

Consultation Response

The Law of Succession

May 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Trusts and Succession Law sub-committee and other relevant sub-committees welcome the opportunity to consider and respond to Scottish Government's consultation on *the Law of Succession*¹. We have the following comments to put forward for consideration.

General comments

We consider that it is important to bear in mind that the substantive regimes considered in this consultation are those applying in intestate cases. We consider that the importance of making a will, and keeping it updated, should be the subject of greater promotion in Scotland. We also consider that there would be merit in consideration being given to the will making process, in particular the ease with which individuals can make a will and how this may be improved, for example, by digital means.

There are a number of broad themes to be considered in relation to an intestate regime. For example, under the current law, we recognise the possibility of prior rights extinguishing the estate and other family members being unable to inherit. The balance between those who are entitled to inherit requires careful consideration.

We consider that any regime which seeks to examine the nature of individuals' relationships to the deceased is potentially challenging. In that regard, we favour a regime with clear default rules.

It is noted that there are two areas where it is presently intended to legislate without further consultation. The first is where the deceased is survived by children/issue and no spouse/civil partner, in which case the issue would take the whole estate. This is uncontroversial and in effect represents the current law.

The second is where the deceased is survived by a spouse/civil partner and no issue, in which case it is proposed that the spouse/civil partner would take the whole estate. This contrasts with the current situation

¹ <https://www.gov.scot/publications/consultation-law-succession/>

quite markedly, where such a surviving spouse/civil partner would take prior rights and legal rights only. The primary prior right in most cases is to a house in which the survivor was ordinarily resident at the date of death, to which will be added the furniture and plenishings of that house and a cash right, as well as legal rights of one half of remaining moveable estate. That will mean that in many, but by no means all cases, such a surviving spouse/civil partner takes the whole estate.

However, we note that situations arise where spouses or civil partners are separated at the time of the death of one of the parties. At present, a surviving party who is residing in the house of the deceased at the time of death would inherit the property regardless of whether or not the couple were living together as cohabiting spouses at the time of death or whether they were separated. Potentially, the surviving individual may inherit more than a house. In contrast, where a couple have separated and the survivor does not reside in a house owned in whole or in part by the deceased, such a survivor would not take the house or furniture. The place of residence produces somewhat random effects.

But under the proposal for a surviving spouse/civil partner to take the whole estate in the absence of issue, a separated spouse/civil partner would take the entire estate no matter the state of the relationship at the time of death. This cannot be assumed to be in any way what the deceased in these circumstances would have wished to happen.

One way in which this matter can be resolved would be to use a test of 'living together as husband and wife/civil partners' before the surviving partner could inherit. This is a concept recognised in both Scots family law and (for many years and for many purposes) tax law. It would not be an issue in most cases where the deceased was survived by a spouse/civil partner and no issue, but would resolve both current anomalies and further ones that would arise from the proposed new law.

We note that the consultation does not consider the matter of liferent of a house for a surviving spouse or civil partner while protecting the capital for the deceased's children. This is of particular significance where the deceased has a second family and the deceased's children are not the children of the marriage or civil partnership subsisting at their death. We suggest that consideration is given to this issue with a view to enacting legislative provisions for such arrangements to be made.

Consultation questions

INTESTACY

1. Do you agree that the current approach to intestate succession needs to be reformed?

Yes, we agree that the current approach requires reform. We consider that wholesale reform is not required but particular aspects would merit adjustment.

We consider it appropriate that spouses and civil partners who are 'living together as husband and wife' at the time of death should inherit over more remote family members. We draw attention to detailed consideration of this matter in our general comments, above.

We consider that there is potentially an anomaly between the current law and what may be generally expected by individuals where a deceased is not survived by a spouse, civil partner, children or remoter issue in that, for example, parents are ranked equally with siblings.

2. Do you agree that the aim of any reforms should be to reflect outcomes which individuals and their families would generally expect?

While we recognise some merit in this approach, it is important to recognise that different individuals expect different things and individual family circumstances are highly variable. There are diverse approaches to the concept of 'family' within our society. We consider that it is more appropriate to consider objectively the outcomes which society expects.

