

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Estate Administration

Section 25 – Gifts made in contemplation of death

74. A donation *mortis causa* is a gift with the following characteristics: it is made by the donor in anticipation of their death; it is made on the understanding that when the donor dies the recipient keeps the gift but that if the donor survives it should be returned to them; the donor can change their mind at any point and ask for the gift to be returned; and if the recipient dies first then the gift is returned to the donor.
75. This special form of gift is counted as part of the donor's estate for the purposes of any claim for legal rights in the event of intestacy. It is also liable for the donor's debts on death in the event that the rest of the donor's estate is insufficient to meet them.
76. This section abolishes this special form of gift as a distinct legal entity. It does not prevent people from continuing to make gifts on such express conditions as they wish to impose and which the recipient is prepared to accept. An individual may even make a gift, subject to the same conditions, in similar circumstances (i.e. in contemplation of death) but as noted above, the only change in the law is that the conditions are no longer automatic.