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Alexandra Braun (ed), ‘Symposium: Reforming Intestate Succession Law’(2020) 24 *Edinburgh Law Review* (forthcoming)

Introduction

Intestate succession law affects a considerable portion of society,¹ and has serious implications for how wealth is distributed on death, including for questions of wealth equality. Yet, or perhaps precisely because of its importance, it is challenging to design a satisfactory set of intestacy rules, not least because of the need to balance manifold interests. Moreover, it is notoriously difficult to reach consensus about what the exact rationale underlying intestate succession law should be and therefore what criteria should guide the legislature. It is thus perhaps unsurprising that Scots law has been struggling to implement a reform of its intestacy rules, despite the fact that dissatisfaction with the current rules looms large.

In Scotland intestate succession law has been under review since the 1980s.² The Scottish Law Commission has published two reports on succession law, one in 1990³ and one in 2009,⁴ both of which contain recommendations on intestacy which remain unimplemented. After a consultation on the 2009 recommendations carried out in 2015, and a further public attitudes survey, the Scottish Government published its response in 2018.⁵ The response was then followed by another consultation launched in February 2019,⁶ the aim of which was to seek views on a “fresh approach to reform of the law of intestacy with reference to regimes which operate elsewhere”. The consultation is now closed, and we are awaiting the response from the Scottish Government, which has been announced for spring 2020. Meanwhile, a number of questions arise. Are the proposals put forward both by the Scottish Law Commission and the Scottish Government suitable for Scotland? Do they address the right issues? What exactly are the shortcomings of the current law and, how can these be remedied? Finally, what should happen next?

These and many other questions were explored during a Symposium that took place at Edinburgh Law School on 11 October 2019. This publication includes a rich set of contributions from some of those who took part in the event. In their contributions they try to shed light on a number of the most contentious and difficult aspects of intestacy, such as the balance between the rights of the surviving spouse/civil partner and the issue of the deceased, the connection between the laws regulating dissolution of marriage on death and on divorce, and the protection of the interests of cohabitants, as well as those of the wider family. As part of this process, the Scottish law of intestacy is examined through a comparative lens in an attempt to understand where it positions itself with respect to other jurisdictions, where the Scottish Government might want to look for inspiration, but also what aspects it will want to be mindful of when devising Scotland’s new intestacy rules.

¹ It is difficult to obtain precise numbers, but it seems to be the case that many Scots have not made a will. See D Reid, “From the Cradle to the Grave: Politics, Families and Inheritance Law” (2008) 12 *EdinLR* 391 at 413 citing statistics that suggest that 31% of those who died in 2007 were intestate. By contrast, Kenneth Reid suggests that a reasonable estimate is that around half of those who die in Scotland do so without leaving a will. See K G C Reid, “Intestate Succession in Scotland”, in K G C Reid, M J de Waal and R Zimmermann (eds), *Comparative Succession Law* vol II: *Intestate Succession* (2015) 371 at 388.

² For details, see Dot Reid’s contribution in this issue: “Why is it so difficult to reform the law of intestate succession?” (2020) 24 *EdinLR* 00.

³ Scottish Law Commission, Report on Succession (Scot Law Com No 124, 1990).

⁴ Scottish Law Commission, Report on *Succession* (Scot Law Com No 215, 2009).

⁵ *Scottish Government response to the Consultation on the Law of Succession* (2018).

⁶ Scottish Government, *Consultation on the Law of Succession* (2019).