

# SUCCESSION (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Testamentary documents and special destinations*

#### *Section 7 – Liferent: vesting of fee other than on death*

31. A liferent is where a beneficiary has the right to receive for the duration of their lifetime, the benefits of an asset. Where a legacy is given without limitation of time, it is referred to as having been given in fee. For example a parent may leave a property in liferent to their spouse or civil partner but in fee to their child. So the spouse may live in the property and enjoy the property but they never own it and may not dispose of it. In these circumstances the child is known as the fiar, or the person in whom the fee vests subject to a liferent. The parent is known as the liferenter.
32. In some cases, the fee does not vest until the death of the liferenter. An example is where the identity of the fiar is dependent on who is alive at the point when the liferenter dies. Problems can arise here where there is early termination of the liferent – for example, where the liferenter renounces the liferent. One such problem is what to do with the income from the property which arises during the life of the liferenter after the point of renunciation or termination. Section 7 removes some of the difficulties where the liferent terminates but the fee does not vest in the fiar. This section allows the fee to vest in the fiar where the liferent terminates but the liferenter has not died.
33. Subsection (1) provides that this section applies when a liferent is terminated otherwise than on the death of the liferenter or where the liferent does not operate because of the effect of divorce, dissolution or annulment on a will or because of the application of forfeiture.
34. Subsection (2) provides that the fee will vest in the fiar on the date of termination of the liferent unless the document creating the liferent expressly provides otherwise or there is an obligation which requires that it should not operate in this way. For example, if a liferent is created by a document, the document itself may provide that the fee is to vest on the death of the liferenter even if the liferent terminates early. If a liferent is created orally, the granter of the liferent may specify at the time of its creation that the fee is to vest on the death of the liferenter even if the liferent terminates early. In both of those situations, the fee would vest on the death of the liferenter as the granter of the liferent intended. The section applies to liferents created by *inter vivos* or testamentary documents.