

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Estate Administration

Section 24 – Protection of person acquiring title

71. This section re-enacts in wider terms, section 17 of the Succession (Scotland) Act 1964, which protects those who purchase heritable property which is or was vested in the deceased's executor by virtue of confirmation. In their 1990 report the Commission took the view that section 17 was deficient because purchasers of items other than heritage or goods, such as shares or book debts were not protected, and second that onerous acquirers of goods otherwise than by purchase (for example by exchange with another beneficiary or foregoing a claim) were not protected.
72. The existing common law protects a person who acquires property in good faith and for value, from someone whose title is voidable, regardless of the type of property. The 1990 report also noted that section 17 may cover cases that would be outwith the scope of this rule. For these reasons the Commission recommended that section 17 be repealed and re-enacted. This section gives effect to this recommendation by providing a more complete statutory protection which protects those who acquire property in good faith and for value directly or indirectly from the executor or a person (such as a legatee) who derived it directly from the executor.
73. Subsection (2) makes express provision about factors which cannot be relied on as grounds of challenge. These factors are: where the court has overturned (reduced) the confirmation; where the will has been subject to rectification after the property has been distributed; and where the title was not necessarily 'good' title.