

# **Scottish Government Response to Consultation on the Law of Succession**

**May 2020**



**Scottish Government**  
Riaghaltas na h-Alba  
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## **We Asked**

We published the Scottish Government 'Consultation on the Law of Succession 2019' for 12 weeks, between 17 February and 10 May 2019.

The central focus of the paper was on how, in the absence of a will, an estate should be split where there are both a surviving spouse/civil partner and children. We sought views on alternative approaches to reform of the law of intestacy with reference to two regimes which operate elsewhere – British Columbia, Canada and Washington State, USA.

We also sought views on extending an alternative approach to cohabitants. The aim was to test respondents' views on what cohabitants' rights on intestacy should be, and whether these have shifted since we last consulted on this matter.

Tied in with these was whether step-children should have the same rights in intestate succession as biological or adopted children.

In addition, there were a number of other discrete issues on which views were sought. These were:

- whether a murderer should continue to be able to act as executor in their victim's estate;
- the time limit for temporary aliment;
- information publicly available after a grant of confirmation;
- the value of the small estates limit;
- equitable compensation; and,
- timeshare contracts which purport to continue in perpetuity.

## **You Said**

We received a total of 59 responses from a mix of the legal profession, legal academia and individuals.

The overwhelming majority of respondents agreed that the current approach to intestate succession needs to be reformed, and agreed that the aim of reform should be to reflect generally expected outcomes. Despite this, there was no clear consensus amongst respondents on the way forward both in terms of what the reforms should achieve and, therefore, what the reforms should look like.

Of the two alternative approaches to intestate succession discussed in our consultation, more than half of respondents favoured neither approach.

On cohabitation, almost two-thirds of respondents agree that cohabitants should continue to apply to the courts in order to obtain financial

provision on intestacy. On the range of questions involving treatment of a cohabitant where a deceased person is also survived by a spouse/civil partner respondents' views were more mixed. Broadly, however, they reflect the idea that marriage and civil partnership should be accorded greater recognition in intestate succession than cohabitation.

There was, however, a degree of consensus and agreement on the discrete issues we consulted on. A majority agreed that:

- there should be a time limit for claims of temporary aliment;
- a person convicted of murder/culpable homicide should not be allowed to be executor to their victim's estate;
- personal data publicly available with a Grant of Confirmation causes difficulty for beneficiaries, executors, the deceased's family and others; and,
- the small estates limit should be reviewed.

Although not a formal response to our consultation, we have also listened to the views of a number of legal academics given at the Symposium on the Reform of Succession Law at the University of Edinburgh Law School. The Symposium, and a number of articles<sup>1</sup> arising from it, raised a number of relevant points about intestate succession that have had an effect on our approach going forward.

## **We Did**

We have already published those responses where consent was given to do so alongside the consultation paper on the consultation hub:

[https://consult.gov.scot/justice/law-of-succession-2019/consultation/published\\_select\\_respondent](https://consult.gov.scot/justice/law-of-succession-2019/consultation/published_select_respondent).

We understand the reservations and concerns expressed by respondents to both alternative models of intestate succession proposed in our consultation. We recognise, however, the overwhelming view that intestate succession should generally reflect individual expectations about how a deceased person's estate should devolve.

We accept, however, that this measure is both ambiguous and inconclusive. As a number of respondents said, expectations about how a deceased person's estate devolves is difficult to define and apply. There will be areas where individuals and families have differing expectations.

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<sup>1</sup> The presentations and articles by Dr Dot Reid and Professor Kenneth G. C. Reid, and the article by Dr Alexandra Braun should be singled out. See *Edinburgh Law Review*, Volume 24, Issue 1 (2020).

We will seek, therefore, to explore whether the views of the wider general public regarding intestate succession can be better understood. We will look at ways to facilitate or carry out research and analysis that can be used to inform future reform on this matter. Understanding the presumed intent of the general testator will help to form a pathway for any future reform.

As part of an earlier consultation process, we committed to legislating in order that, when an intestate deceased is survived by a spouse or civil partner and no children, the survivor inherits the whole estate. We remain committed and will make the necessary changes at the next legislative opportunity.

We will consider further how to take forward reforms on the discrete issues (outlined above) for which there was a measure of consensus among respondents. Where required, this will be undertaken at the next legislative opportunity. In addition, we will look at the issue of consulting on the prior right thresholds.

Once we have the benefit of completing further research and evidence gathering, we will consider whether the issue of intestate reform, including the issue of cohabitants rights in succession, should be referred to the Scottish Law Commission. The Scottish Law Commission are currently undertaking a reform project on aspects of family law. As part of this project, the Commission recently published a discussion paper on the cohabitation provisions in the Family Law (Scotland) Act 2006.<sup>2</sup> Any proposed reform on these matters is likely to have a bearing on the shape of any future reform proposals for the succession rights of cohabitants so we will consider carefully any future recommendations. We will also continue to consider this matter in light of any new legislation and any impact it might have on this issue.

We will prepare and promote a campaign to raise awareness of how the current intestate regime operates and how, if these default rules are not suitable to an individual's circumstances, they should make a will to give effect to their wishes.

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<sup>2</sup> Discussion Paper on Cohabitation (DP 170, 2020). Available at <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/aspects-of-family-law/>.



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