As referred to in our general comments, we note the potential difficulties with any regime which seeks to assess the quality of relationships, particularly with regard to the potential for dispute between parties, but consider that the simple test we suggest for one very common situation is appropriate

3. If you favour a different approach, would you prefer to model that change on the regime in Washington State or British Columbia or neither?

We consider that both of the models have features which are of interest and may have some merits, however each also brings disadvantages.

A model based on a 'community property approach' (Washington State model) has the benefit that a spouse or civil partner is unlikely to receive what may be perceived as an 'unreasonable' portion of an estate. However, we consider that such a model is likely to bring practical challenges. We note that paragraph 2.51 of the consultation document refers to "the slightly different context of divorce." We consider that the context of intestate succession is vastly different from that of divorce. While recognising that the model of intestate succession is a default system (that being for those who die without a valid will), it remains the case that a significant proportion of individuals in Scotland do not have a will and therefore this regime has the potential to apply to a large proportion of society. By its nature, the law in relation to financial provision on divorce affects a small proportion of society; and arises when both parties are alive.

The regime found in the Family Law (Scotland) Act 1985 often involves negotiation by solicitors and where matters are not initially agreed between parties, a significant amount of time and effort can be taken to resolve matters. In such scenarios, both parties are alive and, in theory, capable of giving instructions to solicitors and taking part in negotiation. We consider that a 'community property approach' has the potential to give rise to contentious disputes which require significant negotiation. For that reason we favour something more along the lines of the British Columbia model; which has the added advantage of being rather closer to the current Scottish regime.

4. Which of the Washington State or British Columbia models delivers outcomes which most closely reflect what modern Scottish families (with all their many permutations) might expect to happen on the death of a spouse/civil partner?

We refer to our answer to question 2. Any model is unlikely to be able to cater for every circumstance which might arise.

We consider it likely that the ‘threshold approach’ (British Columbia model) may be more akin to that which modern families might expect, on the basis that it is likely to be expected that a spouse or civil partner would inherit from a deceased’s estate as well as children (if applicable). This is dependent, however, on the threshold which is applied.

5. If the Washington State model (‘community of acquests’) is your preferred model, do you think that the Family Law Act (Scotland) 1985 financial provisions on divorce could be readily applied to intestate estates?

No. We refer to our answer to question 3.

6. If the British Columbia model (threshold) is your preferred model, what do you think should be the appropriate threshold levels in Scotland?

We do not suggest any particular levels. We consider that it is undesirable to create an artificially high threshold as this has the potential to incentivise intestacy. There is of course merit in having simple default rules in place from which individuals can always opt out by making a will if they do not wish the regime to apply. This assumes, however, that individuals are aware of the legal regime, which may not be the case.

We note that many individuals are likely to expect that a house would pass to a surviving spouse or civil partner. If there a desire for this to be respected within a threshold approach, the threshold level could be set by consideration of average house values in Scotland.

Depending on the desired outcomes, different approaches to the threshold model could be taken. For example, one approach would be for the higher in value of a cash value and a house to pass to the surviving spouse or civil partner, and thereafter, for the estate to be split among the deceased’s children. We do recognise that other jurisdictions provide greater protection for children on intestacy.

Alternatively, a threshold sum could pass to the surviving spouse or civil partner, and thereafter, the estate split equally between spouse or civil partner and children. This may assist in preventing disinheritance of children from a first family where the deceased has a second family. We consider that there would be merit in such a model which could be simpler than the current regime and not related to particular types of assets. But any threshold based on either the current prior of a dwelling house or the inheritance tax threshold is likely in the vast majority of cases to take the entire estate to the surviving spouse/civil partner, an outcome particularly unfair where there are children other than from that relationship.

7. Should step-children have a right equivalent to that of biological or adopted children to inherit in intestacy?

We take no particular view on this but note that while mixed families are now common, there has previously been mixed support for treating step-children in the same way as biological or adopted children. As a matter of simple fairness, it would mean that step-children might inherit both from their step-parents and their natural parents, if all were to die intestate.

8. Should step-children be able to inherit in order to avoid a step parent's intestate estate passing to the Crown?

We consider there is merit in such provision. We consider that this should extend to any individual who has a 'good case' to inherit, not only step-children and suggest that there be provision for an individual to petition the court, or, more simply, apply to the QLTR for this purpose. For example, another individual who has assisted the deceased during lifetime may seek to inherit.

