

Important Information About Writing a Will in Scotland

If you live in Scotland you'll know some laws and processes there are different to those in England and Wales. That includes those relating to writing a Will.

We hope this factsheet will highlight the main differences and, when used with our main Gifts in Wills Guide, help you get started on your Will-writing journey.

We always recommend seeking professional advice when making or updating a Will, so we've included contact details for the Law Society of Scotland and other bodies that can provide expert guidance and help you take care of your estate.

The basic process

Many of the basic considerations involved in making a Will are the same wherever you live in the UK:

- Work out what you own (your assets)
- Work out what you owe (your liabilities)
- Calculate the value of your estate by subtracting your liabilities from your assets
- Think about who you would like to take care of with your Will
- Decide who you trust to carry out your wishes
- Choose a guardian for your dependants (e.g. children, elderly relatives, pets)
- Consult a qualified legal adviser who will help you draft your Will
- Check your Will carefully before signing, dating and having it witnessed.

However, the details of some of these steps and the terminology used can vary greatly; and that can make all the difference between having or not having a valid Will in place to provide for the people and causes you love.

The age at which you can write a Will

In Scotland, you can make a Will from the age of 12 upwards. You must be of sound mind and have a full understanding of the assets you will be leaving in your Will.

Appointing your Executors

As in England and Wales, your Executors can be professionals (such as Solicitors) or family members and friends. Scottish law says Executors must be aged 16 or over (compared to a minimum age of 18 in England and Wales) and they must be capable of carrying out their considerable financial and legal duties.

There's no upper limit to the number of Executors you can appoint, but it's important to consider practicalities.

Confirmation

Proving the validity of a Will in Scotland is known as **confirmation**. Confirmation is granted by a commissary department of the local sheriff court, rather than in the high court which is what happens in England and Wales.

What happens if you die without a Will?

If you die intestate (without a Will) in Scotland, the Sherrif Clerk or your Solicitor will arrange for the Court to appoint an **Executor Dative**. If you are survived by your spouse or civil partner, they will usually be appointed; though anybody with a claim on your estate can apply.

Your Executor Dative may be required to obtain a **bond of caution**.

Your estate will be divided according to the **rights of succession**. First consideration is given to the prior and legal rights of your surviving spouse or civil partner and your descendants, if you have them.

The difference between heritable and moveable property

It's important to note that Scottish law differentiates between heritable property (land and buildings) and moveable property (investments, money, cars, jewellery, furniture and art etc). And legal rights only apply to the moveable portion of your estate.

Prior rights

Scottish law dictates that your surviving widow, widower or civil partner has prior rights in your estate. This entitlement will depend on whether or not you owned a property in which your surviving partner lived and whether or not you're survived by any children or descendants (e.g. grandchildren or great-grandchildren).

Legal rights

Your spouse or civil partner also has legal rights from your net moveable estate.

Either a) one third of your net moveable estate if you have children or descendants
Or b) half of your net moveable estate if you die without children or descendants.

If you leave children behind, they are also entitled to a share of your moveable estate. In the unfortunate event that your child dies before you, their share can be claimed by their descendants. This is known as the principle of representation.

Either a) one third of your net moveable state if you leave a spouse/civil partner behind
Or b) half your net moveable estate if you don't have a surviving spouse/civil partner.

After the prior and legal rights have been fulfilled, the remainder of the estate is distributed according to strict rules set down in law.

What happens if you aren't married or in a civil partnership?

If you have a partner but are not married or in a civil partnership, your partner isn't automatically entitled to a share of your estate when you die. They may need to go to Court to be granted the right to access your estate.

Cohabitants

Under the Family Law (Scotland) Act 2006, if you have lived in with someone as husband and wife or civil partners but did not legally formalise your relationship (known as cohabitation) and one of you dies, the surviving partner can apply to the Court for a share of their late cohabitant's estate.

A claim must be made within six months of the late partner's death.

When assessing the claim the Court will consider evidence such as:

- The nature and length of your relationship
- Did you have a joint bank account?
- Did you support one another financially?

Please note, this only applies if the deceased partner has not left a valid Will.

What happens if you do have a valid Will in place?

If you have a valid Will the prior rights mentioned above do not apply. Your children and surviving spouse or civil partner will still have legal rights, but they must choose between claiming those legal rights or exercising their rights as stated in the terms of your Will. They cannot claim both.

If you're planning to leave a proportion of your estate to charity, your family's legal rights can affect your wishes. As always, we recommend you seek advice from your Solicitor.

