

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Survivorship

Section 9 – Uncertainty of survivorship treated as failure to survive

37. This section applies where two persons die simultaneously or in circumstances where it is uncertain who survived whom. It replaces the current rules of survivorship in section 31 of the Succession (Scotland) Act 1964. Under the current rules of survivorship, if the people who die were spouses or civil partners, it is presumed that neither survived the other. If they were not spouses or civil partners, it is presumed, in most cases, that the younger survived the elder. This section changes the current rules. It provides that, where two persons have died simultaneously or in circumstances where it is uncertain who survived whom, neither is to be treated as having survived the other. This section applies both on testacy and intestacy and applies for all purposes affecting title or section to property (other than where the particular rule in section 10 applies).
38. Subsection (2) provides that where a benefit is conferred on a third party on condition that another person died before the testator and that person dies in a common calamity with the testator, that condition will be treated as a condition that the person failed to survive the testator to enable the legacy to pass to the third party through the application of subsection (1).
39. This section does not change the law on the standard of proof for establishing whether deaths occurred in a particular order. It was established in the case of *Lamb v Lord Advocate* (1964 SC 110) that this was the civil standard of the balance of probabilities. So the order of deaths is uncertain if it is not possible to prove, on a balance of probabilities, a particular order.