COHABITANTS AND INTESTACY

9. Do you agree that cohabitants should continue to have to apply to the courts in order to obtain any financial provision in intestacy?

Yes, we consider that there remains a role for the court in establishing whether or not parties were cohabiting at the time of the death of the deceased. In the event that an application to the court is not required, it is likely that in the majority of cases, the surviving cohabitant will have an economic interest in the estate, and this has the potential to give rise to difficulties.

In our recent paper² covering aspects of section 29 of the Family Law (Scotland) Act 2006, we welcomed the Scottish Government's intention to extend the period for claim by a cohabitant to one year from death, however, also noted that we consider there is scope to link the time period for an application to the grant of confirmation where this follows some time after the death. Given that confirmation may not be granted in every case, we do not suggest a grant of confirmation as a prerequisite to the making of an application under section 29. We suggest that the permitted period should be up to 12 months from the date of death, or in a case where confirmation is obtained in respect of the deceased's estate after the expiry of 12 months from death, up to six months from the date of confirmation. While appreciating the potential for practical challenges in certain cases, we do not consider that these proposals alone go far enough to resolve the potential difficulties with section 29 applications and we therefore suggest that legislation be introduced to provide for an application to be accepted 'late' by the court, 'on cause shown' or 'on special cause shown'. Further detail on these matters can be found in our paper.

² <https://www.lawscot.org.uk/media/361911/rights-of-cohabitants-paper.pdf>

10. Do you agree that cohabitants should have an automatic entitlement to inherit in intestacy?

We consider that this is a matter for policy makers.

We do note that a cohabitant who has been living with the deceased, for example for a number of years, arguably has the potential to have a more compelling reason to inherit from a deceased's estate than an estranged spouse or civil partner from whom the deceased has been separated for a number of years. We do recognise that it can be difficult for the quality of a relationship to be assessed.

We note that there could be provision to provide an automatic entitlement in the event that cohabitation is established (either by agreement or by the court), but for the extent of that entitlement to be assessed by a court in the event that an agreement cannot be reached.

We consider that a fixed amount or share of the estate may be favoured by a cautioner as the extent of their potential liability would be clear.

11. Do you agree that a qualifying cohabitant should have the same rights as a spouse or civil partner in intestacy?

We consider that a qualifying cohabitant should have a maximum of the same rights as a spouse or civil partner in intestacy but not necessarily the same rights.

12. Should a cohabitant inherit where there is a surviving spouse or civil partner?

We consider that there should be scope for a cohabitant to inherit where there is a surviving spouse or civil partner.

13. Should a surviving spouse or civil partner inherit where there is a surviving cohabitant?

We consider that there should be scope for a surviving spouse or civil partner to inherit where there is a surviving cohabitant.

14. Do you agree that where there is both a surviving spouse and a surviving qualifying cohabitant that the spousal share should be split equally between them?

We do not consider that the spousal share needs to be shared 'equally' between the parties. The law currently provides that if a cohabitant seeks a share of the estate, this reduces the estate received by the deceased's children which may be considered to be unfair. Where there is both a surviving spouse or civil partner and cohabitant, there may be merit in the cohabitant's share coming from either the spouse's share or split pro rata between the spouse's share and the child/children's share.

15. Do you agree that where there is both a surviving spouse and a surviving qualifying cohabitant that the spousal share should be split between them as agreed and where the parties cannot agree that the Courts should determine the split?

Yes, we consider that the spousal share should be split between the parties as agreed, failing which by a court. It appears unlikely that agreement will be reached in most cases. We consider that the proposals in our recent paper, as referred to in our answer to question 9, may have the potential to afford greater time for negotiation between parties and may reduce the need for applications to be made to the court.

Further to our answer to question 9, in the event that a court requires to determine whether the parties were cohabiting, there would be merit in the court also assessing the extent of the share. It would be wasteful if there was a necessary court process for one aspect not to have a final resolution in the same process.

ADDITIONAL MATTERS

16. Do you agree or disagree that there should be a time limit for claims for temporary aliment?

We do not make comment as to whether or not there should be a time limit. We recognise the need to balance the ability to timeously wind up an estate while also providing for those who may have been dependent on the deceased.

