

Your guide to Scots Law

Believe in children



Barnardo's Scotland

The law in Scotland is different so you must take the following points into consideration. We also strongly recommend that you seek the professional advice of a solicitor.

Executors

In Scotland the Executors of your Estate, known as Executors Nominate, may have to obtain Confirmation from the Court before winding up your Estate. In the event that your Executors die before you and you have not named any replacement, a residuary beneficiary may become Executor of your Estate. If you were to die without leaving a Will the Court may appoint an Executor Dative, who will wind up your Estate in line with the Scots Law Rules of Intestate Succession.

Having your Will witnessed

In Scotland, you must sign the foot of each page of your Will and the last page. Only one independent witness is required to sign the last page. A Will written, signed and dated in the deceased's own handwriting, but without witnesses, is valid under Scots Law. However, if such a Will is relied upon to apply for Confirmation, it is necessary to prove that the

handwriting and signature are authentic. Therefore, it is advisable to seek the professional advice of your solicitor when making a Will, to ensure that all your wishes are carried out and the Will is fully effective.

Potential claims on your Estate

Under Scots Law, a spouse and children are protected and cannot be disinherited. Even if your Will is valid, your surviving spouse and children can claim "Legal Rights" from your moveable estate i.e. bank balances, stocks, shares etc., but not the family home which is heritable estate. Your spouse and children may be entitled to claim a fixed percentage of your moveable estate. This is particularly relevant for second marriages or complicated family circumstances.

Marriage and Divorce

Marriage, under Scots Law, does not make an existing Will invalid. But if you intend including your spouse in your Will it is important that you update your Will as soon as possible. In Scotland it is essential that new Wills are drawn up after a divorce.

Children

With the birth of a new child it is advisable to consider the terms of your Will.