



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### PART II

#### LEGAL AND OTHER PRIOR RIGHTS IN ESTATES OF DECEASED PERSONS

#### **9 Prior right of surviving spouse [<sup>F1</sup>or civil partner] to financial provision on intestacy.**

- (1) Where a person dies intestate and is survived by a husband [<sup>F2</sup>, wife or civil partner the survivor] shall be entitled to receive out of the intestate estate—
- (a) if the intestate is survived by issue . . . <sup>F3</sup>the sum of [<sup>F4</sup>£4,000 or such larger amount as may from time to time be fixed by order of the Secretary of State, or]
  - (b) if the intestate is not survived by issue . . . <sup>F3</sup>the sum of [<sup>F4</sup>£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State],
- together with, in either case, interest at the rate of 4 per cent. per annum [<sup>F5</sup>or, at such rate as may from time to time be fixed by order of the Secretary of State,] on such sum from the date of the intestate's death until payment:

Provided that where the surviving spouse [<sup>F6</sup>or civil partner] is entitled to receive a legacy out of the estate of the intestate (other than a legacy of any dwelling house to which the last foregoing section applies or of any furniture and plenishings of any such dwelling house), he or she shall, unless he or she renounces the legacy, be entitled under this subsection to receive only such sum, if any, as remains after deducting from the sum [<sup>F4</sup>fixed by virtue of paragraph (a) of this subsection or the sum fixed by virtue of paragraph (b) of this subsection], as the case may be, the amount or value of the legacy.

- (2) Where the intestate estate is less than the amount which the surviving spouse [<sup>F6</sup>or civil partner] is entitled to receive by virtue of subsection (1) of this section the right conferred by the said subsection on the surviving spouse [<sup>F6</sup>or civil partner] shall be satisfied by the transfer to him or her of the whole of the intestate estate.

*Changes to legislation: There are currently no known outstanding effects for the  
 Succession (Scotland) Act 1964, Section 9. (See end of Document for details)*

- (3) The amount which the surviving spouse [<sup>F6</sup>or civil partner] is entitled to receive by virtue of subsection (1) of this section shall be borne by, and paid out of, the parts of the intestate estate consisting of heritable and moveable property respectively in proportion to the respective amounts of those parts.
- (4) Where by virtue of subsection (2) of this section a surviving spouse [<sup>F6</sup>or civil partner] has right to the whole of the intestate estate, he or she shall have the right to be appointed executor.
- (5) The rights conferred by the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 on a surviving spouse in his or her deceased spouse's estate shall not be exigible out of the estate of any person dying after the commencement of this Act.
- (6) For the purposes of this section—
- (a) the expression “intestate estate” means so much of the net intestate estate as remains after the satisfaction of any claims under the last foregoing section; and
  - (b) the expression “legacy” includes any payment or benefit to which a surviving spouse [<sup>F6</sup>or civil partner] becomes entitled by virtue of any testamentary disposition; and the amount or value of any legacy shall be ascertained as at the date of the intestate's death.

#### Textual Amendments

- F1** Words in s. 9(1) sidenote inserted (5.12.2005) by virtue of [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), **Sch. 28 para. 5(b)**; S.S.I. 2005/604, {art. (2)(c)}
- F2** Words in s. 9(1) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), **Sch. 28 para. 5(a)**; S.S.I. 2005/604, {art. (2)(c)}
- F3** Words (which were inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1968 \(c. 70\)](#), Sch. 1) repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(2), **Sch. 2**
- F4** Words substituted by [Succession \(Scotland\) Act 1973 \(c. 25\)](#), **s. 1(1)(b)**
- F5** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1980 \(c. 55, SIF 36:3\)](#), **s. 4(a)**
- F6** Words in s. 9(1)(2)(3)(4)(6) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(2), 263(10)(c), **Sch. 28 para. 5(b)**; S.S.I. 2005/604, {art. (2)(c)}

#### Modifications etc. (not altering text)

- C1** S. 9 saved (25.7.1976) by [Prescription and Limitation \(Scotland\) Act 1973 \(c. 52\)](#), s. 6(2), **Sch. 1 para. 2(f)**
- C2** S. 9(1)(a): new amount of £35,000 specified (1.4.1999) by S.I. 1999/445, art. 2, **Sch.**
- C3** S. 9(1)(a): new amount of £42,000 specified (1.6.2005) by [The Prior Rights of Surviving Spouse \(Scotland\) Order 2005 \(S.S.I. 2005/252\)](#), art. 2, **Sch.**
- C4** S. 9(1)(a): new amount of £50,000 specified (1.2.2012) by [The Prior Rights of Surviving Spouse and Civil Partner \(Scotland\) Order 2011 \(S.S.I. 2011/436\)](#), art. 2, **Sch.**
- C5** S. 9(1)(b): new amount of £58,000 specified (1.4.1999) by S.I. 1999/445, art. 2, **Sch.**
- C6** S. 9(1)(b): new amount of £75,000 specified (1.6.2005) by [The Prior Rights of Surviving Spouse \(Scotland\) Order 2005 \(S.S.I. 2005/252\)](#), art. 2, **Sch.**
- C7** S. 9(1)(b): new amount of £89,000 specified (1.2.2012) by [The Prior Rights of Surviving Spouse and Civil Partner \(Scotland\) Order 2011 \(S.S.I. 2011/436\)](#), art. 2, **Sch.**

**Changes to legislation:**

There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Section 9.