17. If you agree, should that time limit be 6 months?

While we understand that some banks are now paying up to £50,000 from a deceased account(s) without confirmation, we note that in the event that a time limit of 6 months is imposed, this could cause difficulties in payment of aliment as confirmation is unlikely to have been granted within this time.

18. If you do not agree, what time limit would you suggest?

We consider there would be merit in the time limit being 12 months.

19. Do you agree that the implementation of section 7 of the Succession (Scotland) Act 2016 has reduced the potential application of the doctrine of equitable compensation to the extent that no further change is required?

We note that the doctrine has wider application beyond that contained in section 7 of the 2016 Act, however we do not consider that further legislative change is required at the present time.

20. Should a convicted murderer be allowed to be executor to their victim's estate?

The background to this section of the consultation is the well-publicised case where a convicted murderer was named in their victim's will as an executor³. The person has declined to resign his office as the executor which has caused the victim's family much distress. The family can petition for the person to be removed as executor, but this causes delay and has cost implications. There are two points to make at the outset:

- Consideration should be given to legal aid being made available for any person, without any means test, to allow them to make an application to the court for removal of the person as an executor. That would mean that the legal costs and outlays would not be incurred by those interested in bringing forward the petition.
- Clarity by introducing legislation as to the circumstances where an application for removal can be made would seem to be a sensible approach to avoid the problems which have arisen in this case. There are different ways that this might be achieved.

The role of the executor is a fiduciary role to ingather and distribute the estate of the deceased. The law is clear that a convicted murderer cannot benefit from their victim's estate. However, as the law stands, there is nothing to stop a convicted murderer acting in the estate as an executor. Nothing can compel them to resign and/or decline to take up the role.

Where criminal convictions arise, there are timing issues. The removal as an executor should only arise after an actual relevant conviction and only once any appeal proceedings in respect of their case were exhausted. Until then, an accused person is innocent until proved guilty. It would not seem appropriate for them to be excluded from being an executor until the time of that conviction.

Unless the legislation specifically stated that it was to be automatic disqualification on conviction, a process would be required to remove the convicted person as executor. Fairness would suggest that they would need to be advised as to the disqualification at some point, possibly as part of the sentencing procedure. That assumes that the Crown are aware that the individual is an executor under the victim's will. In any other circumstances, if and when the information came to light after conviction, the convicted murderer would still need to be given the opportunity to demit or decline the office. Only where they failed to do so, should there be a process to disqualify them. The lawyers acting in the estate or for the family are going to be aware of the conviction whereupon some kind of court process would be required to make the convicted person aware that they have been disqualified from being an executor.

Question 25 deals with the situation before conviction. It may not be appropriate for them to take office pending trial. However, it is hard to see why they should not take office from the perspective of the criminal law as they are still innocent until proved guilty. It could however be some considerable time before the murder proceedings conclude which delay will no doubt cause distress to the family. The preference would be for the relevant person to decline to take up office. If that is not possible, we would suggest that there

³ <https://www.change.org/p/scottish-government-remove-prevent-convicted-murderers-from-being-executors-of-the-person-they-murdered-estate?here>

should be, in the interests of fairness, a procedure to apply to the court to remove them or prevent them from taking up office. Petitioning for the appointment of a judicial factor may be one way to cover the interim situation before any conviction. The circumstances that permit this would need to be set out clearly to allow a court to appoint the judicial factor. We would suggest that this might require an interests of justice test to be framed.

A further complication could arise in the case of a conviction for culpable homicide as an alternative to murder.

21. Should someone convicted of culpable homicide be allowed to be executor to their victim's estate?

We refer to our answer to Question 20. The problem is that someone could be charged and prosecuted with murder but convicted of culpable homicide.

We do not consider that there should be any automatic ban in cases of conviction for culpable homicide as there are a range of circumstances whereby someone may be convicted of that crime. We also note the Scottish Law Commission's work on homicide⁴ which is developing proposals for modernising the law in this sensitive area.

There might also be circumstances where a conviction for causing death through a driving offence⁵ could be equally pertinent. We can also see issues arising in relation to mercy killings that may result in a prosecution for culpable homicide.

We would suggest that legislation should be introduced but it should require a judicial decision on a case by case basis to disqualify any executor from acting, on the basis of an interests of justice test.

