

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General

Section 28- Interpretation

80. Subsection (1) of section 28 defines the terms “estate” and “property” for the purposes of the Act. The term ‘property’ means both heritable and moveable property. The definitions apply unless the context requires otherwise.
81. Subsection (2) provides that, for the purposes of the Act, ‘forfeiture rule’ has the same meaning as in the Forfeiture Act 1982. In that Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.
82. Subsection (3) defines the term “will” for the purposes of the Act.

Section 29 – Consequential provision

83. Subsection (1) abolishes the *conditio si institutus sine liberis decesserit* in consequence of section 6.
84. Subsection (2) introduces the schedule which modifies certain provisions for the purposes of or in consequence of the Act.

Section 30 - Ancillary Provision

85. Section 30 provides that the Scottish Ministers may by regulations make such ancillary provision as they consider appropriate for the purposes of or in connection with the Act or for the purposes of giving full effect to the Act.

Section 31 – Commencement

86. Section 31 provides that this section and sections 18-22 and 30 and 32 come into force the day after Royal Assent. The Scottish Ministers may make commencement regulations bringing the remaining provisions of the Act into force on a day they specify in the regulations. Commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Section 32 – Short Title

87. This section sets out the short title of the Act.

Schedule

88. Paragraphs 1(1) to (4) of the schedule makes various modifications to sections 5(1), 6(1) and 11 of the Succession (Scotland) Act 1964 in consequence of section 9 of the Act. The amendments replace the references to “predecease” in those sections with

*These notes relate to the Succession (Scotland) Act 2016
(asp 7) which received Royal Assent on 3 March 2016*

“failed to survive” so that these provisions are in line with and get the benefit of the new survivorship provision in section 9 of the Act. Paragraph 1(5)(c) also repeals section 31 of the Succession (Scotland) Act 1964 in consequence of its replacement by section 9 of the Act

89. Paragraph 1(5)(a) repeals section 17 of the Succession (Scotland) Act 1965 in consequence of its replacement by section 24 of the Act.
90. Paragraph 1(5)(b) repeals section 24(2) of the Succession (Scotland) Act 1964. Paragraph 2 repeals section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968. Both of these provisions are repealed in consequence of their replacement by section 23 of the Act
91. Paragraphs 3 and 4 repeal section 124A of the Civil Partnership Act 2004 and section 19 of the Family Law (Scotland) Act 2006. These provisions are replaced by section 2 of the Act.