



# Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

## 1968 CHAPTER 70

### PART I

#### SUCCESSION, CONSTRUCTION OF DEEDS, ETC., IN CASES OF ILLEGITIMACY

##### *Rights in estates of deceased persons in cases of illegitimacy*

#### **1 Intestate succession in cases of illegitimacy**

For section 4 (succession in cases of illegitimacy) of the Succession (Scotland) Act 1964 (hereafter in this Part of this Act referred to as " the Act of 1964 ") there shall, in relation to the estate of any person dying after the commencement of this Act, be substituted the following section:—

##### **“4 Succession in cases of illegitimacy.**

- (1) Notwithstanding anything in section 2 of this Act, where a person dies intestate and is survived by illegitimate children, those illegitimate children and the legitimate children (if any) of the intestate shall together have right to the whole of the intestate estate.
- (2) Notwithstanding anything in the said section 2, where an illegitimate person dies intestate and is not survived by any issue within the meaning of this Act or by any person entitled to succeed to the intestate estate by virtue of subsection (1) of this section or of that subsection as read with section 5 of this Act, but is survived by either of, or both, his parents, the surviving parent or parents shall have right to the whole of the intestate estate.
- (3) For the purposes of subsection (2) of this section an illegitimate person shall be presumed not to be survived by his father unless the contrary is shown.

- (4) Except so far as otherwise provided in this section, or in this section as read with section 5 of this Act, nothing in this Part of this Act shall be construed as importing any rule of succession through illegitimate relationship.”.

## **2 Right of illegitimate children to legitim**

The following section shall be inserted in the Act of 1964 after section 10 thereof and shall have effect in relation to the estate of any person dying after the commencement of this Act:—

### **“10A Right of illegitimate children to legitim.**

The illegitimate children of any person who dies shall have the like right to legitim out of that person's estate as they would have had, according to the law in force immediately before the commencement of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, if they had been born legitimate, and any enactment (including any enactment contained in this Act), and any rule of law, in force immediately before such commencement which has effect in relation to legitim shall apply accordingly.”.

## **3 Consequential modification of Succession (Scotland) Act 1964**

In relation to the estate of any person dying after the commencement of this Act, the Act of 1964 shall have effect subject to the modifications specified in Schedule 1 to this Act, being modifications consequential on the provisions of sections 1 and 2 of this Act.

## **4 Amendment of law with respect to right of illegitimate child to aliment after parent's death**

- (1) Where a person dying after the commencement of this Act (hereafter in this section referred to as " the deceased ") is survived by an illegitimate child, there shall be available to or in respect of that child the like right to aliment—
  - (a) out of the deceased's estate,
  - (b) from any person who has received property which was comprised in that estate, to the extent that that person was enriched by receiving that property, in respect of any period after the death of the deceased as would have been available if the child had been born legitimate ; and in respect of any such period neither the deceased's estate nor any person (other than the child's other parent) who has received property as aforesaid shall be liable for the payment of any sum in respect of the aliment of the child (whether under a decree of a court or otherwise) except by virtue of this subsection or (subject to subsection (2) of this section) of an agreement which provides for the payment of such a sum.
- (2) Where at the date of the deceased's death there is subsisting an agreement entered into before the commencement of this Act in which provision is made for the payment of any sum in respect of the aliment of an illegitimate child of the deceased, and in terms of that agreement any such sum falls to be paid in respect of a period after the death of the deceased, the court, on the application of any person appearing to them to be interested, and after giving to other persons appearing to them to be interested an opportunity of being heard, may if they think fit make such order—

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*Status: This is the original version (as it was originally enacted).*

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- (a) varying the terms of the said agreement, so far as it provides for the payment of such a sum in respect of any such period, or
- (b) directing that the agreement, so far as it so provides, shall cease to have effect, as may appear to them, having regard to the foregoing provisions of this Act and to all the other circumstances of the case, to be just and equitable; and the court may make such order either unconditionally or subject to such conditions as they may think just.

(3) In this section " court" means either the Court of Session or the sheriff.

#### *Construction of deeds, etc.*

### **5 Construction of references to relationship in certain circumstances**

- (1) In deducing any relationship for the purpose of ascertaining the person or persons entitled to benefit under a provision contained in any deed, persons shall, unless the contrary intention appears, be taken to be or, as the case may be, to have been, related to each other notwithstanding that the relationship existing between them is or was an illegitimate one only; and any rule of law to the contrary shall cease to have effect.
- (2) In this section—
  - (a) " deed " includes any disposition, contract, instrument or writing whether inter vivos or mortis causa,
  - (b) " relationship " includes relationship of the whole and of the half blood, and relationship by affinity, and " related " shall be construed accordingly.
- (3) This section shall apply only in relation to deeds executed after the commencement of this Act, and in the case of a deed made in the exercise of a special power of appointment shall apply only where the deed creating the power is executed after such commencement.
- (4) This section shall apply in relation to a provision made after the commencement of this Act otherwise than by deed as it applies in relation to a provision made in a deed.
- (5) Nothing in this section shall—
  - (a) affect the construction of any enactment, or
  - (b) apply in relation to the succession to or devolution of any title, coat of arms, honour or dignity, and where the terms of any deed provide that any property or interest in property shall devolve along with a title, honour or dignity, nothing in this section shall prevent that property or interest from so devolving.

### **6 Application of certain presumptions in cases of illegitimacy**

- (1) Where in the construction of any deed either—
  - (a) the principle known as *conditio si institutus sine liberis decesserit* (in accordance with which the issue of a deceased person may in certain circumstances become entitled to the rights under a deed to which the deceased person would have become entitled if he had not died), or
  - (b) the principle of accretion (in accordance with which, if provision is made in any deed in favour of a number of persons jointly, the share in that provision of any one of those persons may in certain circumstances accrete on his death to the other person or persons in whose favour the provision was made),

would apply for the benefit of any person if it were not for the fact that that or any other person is or was illegitimate, then, unless the contrary intention appears, that principle shall nevertheless apply for the construction of the deed as if the illegitimate person were or had been born legitimate.

- (2) The application in relation to any testamentary writing of the principle known as *conditio si testator sine liberis decesserit* (in accordance with which a testamentary writing may in certain circumstances be held to be revoked by the birth of a child to the testator after the execution of the testamentary writing) shall not be excluded by reason only of the fact that any child born to the testator after the execution of the testamentary writing is or was illegitimate.
- (3) Subsection (2)(a) and subsections (3) to (5) of section 5 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

*Protection of trustees and executors*

**7 Protection of trustees and executors**

Notwithstanding anything in the foregoing provisions of this Act, a trustee or an executor may distribute any property vested in him as such trustee or executor, or may make any payment out of any such property, without having ascertained—

- (a) that no illegitimate person exists who is or may be entitled to an interest in that property or payment in consequence of any of the said provisions, and
- (b) that no illegitimate person exists or has existed, the fact of whose existence is, in consequence of any of the said provisions, relevant to the ascertainment of the persons entitled to an interest in that property or payment,

and such trustee or executor shall not be personally liable to any person so entitled of whose claim he has not had notice at the time of the distribution or payment; but (without prejudice to section 17 of the Act of 1964) nothing in this section shall affect any right of any person so entitled to recover the property, or any property representing it, or the payment, from any person who may have received that property or payment.