

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Survivorship

Section 10 – Equal division of property if order of beneficiaries’ deaths uncertain

40. This section applies instead of section 9 where a will provides that property is to pass or be transferred (whatever the means of transfer or passing, for example, whether by a written or oral obligation or trust provisions) to one member of a group of people depending on the order of death and members of the group are involved in a common calamity. All members of the group are potential beneficiaries and have equal status in the sense that it is the testator’s intention that any of them could benefit from the legacy. Section 10(1)(a) sets out the different ways in which provision might be framed to allow property to pass or be transferred to members of a group depending on the order of death as envisaged by paragraph 6.60 of the Commission’s Report.
41. In those circumstances, the property is to be divided equally among the estates of the members of the group who die in the common calamity (subsection (2)). For example, a life assurance policy on the joint lives of a married couple payable to the estate of the first person to die will benefit the two estates equally if it is uncertain which death was first.
42. This section applies only where no other provision has been made to deal with the situation in question (subsection (1)(d)). Where the document regulating the devolution of the property in these circumstances provides for a different rule of division, that will override the statutory equal division rule (subsection (1)(d)).
43. Subsection (4) provides that where the testator is amongst those who die simultaneously or in an uncertain order, then section 9 and not section 10 will apply. This ensures that any legacies vest in the estates of living family members/legatees rather than in the estates of deceased beneficiaries who have not survived the testator.