



Succession (Scotland) Act 1964

1964 CHAPTER 41

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

36 Interpretation.

(1) In this Act the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say—

“deed” includes any disposition, contract, instrument or writing, whether *inter vivos* or *mortis causa*;

“an intestate” means a person who has died leaving undisposed of by testamentary disposition the whole or any part of his estate, and “intestate” shall be construed accordingly;

“intestate estate”, in relation to an intestate, means (subject to sections 1(2) and 9(6)(a) of this Act) so much of his estate as is undisposed of by testamentary disposition;

“issue” means . . . ^{F1}issue however remote;

“Land Court” means the Scottish Land Court;

“lease” and “tenancy” include sub-lease and sub-tenancy, and tenant shall be construed accordingly;

“legal rights” means *jus relictii, jus relictæ*, [^{F2}legitim and rights under section 131 of the Civil Partnership Act 2004];

“net estate” and “net intestate estate” mean respectively so much of an estate or an intestate estate as remains after provision for the satisfaction of estate duty and other liabilities of the estate having priority over legal rights, the prior rights of a surviving spouse and rights of succession, or, as the case may be, the proportion thereof properly attributable to the intestate estate;

“owner” in relation to any heritable property means the person entitled to receive the rents thereof (other than rents under a sub-lease or sub-tenancy);

“prior rights”, in relation to a surviving spouse [^{F3}or civil partner], means the rights conferred by sections 8 and 9 of this Act;

Changes to legislation: Succession (Scotland) Act 1964, Section 36 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“testamentary disposition”, in relation to a deceased, includes any deed taking effect on his death whereby any part of his estate is disposed of or under which a succession thereto arises.

- (2) Any reference in this Act to the estate of a deceased person shall, unless the context otherwise requires, be construed as a reference to the whole estate, whether heritable or moveable, or partly heritable and partly moveable, belonging to the deceased at the time of his death or over which the deceased had a power of appointment and, where the deceased immediately before his death held the interest of a tenant under a tenancy or lease which was not expressed to expire on his death, includes that interest:

Provided that—

- (a) where any heritable property belonging to a deceased person at the date of his death is subject to a special destination in favour of any person, the property shall not be treated for the purposes of this Act as part of the estate of the deceased unless the destination is one which could competently be, and has in fact been, evacuated by the deceased by testamentary disposition or otherwise; and in that case the property shall be treated for the purposes of this Act as if it were part of the deceased’s estate on which he has tested; and
 - (b) where any heritable property over which a deceased person had a power of appointment has not been disposed of in exercise of that power and is in those circumstances subject to a power of appointment by some other person, that property shall not be treated for the purposes of this Act as part of the estate of the deceased.
- (3) Without prejudice to the proviso to section 23(2) of this Act, references in this Act to the date of execution of a testamentary disposition shall be construed as references to the date on which the disposition was actually executed and not to the date of death of the testator.
- (4) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act.
- [^{F4}(5) Section 1(1) (legal equality of children) of the Law Reform (Parent and Child) (Scotland) Act 1986 shall apply to this Act; and any reference (however expressed) in this Act to a relative shall be construed accordingly.]

Textual Amendments

- F1** Word repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F2** Words in s. 36(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. **131(5)**, 263(3); S.S.I. 2005/604, {art. (2(b))}
- F3** Words in s. 36(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263(10)(c), **Sch. 28 para. 10**; S.S.I. 2005/604, {art. (2(c))}
- F4** S. 36(5) added by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), **Sch. 1 para. 7(2)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 2(1)(ab) inserted by [2024 asp 2 s. 77\(1\)\(a\)](#)