



Succession (Scotland) Act 2016

2016 asp 7

Testamentary documents and special destinations

1 Effect of divorce, dissolution or annulment on will

- (1) This section applies where—
 - (a) a person (“the testator”) by a will—
 - (i) confers a benefit or power of appointment on a person, or
 - (ii) appoints a person as a trustee or executor,
 - (b) that person (“P”) is, or becomes, the testator’s spouse or civil partner,
 - (c) the marriage or civil partnership is terminated, and
 - (d) the testator then dies.
- (2) P is to be treated as having died before the testator for the purposes of the will except for the purposes of any appointment of P or another person as a guardian.
- (3) Subsection (2) does not apply if the will expressly provides that P is to—
 - (a) have the benefit or power of appointment, or
 - (b) be so appointed as a trustee or executor,even if the marriage or civil partnership is terminated.
- (4) For the purposes of this section, a marriage is terminated in the event of divorce or annulment and a civil partnership is terminated in the event of dissolution or annulment.
- (5) In this section, references to “divorce”, “dissolution” and “annulment” are to divorce, dissolution or annulment—
 - (a) obtained from a court of civil jurisdiction in the United Kingdom, the Channel Islands or the Isle of Man, or
 - (b) if not so obtained, the validity of which is recognised in Scotland.

2 Effect of divorce, dissolution or annulment on special destination

- (1) This section applies where—
 - (a) property is held in the name of—

- (i) a person (“A”) and A’s spouse or civil partner (“B”) and the survivor of them,
 - (ii) A, B and another person or other persons and the survivor or survivors of them,
 - (iii) A with a special destination, on A’s death, in favour of B,
 - (b) A and B’s marriage or civil partnership is terminated, and
 - (c) A then dies.
- (2) In relation to the succession to the property mentioned in subsection (1)(a) on A’s death, B is to be treated as having died before A.
- (3) Subsection (2) does not apply if the document under which the property is held expressly provides that succession to the property is to be unaffected by A and B’s marriage or civil partnership being terminated.
- (4) If a person has in good faith and for value (whether by purchase or otherwise) acquired title to the property, that title is not to be challengeable on the ground that, by virtue of subsection (2), the property falls to A’s estate.
- (5) For the purposes of this section, a marriage is terminated in the event of divorce or annulment and a civil partnership is terminated in the event of dissolution or annulment.
- (6) In this section, references to “divorce”, “dissolution” and “annulment” are to divorce, dissolution or annulment—
- (a) obtained from a court of civil jurisdiction in the United Kingdom, the Channel Islands or the Isle of Man, or
 - (b) if not so obtained, the validity of which is recognised in Scotland.

3 Rectification of will

- (1) This section applies where—
- (a) a person (“the testator”) dies domiciled in Scotland, leaving a will,
 - (b) the will was drafted not by the testator but on the testator’s instructions,
 - (c) after the date of death, a person applies to the court for rectification of the will, and
 - (d) the court is satisfied that the will fails to express accurately what was instructed.
- (2) The court may order that the will be rectified in such manner as it may specify so as to give effect to the testator’s instructions.
- (3) For the purposes of subsections (1)(d) and (2), the court may have regard to evidence extrinsic to the will.
- (4) A will rectified by virtue of this section has effect as if so rectified when executed (but see sections 4(7) and 24).
- (5) In this section, “the court” means—
- (a) the Court of Session, or
 - (b) a relevant sheriff.
- (6) In subsection (5)(b), “a relevant sheriff” means—
- (a) a sheriff—

- (i) of the sheriffdom in which the testator was habitually resident at the date of death, or
 - (ii) if subsection (7) applies, of the sheriffdom of Lothian and Borders sitting at Edinburgh, or
 - (b) a sheriff of the sheriffdom in which the testator's executor obtains confirmation.
- (7) This subsection applies if at the date of death—
- (a) the testator was not habitually resident in a particular part of Scotland, or
 - (b) the particular part of Scotland in which the testator was habitually resident is not known or is uncertain.

