law reform



Ciara Wanstall
Solicitor

The Scottish Government has agreed reforms to the succession rules, following the 2015 public consultation.

Changes to the intestacy law

Intestacy is the situation where an individual died without making a Will. Currently, the rights of a spouse or issue (children) where the deceased died intestate are limited. A spouse who survives a Scottish deceased is entitled to:

1. *prior rights* (i.e. they will inherit the matrimonial home up to a limit of £473,000, furniture up to a value of £29,000 and the sum of £50,000 or £89,000 depending on whether the deceased left children); and
2. *legal rights* (i.e. one-third of the deceased's *movable estate* such as bank accounts (if there are issue) or one-half of the *movable estate* (if no issue)). The deceased children would also be entitled only to a one-third share of the movable estate (if surviving

spouse) or a one-half share of the estate (no surviving spouse).

The rest of the deceased's estate would then pass to the surviving parents or siblings, which was unfair in many circumstances. Most of those without a Will had not intended that parents or siblings should inherit instead of it all going to their spouse and children.

The proposed reform will allow the whole estate to be inherited by the surviving spouse (or if none then by the surviving issue). This will simplify the process and provide a better recognition for the rights of the deceased's spouse or children. However, it isn't law yet and further discussions will be held on how to deal with intestate estates, where the deceased is survived by both spouse and issue.

It's another example of how important it is to make decisions about one's hard earned assets and not leave it up to the government to decide who inherits – make a Will instead!

Removal of the distinction between heritable and movable property denied

Although recommended by the Land Reform Review Group (LRRG), the Scottish Government have rejected the proposal to remove the distinction between heritable (land, property etc) and movable estate (cash, shares, jewellery etc). The Scottish Government explained that removal of the distinction will would fail to lead to changes in the pattern of land ownership and would likely cause difficulties in administration.

A Will allows you to decide how your estate is distributed and it allows you to transfer both your heritable and movable property to any individual.

For advise on creating an English Will, please contact Ciara Wanstall on 01604 463101 or [click here](#) to email Ciara. For Wills valid in Scotland we can work with our Law Exchange International firm in Scotland.

The testator's presumed intentions takes priority when interpreting Wills.



Rachel Hawkins
Senior Solicitor

A recent High Court judgment considered the intention of the testator when interpreting an ambiguous clause in her Will.

Mrs Hamblen-Thomas left by Will in 1968, her whole estate to her son Edwin for his lifetime, with the remainder to his children. If Edwin died without children, the residue was to pass to her close friend Enid Simpson, and if Enid had died before her, the residue to Enid's daughter Victoria. Mrs Hamblen-Thomas died in 1973, Enid Simpson died in 1998 and Edwin died without children in 2014.

The issue was that the order of death in this case did not accord to the order of death in the Will, therefore it was unclear whether Victoria Simpson could inherit. The executors of Mrs Hamblen-Thomas' estate argued that the gift to Enid failed because she did not die after Edwin. Victoria challenged this on the basis that the Will intended for Enid to be able to inherit should Edwin die without children.

The High Court, held that Mrs Hamblen-Thomas must have intended the gift over to Enid to take effect despite the fact that Enid died before Edwin. The court must give effect to the presumed intentions of the testator.

Of course it's better still to avoid the cost of a court case and to have your Will written as clearly as possible without needing interpretation!

Should you wish to create a Will, please contact Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.

Modernisation of the Probate procedure



Alexandra Svennevik
Solicitor

The Government has announced amendments to the procedure for applying for probate in England and Wales, which will come into force on 27 November 2018. A Grant of Probate is the document which enables the executor to collect the assets.

Changes include:

- online forms for personal applications ;
- permitting a "statement of trust"(instead of a sworn oath;

This modernisation is intended to make it easier for personal representatives to administer the estate. Similar changes to tax returns resulted first in personal and financial details being published accidentally on the internet and more recently in a return to paper applications for certain taxpayers where the online version is known to result in too high a tax bill.

For advice on estate administration, please contact Alexandra Svennevik on 01604 463342 or [click here](#) to email Alexandra.

Probate Fees to Increase Hugely



Carolyn Bagley
Partner

The spectre of an additional stealth tax on deceased estates has risen again.

On 5 November 2018, Justice Minister Lucy Frazer MP announced that a new structure of court fees will be implemented to obtain a Grant of Probate, which will be banded and based on the size of the estate. A Grant of Probate is the legal authority for the Personal Representatives of a deceased's estate to sell or transfer the deceased's property, money and personal possessions.

Currently, a flat fee of £215 applies if a Grant of Probate is applied for by friends or family, or £155 if a solicitor completes the process. The new legislation changes the system completely to charge probate fees at 0.5% of the value of the estate. This means a new charge of up to £6,000 (the maximum levy for estates worth over £2 million) will apply to estates.

The government is yet to announce the date on which the new legislation will come into force and some groups are lobbying against this as a stealth tax. However, a short timeframe may be given, which will mean that bereaved families, and their solicitors, will need to agree the paperwork in haste – to ensure where possible, a Grant of Probate is obtained under the current fixed fee system, using estimated figures where permissible.

For more information, please contact Carolyn Bagley on 01908 247015, or [click here](#) to read our previous article on the proposed legislation.

New IHT law captures trusts created by non-UK settlors



Eric Wardle
Chartered Accountant

Currently, foreign assets in a settlement are 'excluded' for inheritance tax (IHT) purposes, provided the settlor was not UK domiciled (the UK being his "home") or deemed domiciled (not his home country but resident here for a certain number of years) at the time of creating the settlement - or at the time of adding property to the settlement. HMRC have historically claimed that a new settlement is made each time property is added to an existing settlement and so the settlor needed to be still non UK domiciled for those assets to be free of IHT.

The Court of Appeal in the case of Drelan, held that a settlement is 'made' when it is first created and not every time there is an addition to the settlement. As a result, a settlor could continue adding property to a tax-free excluded trust, even after becoming resident in the UK.

There are settlors who are no longer non UK domiciled and may wish to take advantage of this new rule by adding foreign assets to those tax-free settlements.

To avoid the Dreelan case allowing a mass addition of tax-free assets to foreign settlements, the government has announced an amendment to the IHT legislation which is not, however, expected to come into effect until 6 April 2020. The amendment will state that any property added to a settlement after creation, and after the settlor has become (deemed) UK domiciled, is 'relevant property' which is subject to inheritance tax. This changes completely the definition of 'excluded property' and settlors currently whose domicile may be changing should take urgent advice about adding more assets to a trust.

For advice on the inheritance tax implications of foreign settlements, please contact Eric Wardle on 01604 463110, or [click here](#) to email Eric.



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