

# **SUCCESSION (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **OVERVIEW**

3. The law of succession regulates how property passes on a person's death. It has been subject to substantive review by the Scottish Law Commission ("the Commission") and it has published 2 wide ranging reports in 1990 (Scottish Law Commission no.124; January 1990) and 2009 (Scottish Law Commission no.215; January 2009). The Commission's 2009 recommendations cover both a fundamental overhaul of the major elements of the law of succession – intestate succession, protection from disinheritance and cohabitation – as well as a range of other recommendations relating to the law of succession. A number of these other recommendations were carried forward from the earlier Report on succession published in 1990.
4. This Act will therefore modernise and clarify some technical aspects of the law relating to succession and will address a number of anomalies within the current legislative framework so that the law in this area is fairer, clearer and more consistent. The Act has 32 sections and a schedule which cover the following key areas—
  - testamentary documents and special destinations - this includes reforms which relate to the rectification of wills; the effect of divorce, dissolution or annulment on a will or special destination; and the revival of a revoked will;
  - survivorship – the provision of new rules where there is uncertainty about the order of death;
  - forfeiture – updating the rules in respect of forfeiture;
  - estate Administration – putting in place protections for trustees and executors in certain circumstances and for persons acquiring title in good faith;
  - other reforms – abolishing *donations mortis causa* and the right to claim the expense of mournings; and introducing a new ground of jurisdiction for executors confirmed in Scotland.