22. Should conviction automatically prevent/disqualify someone convicted of either murder or culpable homicide from acting as an executor on their victim's estate?

No, this requires to be considered on a case-by-case basis. See also our answer to questions 23 and 24.

There may be an argument for an automatic disqualification on a murder conviction but only after the appeal proceedings have been exhausted.

23. Should a conviction for any type of crime which results in imprisonment automatically disqualify an executor from acting?

We do not consider that there should be an automatic disqualification of those who have been convicted of any crime which results in imprisonment. There is no similar provisions for disqualification of trustees. We consider that such matters require to be considered on a case-by-case basis. It may not be necessary or

⁴ <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/homicide/>

⁵ Death by dangerous or careless driving.

appropriate for individuals to be disqualified in particular circumstances, for example, where a conviction is of considerable age or irrelevant to their conduct as executor.

We suggest that there be improvement in the law around removal of an executor. At present, there is no statutory provision regarding the probity of an individual to act as executor and a court action at common law requires to be raised to seek the removal of an executor on the basis of their 'unfitness' to act. We consider the law would benefit from greater clarity and certainty in this regard by the introduction of statutory provisions for the procedure. In addition, at present, such an action may only be raised in the Court of Session which is likely to have significant cost implications for those seeking to have an executor disqualified.

We note that section 6 (read with section 75) of the draft Trusts (Scotland) Bill makes improved provision for the removal of trustees – and executors – by the court. We consider that this, along with many other aspects of the draft Bill, would be a very helpful step. If such legislation was introduced, this would allow an application to be made to remove them from office. Imprisonment might be one factor to consider along with other factors such as the serious nature of the crime, the relationship to the victim and the length of any custodial sentence imposed.

People may well be sentenced to custody for cases which have nothing to do with the victim and for periods which are relatively short. The problem is delay in administering the estate but unless the delay is significant when an application could be made, there should not be any automatic disqualification

24. Do you agree that someone who has been charged with the murder or culpable homicide of their benefactor should be disqualified from becoming the executor until the outcome of a trial determines whether or not the disqualified executor is guilty or innocent?

We note that there is the potential for significant administration costs to be incurred in the event that an executor is changed part way through administration of an estate.

This needs to be looked at by a case-by-case basis. The accused person may well decline to act. If they are not convicted after trial, they should be able to act as executor as they have been found innocent.

25. If you agree, should consideration be given to the appointment of a judicial factor, on an interim business or otherwise, until such time as a conviction is confirmed?

We refer to our answer to question 24.

An application for a judicial factor could be made where the circumstances are appropriate but until there is a conviction there is no guilt. Unless the delay was inordinate, it does not seem the correct approach unless the interests of justice test were satisfied.

26. Are you aware of any difficulties which have been encountered as a consequence of public access to the details provided in an Inventory?

We are aware that family members and others may on occasion be upset by such information being made public, particularly for high-profile or high-net-worth individuals where there may be media coverage of such information.

We recognise the importance of information about the estate being available to those with a relevant interest, and especially to those who are entitled to prior rights and legal rights on an estate; however, those who have a claim are already legally entitled to obtain copies of such information from executors.

From a privacy perspective, an alternative way to frame the question might be to look at the basis for publishing some of the information which appears in the inventory as read in conjunction with the will itself (where applicable), consider the basis for making the information publicly available, and then test this against the risk to the privacy (and indeed security) of beneficiaries. We note that it would be possible for formal documents to be lodged with the court and accessed by the relevant authorities (such as HMRC), without requiring potentially sensitive personal financial information to be widely available to the public in general.

We understand that in England and Wales, only a total figure of the estate value is made public

27. Does the current process of making the Inventory (and all the attendant information contained therein including bank account details) publicly available have the potential to create difficulties for beneficiaries, executors, the deceased's family or other individuals?

We consider that there is a potential for this to create difficulties. We are not aware as to whether there is, and if so, the extent of, any evidence of issues arising, for example cybercrime, fraud, theft, or other crimes. We note that at present an application in writing to a court would be required to obtain a copy of the inventory. We foresee that in the future, however, there may be greater scope for such information being available online in such a way as to be digitally searchable, which could increase the likelihood of information being used for unlawful purposes.

