



Succession (Scotland) Act 1964

1964 CHAPTER 41

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

^{F1}28

Textual Amendments

F1 S. 28 repealed (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991](#) (c. 50, SIF 49:8), ss. 10(2), 11(2), [Sch.2](#) (with s. 1(3))

29 **Right of tenant to bequeath interest under lease.**

- (1) A bequest by a tenant of his interest under a tenancy or lease to any one of the persons who, if the tenant had died intestate, would be, or would in any circumstances have been, entitled to succeed to his intestate estate by virtue of this Act shall not be treated as invalid by reason only that there is among the conditions of the tenancy or lease an implied condition prohibiting assignation.
- (2) This section shall not prejudice the operation of section 16 of the ^{M1} Crofters Holdings (Scotland) Act 1886 or [^{F2}]^{F3}sections 11 or 12A to 12C] of the Agricultural Holdings (Scotland) Act 1991][^{F4}or section 21 of the Agricultural Holdings (Scotland) Act 2003 (asp 11)] (which relate to bequests in the case of agricultural leases) [^{F5}or of section 10 of the ^{M2} Crofters (Scotland) Act 1955 (which makes similar provisions in relation to crofts.)]

Textual Amendments

F2 Words in s. 29(2) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991](#) (c. 55, SIF 2:3), ss. 88(1), 89(2), [Sch. 11 para.25](#) (with s. 45(3), [Sch. 12 para. 3](#))

Changes to legislation: There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part VI. (See end of Document for details)

- F3** Words in s. 29(2) substituted (23.12.2016) by Land Reform (Scotland) Act 2016 (asp 18), s. 130(1), **sch. 2 para. 14(3)** (with s. 128); S.S.I. 2016/365, reg. 2, sch. (with regs. 5-8)
- F4** Words in s. 29(2) inserted (27.11.2003) by Agricultural Holdings (Scotland) Act 2003 (asp 11), ss. 94, 95(3)(4), **Sch. para. 2(2)** (with s. 95(2)); S.S.I. 2003/548, **art. 2(i)** (with art. 3, Sch.)
- F5** Words added by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8, Sch. 2 Pt. I para. 27

Marginal Citations

- M1** 1886 c. 29.
M2 1955 c. 21.

30 Effect of testamentary dispositions on special destinations.

A testamentary disposition executed after the commencement of this Act shall not have effect so as to evacuate a special destination (being a destination which could competently be evacuated by the testamentary disposition) unless it contains a specific reference to the destination and a declared intention on the part of the testator to evacuate it.

^{F6}31 Presumption of survivorship in respect of claims to property.

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Textual Amendments

- F6** S. 31 repealed (1.11.2016) by Succession (Scotland) Act 2016 (asp 7), s. 31(2), **sch. para. 1(5)(c)**; S.S.I. 2016/210, reg. 2(1)(a)(2)

[^{F7}32 Certain testamentary dispositions to be formally valid.

- (1) For the purpose of any question arising as to entitlement, by virtue of a testamentary disposition, to any relevant property or to any interest therein, the disposition shall be treated as valid in respect of the formalities of execution.
- (2) Subsection (1) above is without prejudice to any right to challenge the validity of the testamentary disposition on the ground of forgery or on any other ground of essential invalidity.
- (3) In this section “relevant property” means property disposed of in the testamentary disposition in respect of which—
 - (a) confirmation has been granted; or
 - (b) probate, letters of administration or other grant of representation—
 - (i) has been issued, and has noted the domicile of the deceased to be, in England and Wales or Northern Ireland; or
 - (ii) has been issued outwith the United Kingdom and had been sealed in Scotland under section 2 of the Colonial Probates Act 1892.]

