

Wills

Is my English Will valid in Scotland?

If you have moved to Scotland from England or Wales, you may be wondering whether your existing legal documents are valid.

The laws affecting Wills, succession and incapacity in England and Wales are very distinct from their Scottish counterparts – each with their own set of nuances and quirks. So, what are the main differences – and what do you need to do?

Wills

If you have made a Will south of the border but now live in Scotland, you ought to think seriously about getting a Scottish version. The process is very straightforward, and you can decide whether your new Scottish Will exists in harmony with your current one, or if it revokes it entirely.

A key difference between English/Welsh and Scottish Wills is the issue of forced heirship.

Forced heirship is a legal principle that is common in many legal systems across the world – including Scotland – but does not feature in English and Welsh law. It mandates that a portion of the deceased's estate is passed onto close relatives – typically their spouse and/or children.

Practically speaking, forced heirship makes it very difficult to disinherit dependents under the Scottish system of succession. A surviving spouse and children each have automatic rights to make a claim on the deceased's estate – and this right extends for twenty years after the death. In England and Wales, disappointed dependents must raise a court action within six months of the death, and it is for the court to decide what – if any – provisions are made.

The automatic operation of these legal rights in Scotland ought to prompt people who have made the move from England/Wales to Scotland to review their existing Wills – especially if they have remarried and have children by a former relationship.

Powers of Attorney

Although the documents are similar in their aims, different legislation regulates the treatment of powers of attorney in England and Wales from that in Scotland.

If you have created an LPA (Lasting Power of Attorney) through your solicitor in England or Wales, this can be used in Scotland if an organisation (e.g. a bank or local council) accepts its authority. However, a Registered Power of Attorney may need to be exhibited to a variety of

organisations and there is no guarantee that the document will be universally accepted in Scotland.

The registration body – the Office of the Public Guardian (Scotland) – is aware of this inconsistency and has devised a certificate that can be printed and presented along with the existing document to assist in having a non-Scottish power of attorney recognised in Scotland.

However, considering the importance of a power of attorney in dealing with your financial and welfare decisions, the safest option is to create a Scottish power of attorney if you now reside in Scotland.

Tim Wier, January 2017

Time is a senior private client solicitor at BMA Law Scotland

Want to know more?

If you would like to discuss writing a Will or LPA, BMA Law can help. Our specialist private client team are based in Scotland, and are trained in Scottish law. With fixed fees and preferential rates for BMA members, we'll make sure that you and your loved ones are catered for in the event of your death or diminished capacity.

For more information, contact us:

bmalaw.co.uk

0300 123 2014

info@bmalaw.co.uk