There are also a number of privacy issues about what information/documents should be publicly available in the context of an executry. There are concerns that the current practice of making available the will, confirmation form and inventory of the estate compromises the privacy and potentially even security of individuals. Privacy concerns could arise, for example, in relation to: the names and addresses of individuals; the relationship of individuals to the deceased; bank account details (specifically in the context of joint accounts); and specific items or assets in the estate inventory/the inventory as a whole as this would or could indicate current or future financial information about beneficiaries (who could often be easily identified as a matter of logic, even without a copy of the will). Certain information, however, should be a matter of public record, particularly the date of the will as this would highlight to anyone who discovered a newer will to come forward.

28. Do you agree that information which may compromise the security of joint accounts/assets for the survivor should be redacted?

We consider there could be some merit in such an approach. However, see also our comments in response to question 26.

29. What sort of information contained in the Inventory should not be publicly available?

Please see our answer to question 27.

30. Should it be possible to redact information from the inventory of an estate which may compromise the security of another individual's assets?

We consider that there could be merit in such provision, however, see also our comments in response to questions 26 and 27.

31. Would delaying the public availability of inventories for a year provide the necessary protections for individuals for whom the security of their assets may be compromised?

We are not sure how this would improve the situation.

32. Is there another means of providing the necessary protections to individuals who may be compromised?

We have no suggestions in this regard.

33. Should personal details of a beneficiary in wills be in the public domain?

See comments in relation to questions 26 and 27 above. We are not persuaded that it is necessary to publish personal details of a beneficiary, nor that this would necessarily be justified, when approached from the perspective of the right to privacy.

As noted above, there should be a reasonable justification for personal details to be made public and the default option in privacy terms must guard against doing this unless public policy considerations for doing so outweigh the interests of protecting an individual's right to privacy, particularly where this may be done without a beneficiary's consent or knowledge. An individual may not be aware that they are a beneficiary to an estate until the author dies, or indeed for some time after death. In the experience of our members, it is also common for individuals to be surprised that the personal details of a beneficiary will be publicly available after death.

Although not personal details, our members are aware of circumstances whereby private companies acting on behalf of charities obtain information regarding a legacy or residue payment from a will, and approach solicitors or executors directly to enquire as to when and how much will be received from an estate.

34. Should it be possible to redact personal details of a beneficiary from a will?

We refer to our answer to question 33.

35. Would delaying the public availability of a will for a year address concerns about sharing personal details of a beneficiary?

We refer to our answer to question 31.

36. Do you agree that it would now be appropriate to review the 'small estates' limit?

We consider that the limit may be reviewed at any time but note that this was last done in 2011 and may now merit review. A review in and of itself does not require the limit to be altered. We understand that some banks are willing, in particular circumstances, to make payment from a deceased's account(s) of up to £50,000 without confirmation having been granted and this may suggest that it is an appropriate to review the limit.

37. How many executry cases are you are aware of where there has been a difficulty created by a timeshare contract in perpetuity?

We are not in a position to specify the number of cases in which such problem arises, however, our members are aware of such contracts causing difficulties in the administration of a number of estates. Although such a contract may be viewed as an asset, it is in fact often a liability which cannot be easily disposed of.

38. What are the issues in these cases for beneficiaries?

The issues for beneficiaries are limited as they may refuse to accept any legacy.

39. What are the issues in these cases for Executors?

Such contracts can cause difficulties for executors who may experience problems in assessing the assets and liabilities in an estate and in winding up the estate as a result of the ongoing nature of such a contract.

40. What are the solutions?

One solution may be for the holder of a timeshare contract to write the contract into trust during their lifetime, providing that they are the only trustee. This would have the effect of the trust coming to an end on the holder's death and therefore the contract concluding. Such solution is likely to be used only by those who are advised as to this possibility during their lifetime, most likely by a solicitor.

We consider that legislation is required to provide for bringing such contracts to an end following the death of the party, for example by way of providing for a time limit on the contract after death which could be enforced in the event that the contract has not been assigned.

41. Are there similar contracts in other areas which create difficulties for executors and beneficiaries?

In the experience of our members, bank and other guarantees cause difficulties for the administration of an estate. Although not a contract, alimentary decrees also typically cause difficulties.

For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

AlisonMcNab@lawscot.org.uk