

ESTATES OF DECEASED PERSONS (FORFEITURE RULE AND LAW OF SUCCESSION) ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 which received Royal Assent on 12 July 2011. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY OF REFORMS AND BACKGROUND

3. The Act amends the law of succession in England and Wales where a person disclaims (that is rejects) an inheritance or is disqualified from receiving an inheritance by reason of the forfeiture rule. The rule is defined in section 1 of the Forfeiture Act 1982 as meaning the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another, or unlawfully aided, abetted, counselled or procured the death of that other, from acquiring a benefit in consequence of the killing. It will also address the anomalous situation under the present law by which the children of a minor, who is entitled to inherit an interest in the estate of an intestate but who dies unmarried and without entering a civil partnership before the age of 18, are unable to inherit their parent's interest in that estate.

4. The Act gives effect, with modifications, to the recommendations set out in the Law Commission's 2005 report "The Forfeiture Rule and the Law of Succession" (Law Com No 295). The subject of forfeiture and succession was referred to the Law Commission following the case of *Re DWS (deceased)* [2001] Ch 568 (CA). Briefly, the facts were that a person (P) killed both his parents, neither of whom left a will. The court had to decide who was entitled to inherit P's father's estate under the intestacy rules specified in sections 46 and 47 of the Administration of Estates Act 1925 ("the 1925 Act"). P was not allowed to inherit because of the forfeiture rule. However, P's child, the grandchild of P's victims, could not inherit in place of P under the intestacy rules because P was still alive. Instead, the victim's estate passed to his late sister's estate. The Commission considered that this outcome was unfair and noted that similar problems arose where a killer forfeited an inheritance under a will.

5. The Law Commission also noted similar problems where a person disclaimed an inheritance under a will or on intestacy. For example, where on an intestacy the person who disclaims is the only child of the deceased, the inheritance will by-pass the child's descendants because grandchildren may only inherit from their grandparent if their parent dies before the grandparent. The inheritance passes instead to the deceased's other blood relatives.

6. The Law Commission also recommended reform of the anomalous situation involving the children of a deceased minor described in paragraph 3 following comments made in response to the Commission's 2003 consultation paper "The Forfeiture Rule and the Law of Succession" (Consultation Paper No 172).

TERRITORIAL EXTENT AND APPLICATION

7. The Act extends to England and Wales only (section 4(5)). It does not contain any provisions that fall within the legislative competence of the National Assembly for Wales and does not affect the functions of Welsh Assembly Government Ministers.

COMMENTARY ON SECTIONS

Section 1 – Disclaimer or forfeiture on intestacy

8. *Section 1* amends Part 4 of the 1925 Act, which sets out how a deceased person's estate is to be distributed in the absence of a will or to the extent that a will is not valid.

9. *Subsection (2)* inserts a new section 46A into the 1925 Act.

10. Subsection (1) of the new section 46A specifies that the new section applies where a person ("X") disclaims an inheritance or is disqualified from inheriting from another person because of the forfeiture rule.

11. Subsection (2) of the new section 46A provides that for the purpose of deciding who should inherit X's interest in the deceased's estate in these situations, X should be deemed to have died immediately before the intestate. This overcomes the requirement in the present law of intestacy that a child cannot inherit in place of his or her parent if that parent is still alive (see Administration of Estates Act 1925, s 47(1)). The effect of the reform is that if a person disclaims or is disqualified under the forfeiture rule, the inheritance to which he or she is no longer entitled will go to the next person listed in the order of priority in section 46 of the 1925 Act, even though the person who disclaimed or suffered the forfeiture is still alive.

12. Subsection (3) of the new section 46A provides that the new rule will not limit the court's power under section 2 of the Forfeiture Act 1982. Under this section, the court has the power to modify the effect of the forfeiture rule where the offender has not been convicted of murder; for example, by allowing the killer to inherit all or part of the estate. Accordingly, the rule introduced by the new section 46A gives way to any order made by the court under section 2 of the Forfeiture Act 1982.

13. *Subsection (3)* makes a consequential amendment. At present, section 47(1) of the 1925 Act, which defines the statutory trusts for descendants on intestacy, provides that no grandchild or remoter descendant may inherit if his or her parent is still alive when the intestate dies. This is inconsistent with the new section 46A, which treats the offender as having died before the deceased. Subsection (4) therefore inserts the words "subject to section 46A" into section 47(1), to ensure consistency with the new rule.