Changes to legislation: There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part VI. (See end of Document for details)

Textual Amendments

- F7** S. 32 substituted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 40** (with ss. 9(3)(5)(7), 13, 14(3))

33 Construction of existing deeds.

- (1) Subject to subsection (2) of this section, any reference in any deed taking effect after the commencement of this Act to *tojus relictī, jus relictæor* legitim shall be construed as a reference to the right to *tojus relictī, jus relictæor* legitim, as the case may be, as modified by Part II of this Act . . . ^{F8}; and any reference in any [^{F9}such deed] to courtesy or terce shall be of no effect.
- (2) Any reference to legal rights in a marriage contract made before the commencement of this Act and taking effect in consequence of a decree of divorce granted in an action commenced after the commencement of this Act shall be construed as a reference to any right which the husband or the wife, as the case may be, might obtain by virtue of the provisions of section 26 of this Act [^{F10}or section 5 of the Divorce (Scotland) Act 1976][^{F11}or section 29 of the Matrimonial and Family Proceedings Act 1984][^{F12}or section 8 of the Family Law (Scotland) Act 1985].

Textual Amendments

- F8** Words (which were inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F9** Words substituted by virtue of Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), **Sch. 1 para. 7(1)**
- F10** Words added by Divorce (Scotland) Act 1976 (c. 39, SIF 49:3), s. 12(1), **Sch. 1**
- F11** Words added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), s. 46(1), **Sch. 1 para. 6**
- F12** Words added by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), s. 28(1), **Sch. 1 para. 4**

34 Modification of enactments and repeals.

- (1) Subject to the provisions of section 37 of this Act, the enactments mentioned in Schedule 2 to this Act shall have effect subject to the modifications specified in that Schedule, being modifications consequential on the provisions of this Act.
- (2) ^{F13}

Textual Amendments

- F13** S. 34(2), Sch. 2 para. 13(a) and Sch. 3 repealed by Statute Law (Repeals) Act 1974 (c. 22), **Sch. Pt. XI**

35 Transfer of certain jurisdiction to Sheriff of Chancery.

- (1) If at any time it appears to the Secretary of State expedient to do so he may by order transfer to the Sheriff of Chancery the jurisdiction of any other sheriff in relation to the service of heirs.

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- (2) An order made under this section may contain such consequential provisions as appears to the Secretary of State to be necessary, including provisions for the consequential repeal or consequential modification of any enactment relating to the matters dealt with in the order.
- (3) Any order made under this section shall be made by statutory instrument.

36 Interpretation.

- (1) In this Act the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say—
- “deed” includes any disposition, contract, instrument or writing, whether *inter vivos* or *mortis causa*;
- “an intestate” means a person who has died leaving undisposed of by testamentary disposition the whole or any part of his estate, and “intestate” shall be construed accordingly;
- “intestate estate”, in relation to an intestate, means (subject to sections 1(2) and 9(6)(a) of this Act) so much of his estate as is undisposed of by testamentary disposition;
- “issue” means . . . ^{F14}issue however remote;
- “Land Court” means the Scottish Land Court;
- “lease” and “tenancy” include sub-lease and sub-tenancy, and tenant shall be construed accordingly;
- “legal rights” means *jus relictii, jus relictarum*, [^{F15}legitim and rights under section 131 of the Civil Partnership Act 2004];
- “net estate” and “net intestate estate” mean respectively so much of an estate or an intestate estate as remains after provision for the satisfaction of estate duty and other liabilities of the estate having priority over legal rights, the prior rights of a surviving spouse and rights of succession, or, as the case may be, the proportion thereof properly attributable to the intestate estate;
- “owner” in relation to any heritable property means the person entitled to receive the rents thereof (other than rents under a sub-lease or sub-tenancy);
- “prior rights”, in relation to a surviving spouse [^{F16}or civil partner], means the rights conferred by sections 8 and 9 of this Act;
- “testamentary disposition”, in relation to a deceased, includes any deed taking effect on his death whereby any part of his estate is disposed of or under which a succession thereto arises.
- (2) Any reference in this Act to the estate of a deceased person shall, unless the context otherwise requires, be construed as a reference to the whole estate, whether heritable or moveable, or partly heritable and partly moveable, belonging to the deceased at the time of his death or over which the deceased had a power of appointment and, where the deceased immediately before his death held the interest of a tenant under a tenancy or lease which was not expressed to expire on his death, includes that interest:

