



Scottish Law Commission

promoting law reform

news release • news release • news release • news release • news release • news release

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS 15 APRIL 2009.

A NEWS CONFERENCE WILL BE HELD AT 1100 HOURS ON 15 APRIL

REPORT ON SUCCESSION PUBLISHED

The Scottish Law Commission today publishes its Report on the Law of Succession. Launching the Report, Professor Joseph Thomson, the lead Commissioner on the Succession project said: "The aim is to simplify the law radically by providing rules which are easily understood and which at the same time reflect the nature of family structures in contemporary Scotland."

The Report recommends that when a person dies intestate ie without making a will, the deceased's surviving spouse or civil partner will inherit the whole estate up to the value of a threshold sum after which the remainder of the estate will be shared equally with the deceased's issue ie his children and grandchildren. The Report proceeds on the basis that the threshold sum should be £300,000 but recognises that the precise sum is a political question for the Scottish Parliament. Where there is no surviving spouse or civil partner, the deceased's issue will inherit the whole estate.

If there is a will and the deceased's surviving spouse or civil partner is disinherited, the Report recommends that they will be entitled to a legal share amounting to 25% of what they would have inherited if the deceased had died intestate. If children are disinherited, the Report offers two possible scenarios. First, the children would be entitled to a legal share amounting to 25% of what they would have inherited if the deceased had died intestate. Second, and more radically, dependent children should be entitled to a capital sum calculated by reference to their maintenance needs: but otherwise a person would be free to leave his estate as he or she chose and his wishes could not be disturbed by claims from adult children. Which scheme should be adopted is again a political question for the Scottish Parliament.

The Report recommends that cohabitants should be entitled to a percentage of what they would have received if they had been the deceased's spouse or civil partner. The appropriate percentage will be determined by considering only the length and quality of the cohabitant's relationship with the deceased.

The Report also builds on a number of recommendations in the Commission's Report on Succession published in 1990 which have not yet been implemented. These deal with more technical matters and will again further simplify and clarify the law.

Apart from recommending that there should no longer be a need to provide caution before an executor-dative can be confirmed, the Report does not address matters relating to executors and the administration of estates. The Commission intends to review the law in this area in a future project, possibly to form part of its Eighth Programme of Law Reform.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Professor George L Gretton, Patrick Layden QC TD, Professor Joseph M Thomson and Colin J Tyre QC. The Chief Executive is Malcolm McMillan.

2. **A News Conference will be held on 15 April 2009 at 1100 hours** at the Commission's office, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk). You are invited to be represented. Media copies of the paper will be available at the News Conference or can be collected from the Commission's office. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (tsoshop.co.uk).

3. Further information can be obtained by contacting Charles Garland at the above address.