

Making a Will in Scotland

We hope this leaflet will act as a useful introduction to the law and procedures which apply in Scotland, and as an addition to Oxfam's Guide to making a Will. However, to avoid any difficulties in carrying out your wishes, we would advise you to consult a solicitor.

Prior Rights

Under Scottish Law the surviving spouse has Prior Rights to part or all of the estate. Following that are the Legal Rights of any children.

Legal Rights

The Scottish answer to the problem of family disinheritance. Under Legal Rights:

- A person is not absolutely free to distribute his or her estate in a Will as they wish. The spouse and descendants have some claim on the estate. This is commonly known as Legal Rights.
- It is a duty of the executors to inform relatives of their Legal Rights.

A claim can be made when a spouse or children do not receive the amount they are entitled to under Legal Rights or if the amount they have been left is less than they would receive in Legal Rights.

The size of the claim is determined by the size of the 'moveable estate', that is, all possessions except land and buildings, at the time of death.

The spouse or child cannot claim both the legacy and Legal Rights. They must choose which to take.

Life-changing events

It is advisable to update your Will as your personal circumstances change.

- In Scotland marriage does not invalidate an existing Will. Unless a new Will is made, a husband or wife can only inherit if they claim Legal Rights.
- Bequests to a husband or wife are not automatically invalidated by a subsequent divorce or separation.
- The birth of a child can invalidate an earlier Will, if it does not provide for the child. It is best to put the matter beyond doubt by making a new Will without delay.

Writing a Will

Under Scottish law children aged 12 or over who permanently live in Scotland can make a Will.

Witnessing a Will

- The person making the Will must sign the Will at the bottom of each page.
- A person who does not stand to benefit from the Will should sign the last page.
- Only one witness is required in Scotland.
- A 'holograph' Will – that is written and signed and dated in the person's own handwriting – is valid in Scotland even if it has not been witnessed.



Oxfam has a dedicated Legacy Adviser for Scotland, who can answer any questions you might have about making a Will or leaving a legacy. This service is completely free, confidential, and there is no obligation to support Oxfam. Call or write to Glenn Scott (pictured) at: Oxfam House, John Smith Drive, Cowley, Oxford OX4 2JY. Telephone 01865 472073. Email legacy@oxfam.org.uk



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