How are shared assets calculated?

Scottish law also differs significantly from that south of the border when it comes to valuing shared assets.

Unlike in England and Wales, where an individual's share of an asset is calculated as one half of the full valuation minus 10%, in Scotland you subtract £4,000 from the shared asset's total value, and then divide the remainder by two.

E.g. In the case of a shared property in Scotland valued at £400,000:

Step 1) $£400,000 - £4,000 = £396,000$

Step 2) $£396,000 \div 2 = £198,000$

What happens if I move to Scotland from England or Wales?

Will my existing English Will still be valid?

If you write a Will under English and Welsh law and then move to Scotland, your Will should be recognised by a Scottish Court. To be on the safe side, we recommend getting a Scottish Solicitor to review your existing Will. They will be able to advise you and highlight any decisions you may need to review or wording you may need to alter to ensure your Will complies with Scottish law.

If you're planning on remaining in Scotland permanently, it would be advisable to make a new Will compliant with Scottish law.

What if have assets on both side of the border?

The country in which you are domiciled at the time of your death is the country whose law will determine how your moveable estate is handled and distributed.

Because Scottish law differentiates between heritable and moveable assets, you may find different parts of your estate subject to different legal jurisdictions.

E.g. If you live in Scotland but have an English bank account, Scottish law will apply to that account.

E.g. If you live in Scotland but also own a home in England, the property will be subject to English law because it's heritable property.

Do I need two Wills – one for my English assets and one for my Scottish assets?

Depending on the nature of your assets and the complexity of your circumstances, you may be advised to have an English Will to cover your English property but also make a Scottish Will to deal with your other assets.

This can be complicated, so careful attention and professional advice will be required to make sure both Wills give clear direction on which assets are covered by which Will.

Are the Inheritance Tax laws different in Scotland?

Inheritance Tax legislation is the same right across the United Kingdom.

In 2025 the UK Government announced changes to the Inheritance Tax eligibility of certain assets, including pensions and farmland, which may affect your IHT liability. We recommend reviewing your Will to ensure it reflects your current circumstances and aligns with the new IHT rules that will come into force in April 2027.

Leaving a gift to ActionAid in your Will

One in ten of all the women, girls and communities we helped in 2025 were reached thanks to legacies left by friends like you.

As you read this factsheet, legacy gifts are enabling hundreds of children in Latin America, Asia and Africa to attend school and get an education. They're providing training in health, sustainable agriculture, disaster preparedness, business and leadership skills. They're giving women and girls the tools and confidence to defend their rights, provide for their families and protect their communities and environment.

Those legacies are also helping thousands affected by natural and man-made emergencies, most of which never make the news. And they're amplifying the voices of women and girls across the world who are calling for an end to the unjust systems and inequalities that trap people in poverty.

Every legacy gift, however large or small, has the power to change things for the better. And if we all join together and stand up for what we believe in, we can change the world.

If you'd like to be part of something bigger please remember ActionAid in your Will. Together we can create a better, fairer future.

The essential information you'll need

If you've chosen to leave a little something to ActionAid UK, thank you from the bottom of our hearts.

Please share our registered details with your Solicitor so your gift will reach us:

Registered name: ActionAid UK

Registered address: ActionAid UK, 2nd Floor, 1 Easton Street, London, WC1X 0DW.

Registered charity number in Scotland: SC045476.

Sources of further help

As a charity we're unable to offer you legal or tax advice, but there are lots of qualified and specialist organisations that can help you.

For help finding a specialist Solicitor in your area

The Law Society of Scotland
144 Morrison Street, Edinburgh, EH3 8EX
Telephone: 0131 226 7411
Website: www.lawscot.org.uk
Email: lawscot@lawscot.org.uk

For guidance on Will-making and dealing with a loved one's estate

The Scottish Government
Civil Law and Legal System Division
St Andrew's House, Regent Road, Edinburgh, EH1 3DG
Telephone: 0131 244 3581
Email: succession@gov.scot
<https://www2.gov.scot/Topics/Justice/law/damages/succession>

Age Scotland
Causewayside House, 160 Causewayside, EDINBURGH, EH9 1PR
Helpline 0845 125 9732
E-mail: info@agescotland.org.uk
Website: www.ageuk.org.uk/scotland

Citizens Advice Scotland
Telephone: Citizen Advice Direct 0808 800 9060
Website: www.cas.org.uk
NB: A list of regional Citizens Advice offices can also be found on their website.