

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Forfeiture

Section 12 – Person forfeiting to be treated as having failed to survive victim

45. The forfeiture rule is a rule of public policy which, in certain circumstances, precludes a person who has unlawfully killed another from acquiring a benefit in consequence of that killing. This section provides that in circumstances where a person has forfeited their rights of succession, including prior and legal rights, to the estate of the deceased, their beneficial interest in trust property, or their title to property by virtue of a special destination, they are to be treated as having died before the deceased. This addresses a situation highlighted in a case (called *Hunter's Executors, Petitioners*, 1992 SC 474) in which a man murdered his second wife. Her will provided for her estate to go to her husband and if he predeceased her and there was no issue of the second marriage, it was to be divided between his son by his first wife and her own sister. While the murderer clearly forfeited his own benefit under the will, the court was not prepared to go so far as to say that this meant that he had predeceased his second wife. Accordingly, the estate fell into intestacy and passed to the second wife's sister and parents.

Section 13 – Protection for persons acquiring in good faith and for value

46. This section protects the title of a person who acquires property in good faith and for value, whether by purchase or otherwise, whose title would otherwise be challengeable by virtue of the forfeiture rule. For example where a third party has bought a house from a person who had inherited it from their spouse and that person is then convicted of murdering their spouse.

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 immovable 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.

Section 15 – total relief from forfeiture rule

51. The Forfeiture Act 1982 enables a person to apply to the court for “relief” from the forfeiture rule. Relief means that the effect of forfeiture rule is modified and the killer is enabled to inherit a proportion of the victim's estate. This section reverses the decision in *Cross, Petr* 1987 SLT 384 in which it was held that the court could not go so far as to disapply the effect of the rule in a given case entirely. So the court granted relief in respect of all of the heritable property and 99% of the moveable property. As relief is entirely at the discretion of the court, the Commission recommended that the court should be able to grant total relief in the rare case where they deem it appropriate. This section therefore amends section 2 of the Forfeiture Act 1982 to provide courts with the power to grant total relief.

Section 16 – Time limit for applying for relief from forfeiture rule

52. This section amends section 2 of the Forfeiture Act 1982 to extend the period of time within which proceedings for relief from the forfeiture rule may be from 3 months from the conviction to 6 months from the conviction. It provides that the 6 month period will only start to run once the period within which an appeal against conviction may be brought has expired or on the conclusion of any appeal proceedings brought.

Section 17 – Repeal of the Parricide Act

53. The Parricide Act 1594 – an Act of the Parliament of Scotland - makes provision for anyone killing a parent or grandparent to be disinherited. This section repeals the Parricide Act 1594, as recommended by the Commission, on the basis that it deals with a limited class of victims, disinherits the killer's issue, appears to only apply to the victim's heritable property and was ignored by the court in the case of *Cross, Petr* 1987 SLT 384. Subsection (1) provides that the Parricide Act 1594 is repealed. Subsection (2) clarifies that 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 any other cases of unlawful killing.