



The Laws of Intestacy in Scotland

The following is a **simplified** guide to the order in which members of a family inherit when a person (“the Deceased”) has died in Scotland without leaving a valid Will. Only the first class of kin in which there is at least one beneficiary will inherit. Issue of a living heir do not themselves inherit.

1. **Statutory Prior Rights.** The surviving spouse or registered civil partner has Statutory Prior Rights to the dwelling house, to its furnishings and to cash, each up to a defined value which changes every few years.
2. **Legal Rights.** The spouse or registered civil partner and issue have automatic Legal Rights (which may be known as “jus relict/ae” or “legitim” respectively), to either a third or half of the moveable property (chattels) depending on whether or not the spouse or registered civil partner, or issue, or both spouse or registered civil partner and issue, survive.

The remaining third (where there is spouse or registered civil partner and issue) or half of the moveable property (where there is either surviving spouse or registered civil partner but no issue, or no surviving spouse or registered civil partner, but issue) forms the **free estate**.

3. **Free estate.** The free estate is either what remains after Statutory Prior Rights and Legal Rights have been satisfied or, of course, if there is no surviving spouse or registered civil partner, or issue, the entire residuary estate passing on intestacy. The order of succession is as follows:
 - a) **issue**
 - b) 50:50 to **parents and siblings of the whole blood** and their issue if there are survivors in both classes
 - c) 50:50 to **parents and siblings of the half blood** and their issue if there are survivors in both classes but no siblings of the whole blood or their issue
 - d) **siblings of the whole blood** and their issue if there are no surviving parents
 - e) **siblings of the half blood** and their issue if there are no surviving parents or siblings of the whole blood or their issue
 - f) **parents** if there are no surviving siblings of whole or half blood or their issue
 - g) **spouse or registered civil partner**
 - h) **uncles and aunts of the whole blood** and their issue
 - i) **uncles and aunts of the half blood** and their issue
 - j) **grandparents**
 - k) **great uncles and great aunts of the whole blood** and their issue
 - l) **great uncles and great aunts of the half blood** and their issue



m) **great grandparents**; etc

If, at the date of death of the Deceased, there is no one alive in any of the above classes of kin, the estate passes to the Crown.

Definitions:

Spouse = husband or wife through legal marriage. A former spouse who is legally divorced from the Deceased is **not** entitled. However, a separated or estranged spouse **is still** entitled. Common law spouses or cohabitants are **not** entitled under the intestacy rules.

Registered civil partner = The Civil Partnership Act 2004 came into operation on 5 December 2005 and enables a same-sex couple to register as civil partners of each other. A registered civil partner has the same status under the rules of intestacy as a spouse, above.

Issue = children, grandchildren, great grandchildren and so on. It does not matter if issue is legitimate or illegitimate. Issue legally adopted **into** the family **is** entitled. Issue legally adopted **out** of the family is **not** entitled. Foster children and stepchildren are **not** entitled.

Siblings = brothers and sisters by birth or by legal adoption. A **whole blood** sibling has the same two birth or adoptive parents as the Deceased. A **half blood** sibling shares only one birth parent or adoptive parent with the Deceased.

Note: Should a member of the family die after the date of death of the Deceased, his or her own estate inherits. In the case of the spouse or registered civil partner only, there is a qualification period of 28 days from the date of death.

Disclaimer. This summary of the laws of intestate succession for deaths within the jurisdiction of Scotland is necessarily simplified and is for general guidance purposes only. If you require a more detailed understanding of the law, please consult a solicitor. The laws differ in other parts of UK.