



Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

1968 CHAPTER 70

PART I

SUCCESSION, CONSTRUCTION OF DEEDS, ETC., IN CASES OF ILLEGITIMACY

Rights in estates of deceased persons in cases of illegitimacy

1 Intestate succession in cases of illegitimacy

For section 4 (succession in cases of illegitimacy) of the Succession (Scotland) Act 1964 (hereafter in this Part of this Act referred to as " the Act of 1964 ") there shall, in relation to the estate of any person dying after the commencement of this Act, be substituted the following section:—

“4 Succession in cases of illegitimacy.

- (1) Notwithstanding anything in section 2 of this Act, where a person dies intestate and is survived by illegitimate children, those illegitimate children and the legitimate children (if any) of the intestate shall together have right to the whole of the intestate estate.
- (2) Notwithstanding anything in the said section 2, where an illegitimate person dies intestate and is not survived by any issue within the meaning of this Act or by any person entitled to succeed to the intestate estate by virtue of subsection (1) of this section or of that subsection as read with section 5 of this Act, but is survived by either of, or both, his parents, the surviving parent or parents shall have right to the whole of the intestate estate.
- (3) For the purposes of subsection (2) of this section an illegitimate person shall be presumed not to be survived by his father unless the contrary is shown.

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- (4) Except so far as otherwise provided in this section, or in this section as read with section 5 of this Act, nothing in this Part of this Act shall be construed as importing any rule of succession through illegitimate relationship.”.

2 **Right of illegitimate children to legitim**

The following section shall be inserted in the Act of 1964 after section 10 thereof and shall have effect in relation to the estate of any person dying after the commencement of this Act:—

“10A **Right of illegitimate children to legitim.**

The illegitimate children of any person who dies shall have the like right to legitim out of that person's estate as they would have had, according to the law in force immediately before the commencement of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, if they had been born legitimate, and any enactment (including any enactment contained in this Act), and any rule of law, in force immediately before such commencement which has effect in relation to legitim shall apply accordingly.”.

3 **Consequential modification of Succession (Scotland) Act 1964**

In relation to the estate of any person dying after the commencement of this Act, the Act of 1964 shall have effect subject to the modifications specified in Schedule 1 to this Act, being modifications consequential on the provisions of sections 1 and 2 of this Act.

4 **Amendment of law with respect to right of illegitimate child to aliment after parent's death**

- (1) Where a person dying after the commencement of this Act (hereafter in this section referred to as " the deceased ") is survived by an illegitimate child, there shall be available to or in respect of that child the like right to aliment—
- (a) out of the deceased's estate,
 - (b) from any person who has received property which was comprised in that estate, to the extent that that person was enriched by receiving that property, in respect of any period after the death of the deceased as would have been available if the child had been born legitimate ; and in respect of any such period neither the deceased's estate nor any person (other than the child's other parent) who has received property as aforesaid shall be liable for the payment of any sum in respect of the aliment of the child (whether under a decree of a court or otherwise) except by virtue of this subsection or (subject to subsection (2) of this section) of an agreement which provides for the payment of such a sum.
- (2) Where at the date of the deceased's death there is subsisting an agreement entered into before the commencement of this Act in which provision is made for the payment of any sum in respect of the aliment of an illegitimate child of the deceased, and in terms of that agreement any such sum falls to be paid in respect of a period after the death of the deceased, the court, on the application of any person appearing to them to be interested, and after giving to other persons appearing to them to be interested an opportunity of being heard, may if they think fit make such order—

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- (a) varying the terms of the said agreement, so far as it provides for the payment of such a sum in respect of any such period, or
 - (b) directing that the agreement, so far as it so provides, shall cease to have effect, as may appear to them, having regard to the foregoing provisions of this Act and to all the other circumstances of the case, to be just and equitable; and the court may make such order either unconditionally or subject to such conditions as they may think just.
- (3) In this section " court" means either the Court of Session or the sheriff.