4 Rectification of will: supplementary

- (1) Subject to subsection (2), an application under section 3(1)(c) must be made within the period of 6 months commencing—
 - (a) in a case where confirmation is obtained in respect of the testator's estate, on the date of its being obtained, or
 - (b) in any other case, on the date of the testator's death.
- (2) The court may, on cause shown, consider an application which is made outwith that period of 6 months.
- (3) An order made by virtue of section 3(2) may be registered in—
 - (a) the Books of Council and Session, or
 - (b) the sheriff court books,if the will to which the order relates is registered (either before or when the order is registered) in the books in question.
- (4) Subsections (5) and (6) apply if the court is satisfied, on an application, that—
 - (a) execution by a person of a particular document is reasonably necessary to give effect to the rectified will, and
 - (b) the person—
 - (i) is refusing to execute the document, or
 - (ii) is unable, or otherwise failing, to execute the document.
- (5) The court may make an order—
 - (a) dispensing with the execution of the document by the person, and
 - (b) directing a clerk of session, or as the case may be the sheriff clerk, to execute the document.
- (6) A document executed by a clerk of session or the sheriff clerk in accordance with an order under subsection (5) has the same force and effect as if it had been executed by the person.
- (7) A trustee or executor is not personally liable for distributing property in good faith in accordance with a will which, by virtue of section 3, is rectified after the distribution.
- (8) In this section, "the court" has the same meaning as in section 3.

5 Revocation of will not to revive earlier revoked will

- (1) This section applies where—
 - (a) a will, or part of a will, is expressly or impliedly revoked by a subsequent will, and
 - (b) the subsequent will, or part of it, is revoked.
- (2) The revocation of the subsequent will, or part of it, does not revive the earlier will or (as the case may be) the revoked part of the earlier will.

6 Death before legacy vests: entitlement of issue

- (1) This section applies where—
 - (a) a person (“the testator”) by a will bequeaths a legacy to—
 - (i) a direct descendant of the testator, or
 - (ii) more than one person where both or (as the case may be) all of those persons are direct descendants of the testator, and
 - (b) the person to whom the legacy is bequeathed or, if it is bequeathed to more than one person, a person to whom it is bequeathed—
 - (i) is alive when the will is executed, but
 - (ii) fails to survive the date of vesting of the legacy.
- (2) Any issue of the deceased legatee alive when the legacy would, but for the legatee’s death, have vested in the legatee is entitled to receive the legacy unless it is clear from the terms of the will that the testator intended otherwise.
- (3) Without prejudice to the generality of subsection (2), it is to be regarded as clear from the terms of the will that the testator intended otherwise if the will provides expressly that the legacy is bequeathed—
 - (a) to the deceased legatee and another person (or other persons) and to the survivor (or survivors) of them, or
 - (b) to the deceased legatee, whom failing to another person (or other persons).
- (4) Where the legacy is bequeathed to more than one direct descendant, the share of it which the deceased legatee’s issue is entitled to receive is the share which the deceased legatee would have received if alive.
- (5) Any distribution made by virtue of this section between or among two or more of the deceased legatee’s issue is to be made in the same way as if it were a distribution between or among them of the whole or part of an intestate estate.
- (6) In this section—

“intestate estate” means an estate, or any part of an estate, which is not disposed of by will,

“issue” means issue however remote.

7 Liferent: vesting of fee other than on death

- (1) This section applies where a liferent terminates other than on the death of the liferenter.
- (2) If the fee has not vested in the fiar by the date of termination of the liferent, the fee vests in the fiar on that date unless—
 - (a) the document creating the liferent expressly provides otherwise, or

- (b) there is an obligation requiring otherwise.

8 Destinations in wills and certain trusts: conditional institution

(1) This section applies where—

- (a) a destination of property in favour of a person (“A”) whom failing another person (“B”) is contained in a will or in a trust taking effect during the lifetime of the truster, and
- (b) the property vests in A.

(2) B loses all rights to the property under the destination unless—

- (a) the will or trust expressly provides otherwise, or
- (b) it is clear from the terms of the will or trust that the testator or truster intended otherwise.