In the field of civil justice, pending procedures and proceedings initiated before the end of the transition period will continue under EU law. The e-Justice Portal, on the basis of a mutual agreement with the UK, will maintain the relevant information related to the United Kingdom until the end of 2024.

Succession

Scotland

1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

A person can leave property on death to another by making a bequest in a will. The Requirements of the Writing (Scotland) Act 1995 requires wills made after 1 August 1995 to be in writing and signed by the granter.

Individuals may also hold moveable and immoveable property with the title in joint names and to the survivor (this is commonly referred to as a survivorship clause).

Individuals may also hold moveable and immoveable property with the title in their own name or with others, with a special destination clause of that person's property or share therein, in favour of another in the event of death.

Where there is no will, survivorship clause or special destination in place, property will pass in terms of the Succession (Scotland) Act 1964.

2 Should the disposition be registered and if yes, how?

There is no requirement to register a will in Scotland.

Title to immoveable property including titles with a special destination or a survivorship clause will be registered in either the Register of Sasines or the Land Register of Scotland.

In some instances, title to moveable property, including those with a special destination or survivorship clause will be registered, for instance in a company's Shareholder Register.

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

Under Scots law, it is possible for a child or surviving spouse/civil partner to claim legal rights from moveable estate on the death of a parent/spouse/civil partner even where the deceased left a will. Legal rights are a protection from disinheritance. Children have a right to share one third of the deceased's moveable estate (money, shares etc) if there is a surviving spouse or civil partner or one half if there is no surviving spouse or civil partner. A surviving spouse/civil partner has a right to one third of the deceased's moveable estate (money, shares etc) if there are children or one half if there are none.

4 In the absence of a disposition of property upon death, who inherits and how much?

Property will pass under the Succession (Scotland) Act 1964 in the order set out below.

(a) PRIOR RIGHTS

A widow, widower or surviving civil partner (the survivor) has prior rights in his or her late spouse or civil partner's estate.

If the person who died owned a house, and the survivor lived there, he or she is entitled to the house and the furnishings and furniture of that house, subject to certain limits. The survivor can claim:

the house, as long as its value is less than £473000

the furnishings and furniture up to the value of £29000.

If the person who died left children or descendants, the survivor is entitled to the first £50000 out of the estate. If the person left no children or descendants, the survivor is entitled to the first £89000.

(b) LEGAL RIGHTS

If any estate remains after 'prior rights' have been met, a surviving spouse or civil partner and children are entitled to certain "legal rights" from the "moveable estate" of the person who died as set out in answer to 3 above

(c) FREE ESTATE

After the prior and legal rights have been satisfied, the rest of the intestate estate "devolves" according to legal rules, in the following order

Children

If parents and siblings survive, parents inherit half and brothers and sisters inherit half

Brothers and sisters, if no parents survive

Parents, if no brothers and sisters survive

Surviving spouse or civil partner

Uncles or aunts (on either parent's side)

Grandparents (on either parent's side)

Brothers and sisters of grandparents (on either parent's side)

Other ancestors – more remote than grandparents

The Crown

5 What type of authority is competent:

5.1 in matters of succession?

5.2 to receive a declaration of waiver or acceptance of the succession?

5.3 to receive a declaration of waiver or acceptance of the legacy?

5.4 to receive a declaration of waiver and acceptance of a reserved share?

In most estates, it is necessary for an executor (either named in a deceased's will or appointed by the sheriff court) to obtain 'confirmation' from the sheriff court. The grant of confirmation is the executor's title to administer the estate outlined in the inventory of estate which accompanies the application for confirmation - and also gives the executor authority to deal with all succession related matters in connection with that estate.

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

In most estates it is necessary to have an executor to administer an estate appointed either under a will or by the sheriff court (an executor dative) in circumstances where there is no valid will or if the named executors are unable or unwilling to act.
in most estates, the executor(s) must apply to the sheriff court for confirmation.
An executor dative, except where the estate is not subject to the small estate procedure and in certain other limited circumstances, will be required to obtain indemnity insurance (bond of caution) before beginning to administer an estate.
An Inventory listing all items of the estate together with the will, if there is one, must be submitted with the application for confirmation.
The court grants confirmation in relation to the items of estate in the inventory and that is the executor's authority to ingather those items.
Once the estate is ingathered, the executor must then pay any debts and tax due before distributing the estate in terms of the will or the Succession (Scotland) Act 1964.

7 How and when does one become an heir or legatee?

Where there is a will, it will name the beneficiaries or class of beneficiaries who should inherit part or all of the estate subject to any claim for legal rights.
Where there is no will, the rights and order of who will inherit the estate is set out in the Succession (Scotland) Act 1964.
Where there is no will a surviving cohabitant may also apply to the court within six months of the death for an award from the estate under the Family Law (Scotland) Act 2006.
'Vesting' is the point at which a beneficiary acquires 'a right of property' in respect of a legacy. Under the Succession (Scotland)1964 Act, the estate vests in the executor for the purposes of the administration. At this point, the beneficiary acquires a personal right against the executor for delivery of the subject of the legacy in his/her favour. When the subject of the legacy is delivered to the beneficiary, he or she acquires a 'real right'.
The timing of vesting is a matter of what the deceased intended determined by reference to his or her will.

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

The executor will be liable to pay all debts due by the estate before distributing the estate to beneficiaries. The estate should not be distributed until six months from date of death to allow creditors time to make a claim. If a creditor does not make a claim within 6 months and the executor distributes the estate, the beneficiaries are in theory liable for any debts to the extent of their legacy.

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

The title of immoveable property can be transferred to a beneficiary by means of a disposition which should be registered in the Land Register for Scotland, or by attaching a signed document (docket) to the confirmation (or to a certificate of confirmation).
If there is a survivorship clause, the title of the property automatically passes to the surviving owner and an extract of the death certificate should be placed with the title deeds.

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

Not all estates require the confirmation from the court – some fundholders will pay out without the need for confirmation. If confirmation is required, an executor must be appointed, either named in a will or by an application for appointment of an executor dative by the court.

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

An executor appointed, either under a will or by the court, who is granted confirmation by the court will administer the estate. However, in some cases, fundholders will transfer the deceased's estate without the need for confirmation.

9.3 What powers does an administrator have?

To ingather the estate identified in the inventory in the application for confirmation.
To pay debts and taxes.
To distribute the remaining estate to beneficiaries under the will or, where there is no will, under the Succession (Scotland) Act 1964.
To pursue debts due to the deceased.
If a deceased has sustained personal injuries before his or her death, that person's executor has like rights to damages as the deceased.
The executor has the right to continue an action for damages for personal injury which was raised by the deceased before death and which has not concluded.
If an action for damages for defamation has been raised by the deceased and not concluded at the time of death, the right to damages can be transmitted to the executor.
If the deceased had a right to damages for breach of contract, that can be the subject of an action continued or raised by the executor.

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

There are no documents required to be issued proving the status and rights of beneficiaries. Items of estate will be transferred to the beneficiaries by the executor administering the estate and for some this will involve a formal transfer, and possibly registration, of title. As noted above, if there is a survivorship clause, the title of the property automatically passes to the surviving owner and an extract of the death certificate should be placed with the title deeds. An inheritance tax form will have to be submitted as part of the confirmation process in Scotland, even if no Inheritance Tax is due.

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Last update: 12/12/2020

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