14. *Subsection (4)* makes another consequential amendment to ensure consistency with the new rule. It inserts a new subsection after section 47(4) of the 1925 Act, stating that subsections (2) and (4) of section 47 are subject to the new section 46A. Section 47(2) provides that, where no descendant of the intestate attains a vested interest by reaching the age of 18 or marrying or entering a civil partnership under that age, the estate is to be distributed as if the intestate had died without issue. Section 47(4) applies a similar rule to the statutory trusts for siblings or issue of siblings, which are defined by section 47(3) of the 1925 Act. Section 47(4A) prevents the new section 46A duplicating or conflicting with section 47(2) and (4).

Section 2 – Disclaimer or forfeiture of a gift under a will

15. This section makes analogous provision to that made by section 1 in relation to intestate succession for disclaimers or forfeitures of gifts under wills. It inserts a new section after section 33 of the Wills Act 1837 ("the 1837 Act"), and makes one consequential amendment to that section.

16. *Subsection (2)* inserts a new section 33A into the 1837 Act. It corresponds to the new section 46A set out in section 1(2).

17. Subsection (1) of the new section 33A specifies that the new section applies where a person either disclaims a gift under a will or is precluded from taking it by the forfeiture rule.

18. Subsection (2) of the new section 33A provides that in both these situations, the will is to be interpreted as if the person disclaiming or forfeiting had died immediately before the testator. The effect of this is that the person next entitled to the property will be able to inherit. This general rule does however give way to a contrary intention in the will. This is consistent with the provisions of section 33 of the 1837 Act, which also give way to a contrary intention in the will.

19. Subsection (3) of the new section 33A provides that, as in the analogous intestacy situation, the new rule gives way to any order the court may make under section 2 of the Forfeiture Act 1982 to give relief to the killer from the effect of the forfeiture rule.

20. *Subsection (3)* makes a consequential amendment to section 33(3) of the 1837 Act and corresponds to subsection (3) of section 1. Section 33(3) excludes a grandchild or remoter descendant of the testator whose parent is still alive at the testator's death from inheriting. Subsection (3) avoids inconsistency with the rule introduced by section 33A by making section 33(3) subject to the new section 33A.

Section 3 – Death of a single parent under 18

21. This section inserts new subsections (4B), (4C) and (4D) into section 47 of the 1925 Act after the new section 47(4A) (inserted by section 1(4) of the Act). The subsections inserted by this section concern a situation, in which a child ("C") of an intestate ("Y") dies under the age of 18 without having married or formed a civil partnership, but leaves children. As C is a minor at the date of Y's death, his or her interest in Y's estate will be held on the statutory trusts imposed by section 47 of the 1925 Act.

22. At present, on C's death, C's children will not inherit C's interest in Y's estate. They cannot inherit directly from Y, because C was alive at Y's death. They cannot inherit through C because C did not attain a vested interest in Y's estate by reaching the age of 18 or marrying or entering a civil partnership under that age.

23. The provisions inserted by section 3 provide that Y's estate is to be distributed as if C had died immediately before Y. The children of the deceased minor, C, living at the death of Y, will then be able to inherit. Income from the estate is dealt with in the same way.

Section 4 – Short title, commencement, application and extent

24. *Subsection (4)* provides that the Act only applies to deaths occurring after the commencement of sections 1, 2 and 3 of the Act (see paragraph 25).

COMMENCEMENT

25. The Act will come into force on such day as the Secretary of State may specify by order (section 4(2)), but sections 1, 2 and 3 may not be brought into force within three months of Royal Assent (section 4(3)).

HANSARD REFERENCES

26. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction	30 June 2010	Vol 512 Col 867
Second Reading	21 January 2011	Vol 521 Col 1127
Committee	16 February 2011	PBC (Bill 008) 2010 – 2011 Col 3
Report and Third Reading	4 March 2011	Vol 524 Col 552
House of Lords		
Introduction	7 March 2011	Vol 725 Col 1430
Second Reading	13 May 2011	Vol 727 Col 1106
Committee	15 June 2011	Vol 728 Col 789
Third reading	23 June 2011	Vol 728 Col 1392
House of Commons		
Royal Assent	12 July 2011	Vol 531 Col 211
House of Lords		
Royal Assent	12 July 2011	Vol 729 Col 711