

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Forfeiture

Section 14 – Power of sheriff to order sheriff clerk to execute document

47. This section relates to circumstances where forfeiture occurs following distribution of the estate. In this situation, those in possession of the property are no longer entitled to it and are under a duty to return the property to the estate. To do so they require to sign the necessary documents to give effect to a forfeiture and should they not do so this section will take effect. This section provides powers for a relevant sheriff (as defined at subsection (4)), on application, to dispense with the execution of any document necessary to give effect to a forfeiture and to direct the sheriff clerk to execute the document in question (subsection (2)).
48. Subsection (3) provides that a document executed by the sheriff clerk under authority from a relevant sheriff is to have the same force and effect as if the person who was under a duty to execute it had done so.
49. The process for applying to the sheriff to have the document executed by the sheriff clerk or to dispense with the execution is by application and the normal rules of standing will apply. This means that the court must be satisfied that the applicant, on cause shown, has sufficient interest in the application.
50. Subsection (4) sets out which sheriff will have jurisdiction. If the deceased died domiciled in Scotland (domicile being the rule of law that sets out where a person's home is regarded for certain legal purposes) it will be a sheriff of the sheriffdom where the deceased lived or if that is not clear it will be a sheriff of the sheriffdom of Lothian and Borders sitting in Edinburgh. If the deceased was not domiciled in Scotland but owned immoveable property in Scotland it will be a sheriff of the sheriffdom where that property is situated. In addition, a sheriff of the sheriffdom in which confirmation was obtained will always have jurisdiction.