Provided that—

- (a) where any heritable property belonging to a deceased person at the date of his death is subject to a special destination in favour of any person, the property shall not be treated for the purposes of this Act as part of the estate of the deceased unless the destination is one which could competently be, and has in fact been, evacuated by the deceased by testamentary disposition or otherwise;

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- and in that case the property shall be treated for the purposes of this Act as if it were part of the deceased's estate on which he has tested; and
- (b) where any heritable property over which a deceased person had a power of appointment has not been disposed of in exercise of that power and is in those circumstances subject to a power of appointment by some other person, that property shall not be treated for the purposes of this Act as part of the estate of the deceased.
- (3) Without prejudice to the proviso to section 23(2) of this Act, references in this Act to the date of execution of a testamentary disposition shall be construed as references to the date on which the disposition was actually executed and not to the date of death of the testator.
- (4) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act.
- [^{F17}(5) Section 1(1) (legal equality of children) of the Law Reform (Parent and Child) (Scotland) Act 1986 shall apply to this Act; and any reference (however expressed) in this Act to a relative shall be construed accordingly.]

Textual Amendments

- F14** Word repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F15** Words in s. 36(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. **131(5)**, 263(3); S.S.I. 2005/604, {art. (2(b)}
- F16** Words in s. 36(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263(10)(c), **Sch. 28 para. 10**; S.S.I. 2005/604, {art. (2(c)}
- F17** S. 36(5) added by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), **Sch. 1 para. 7(2)**

37 Exclusion of certain matters from operation of Act.

- (1) Save as otherwise expressly provided, [^{F18}nothing in this Act or (as respects paragraph (a) of this subsection) in the Children Act 1975 or the Adoption (Scotland) Act 1978 [^{F19}or the Adoption and Children (Scotland) Act 2007 (asp 4)] shall]—
- (a) apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof;
 - (b)^{F20}
 - (c) affect any right on the part of a surviving spouse to claim from the representatives of his or her deceased spouse payment of aliment out of the estate of that spouse;
 - (d) affect the administration, winding up or distribution of or the making up of title to any part of the estate of any person who died before the commencement of this Act or the rights of succession to such an estate or any claim for legal rights or terce or courtesy or any rights arising under the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 out of such an estate or the right to take any legal proceedings with respect to any such matters;
 - (e) affect any claim for legal rights arising out of an action of divorce commenced before the commencement of this Act;

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and in relation to the matters aforesaid the law in force immediately before the commencement of this Act shall continue to have effect as if this Act had not passed.

- (2) Nothing in this Act shall be construed as affecting the operation of any rule of law applicable immediately before the commencement of this Act to the choice of the system of law governing the administration, winding up or distribution of the estate, or any part of the estate, of any deceased person.

Textual Amendments

- F18** Words substituted by the [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, **Sch. 3 para. 5**
- F19** Words in s. 37(1) inserted (28.9.2009) by [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), ss. 120(1), 121(2), **Sch. 2 para. 1(3)**; S.S.I. 2009/267, **art. 2** (with arts. 3-21) (as amended by S.S.I. 2012/99, **art. 2**)
- F20** S. 37(1)(b) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1968 \(c. 70\)](#), ss. 8, 22(3), Sch. 2 Pt. I para. 28, **Sch. 3**

Modifications etc. (not altering text)

- C1** S. 37(1) modified (1.11.1994) by S.I. 1994/2804, reg. 3, **Sch. 2 para. 1**
- C2** S. 37(1) modified (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), reg. 5, **Sch. 4 para. 2**
- C3** S. 37(1) modified (21.12.2018) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2018 \(S.I. 2018/1412\)](#), reg. 1(2), **Sch. 4 para. 2**

38 Citation, extent and commencement.

- (1) This Act may be cited as the Succession (Scotland) Act 1964.
- (2) This Act shall extend to Scotland only.
- (3) This Act shall come into operation on the expiration of the period of three months beginning with the date on which it is passed.

Changes to legislation:

There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part VI.