

Why should I make a will?

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There are many reasons why you should make a will but here are the most important ones:

- you control who benefits from your estate,
- you can use your will to save tax,
- you can use your will to protect assets for future generations,
- gives you peace of mind that your affairs are in order, and last but not least
- makes a difficult time for your family slightly easier.

What happens if I don't make a will?

Your estate will be distributed according to intestacy laws – these laws decide for you who will inherit your estate. This may mean that relatives, other than those you wish to benefit, may also receive a share of your estate. It also adds unnecessary cost and worry to your family during an already difficult time.

What should I include in my will?

Your will should set out who you wish to be your executors – these are the people who will be responsible for making sure your estate is dealt with in accordance with your wishes. It should also set out any cash or specific legacies (such as jewellery or other personal effects) you wish to leave to particular people, and finally who you wish to be the main beneficiaries of your estate.

You should be aware that under Scots law you cannot disinherit your spouse (or civil partner) or children as they have “legal rights” to your estate. These legal rights entitle a spouse and children to claim an amount equal to one-third or one-half of your net moveable estate depending on the circumstances. Your moveable estate means money, investments, furniture and personal effects such as jewellery, but does not include heritable property such as a house or other land and buildings.

Illegitimate and adopted children have legal rights to your estate, but step-children do not.

Who should I appoint as my executors?

You should appoint people you trust such as immediate family or close friends. We would recommend that you appoint at least two executors.

I remarried a few years ago and have children from my first marriage. I want to make sure my spouse is provided for but ultimately I want my children to benefit from my estate. Can this be done?

Yes. You can include a trust in your will that will provide your spouse with an income during their lifetime with the capital then passing to your children. The use of trusts within your will is an effective way to protect assets for future generations.

When I was married I made a will leaving everything to my spouse. I am now divorced and I've heard that this makes my will invalid - is this true?

No. Divorce does not automatically invalidate your will. If you wish to make someone else the main beneficiary of your estate then we would recommend that you write a fresh will. This is also the case for individuals who have been in a civil partnership which has now been dissolved.

I'm not married but I've been in a relationship with my partner for years. When I die will they automatically inherit everything?

No. If you die without a will your estate will pass automatically to your relatives. Your partner would have a right to make a claim on your estate but this involves taking court action within a strict time limit. This situation can be made more complicated if you have children with your partner, as your children will be your primary beneficiaries, not your partner. By making a will you will ensure that your partner and your children are provided for in the way that you want.

I own a house abroad and I've also opened a foreign bank account - does my Scottish will cover my foreign assets?

Ideally you should have a will drawn up according to the laws of the country where your assets are situated. If you already have a Scottish will in place, remember to advise your foreign solicitor of this to make sure that the terms of your foreign will don't invalidate your Scottish will. And always use a reputable legal firm abroad (we can help you by recommending firms).

I want to change my will - do I need to completely re-write it?

Not necessarily. It depends on the changes you wish to make. You can make minor changes, such as changing your executors or increasing the amount of a cash legacy, by signing a codicil to your will. If you wish to make more significant changes then you should ideally make a new will.

Once I've made my will, how often should I review it?

We recommend that you review your will every 3 to 5 years and certainly when there is a change in your circumstances.

We can help - Whether your affairs are straightforward or complex, we can advise you on your will.

This Information Sheet is based on Scottish law. If you live in England or Wales, our English law team can help you ensure your will meets your needs.

For further information on these or any other personal law issues, please contact:

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