



# Succession (Scotland) Act 2016

## 2016 asp 7

### *Forfeiture*

#### **12 Person forfeiting to be treated as having failed to survive victim**

- (1) This section applies where, under the forfeiture rule, a person (“the offender”) has forfeited—
- (a) rights of succession to the estate of the deceased,
  - (b) a beneficial interest in trust property which (but for the forfeiture) the offender would have acquired in consequence of the deceased’s death,
  - (c) title to property which (but for the forfeiture) the offender would have acquired in consequence of the deceased’s death by virtue of a special destination.
- (2) In subsection (1)(b), “trust property” means property which, before the deceased’s death, was held in trust for any person.
- (3) The offender is to be treated as having died before the deceased—
- (a) for the purposes of the rights of succession to the deceased’s estate,
  - (b) in relation to the beneficial interest mentioned in subsection (1)(b),
  - (c) in relation to the title to property mentioned in subsection (1)(c),
- (as the case may be).
- (4) For the avoidance of doubt, references in this section to rights of succession to the estate of the deceased include references to—
- (a) a claim to jus relictii, jus relictiae or legitim out of that estate,
  - (b) an entitlement from that estate conferred by section 8 or 9 of the Succession (Scotland) Act 1964.
- (5) In this section, “the deceased” means the person as a result of whose death the forfeiture arose.

#### **13 Protection for persons acquiring in good faith and for value**

- (1) This section applies where a person acquires title to property in good faith and for value (whether by purchase or otherwise).

- (2) The title is not challengeable on the ground that it was acquired (directly or indirectly) from a person who in relation to the property has incurred forfeiture under the forfeiture rule.

#### **14 Power of sheriff to order sheriff clerk to execute document**

- (1) This section applies where a relevant sheriff is satisfied, on an application, that—
- (a) execution by a person of a particular document is reasonably necessary to give effect to a forfeiture under the forfeiture rule, and
  - (b) the person—
    - (i) is refusing to execute the document, or
    - (ii) is unable, or otherwise failing, to execute the document.
- (2) The sheriff may make an order—
- (a) dispensing with the execution of the document by the person, and
  - (b) directing the sheriff clerk to execute the document.
- (3) A document executed by the sheriff clerk in accordance with an order under subsection (2) has the same force and effect as if it had been executed by the person.
- (4) In subsection (1), “a relevant sheriff” means—
- (a) if the deceased died domiciled in Scotland, a sheriff—
    - (i) of the sheriffdom in which the deceased was habitually resident at the date of death, or
    - (ii) if subsection (5) applies, of the sheriffdom of Lothian and Borders sitting at Edinburgh,
  - (b) if the deceased died domiciled other than in Scotland but at the date of death owned immovable property situated in Scotland, a sheriff of the sheriffdom in which the immovable property is situated,
  - (c) in any case, a sheriff of the sheriffdom in which the deceased’s executor obtains confirmation.
- (5) This subsection applies if at the date of death—
- (a) the deceased was not habitually resident in a particular part of Scotland, or
  - (b) the particular part of Scotland in which the deceased was habitually resident is not known or is uncertain.
- (6) In this section, “the deceased” means the person as a result of whose death the forfeiture arose.

#### **15 Total relief from forfeiture rule**

- (1) Section 2 of the Forfeiture Act 1982 is amended as follows.
- (2) In subsection (1), after “modifying” insert “or excluding”.
- (3) In subsection (2)—
- (a) after “modifying” insert “or excluding”,
  - (b) after “modified” insert “or excluded”.
- (4) In subsection (3), after “modifying” insert “or excluding”.

- (5) In subsection (5)—
  - (a) after “modify” insert “or exclude”,
  - (b) in paragraph (a), for “(but not all)” substitute “or all”,
  - (c) in paragraph (b), after “in respect of” insert “all or any”.
- (6) In subsection (6), after “section” insert “modifying the effect of the forfeiture rule”.

## **16 Time limit for applying for relief from forfeiture rule**

- (1) Section 2 of the Forfeiture Act 1982 is amended as follows.
- (2) In subsection (3), for “period of three months beginning with his conviction” substitute “relevant period”.
- (3) After subsection (3), insert—
  - “(3A) In subsection (3) above, the “relevant period” is the period of 6 months beginning with—
    - (a) the end of the period allowed for bringing an appeal against the conviction, or
    - (b) if such an appeal is brought, the conclusion of proceedings on the appeal.”.

## **17 Repeal of the Parricide Act**

- (1) The Parricide Act 1594 is repealed.
- (2) For the avoidance of doubt, the forfeiture rule applies in relation to cases where a person has unlawfully killed the person’s parent or grandparent as it applies in relation to other cases of unlawful killing.