

*These notes relate to the Succession (Scotland) Act 2016
(asp 7) which received Royal Assent on 3 March 2016*

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Forfeiture

Section 12 – Person forfeiting to be treated as having failed to survive victim

45. The forfeiture rule is a rule of public policy which, in certain circumstances, precludes a person who has unlawfully killed another from acquiring a benefit in consequence of that killing. This section provides that in circumstances where a person has forfeited their rights of succession, including prior and legal rights, to the estate of the deceased, their beneficial interest in trust property, or their title to property by virtue of a special destination, they are to be treated as having died before the deceased. This addresses a situation highlighted in a case (called *Hunter's Executors, Petitioners*, 1992 SC 474) in which a man murdered his second wife. Her will provided for her estate to go to her husband and if he predeceased her and there was no issue of the second marriage, it was to be divided between his son by his first wife and her own sister. While the murderer clearly forfeited his own benefit under the will, the court was not prepared to go so far as to say that this meant that he had predeceased his second wife. Accordingly, the estate fell into intestacy and passed to the second wife's sister and parents.