



Succession (Scotland) Act 1964

1964 CHAPTER 41

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

28 Power of minor to test on heritage.

A minor shall have the like capacity to test on heritable property as he has on moveable property.

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 section 20 of the ^{M2} Agricultural Holdings (Scotland) Act 1949 (which relate to bequests in the case of agricultural leases) [^{F1} or of section 10 of the ^{M3} Crofters (Scotland) Act 1955 (which makes similar provisions in relation to crofts.)]

Textual Amendments

- F1** 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 1949 c. 75.
M3 1955 c. 21.

Status: Point in time view as at 01/02/1991.

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

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.

31 Presumption of survivorship in respect of claims to property.

- (1) Where two persons have died in circumstances indicating that they died simultaneously or rendering it uncertain which, if either, of them survived the other, then, for all purposes affecting title or succession to property or claims to legal rights or the prior rights of a surviving spouse,
 - (a) where the persons were husband and wife, it shall be presumed that neither survived the other; and
 - (b) in any other case, it shall be presumed that the younger person survived the elder unless the next following subsection applies.
- (2) If, in a case to which paragraph (b) of the foregoing subsection would (apart from this subsection) apply, the elder person has left a testamentary disposition containing a provision, however expressed, in favour of the younger if he survives the elder and, failing the younger, in favour of a third person, and the younger person has died intestate, then it shall be presumed for the purposes of that provision that the elder person survived the younger.

32 Certain testamentary dispositions to be probative.

- (1) For the purpose of any question arising as to entitlement to any property by virtue of a testamentary disposition to which this section applies, the testamentary disposition shall (notwithstanding anything in any Act passed before this Act) be treated as probative.
- (2) This section applies to any testamentary disposition (not being a testamentary disposition which would be treated as probative apart from this section) if—
 - (a) confirmation of an executor to property disposed of in the disposition has been granted in Scotland, or
 - (b) probate, letters of administration or other grant of representation [^{F2}has been issued in England and Wales or Northern Ireland in respect of property disposed of in the disposition and notes the domicile of the deceased in England and Wales or in Northern Ireland, as the case may be, or probate, letters of administration or other grant of representation issued out with the United Kingdom in respect of such property has been] sealed in Scotland under section 2 of the ^{M4} Colonial Probates Act 1892.

Textual Amendments

F2 Words substituted by [Administration of Estates Act 1971 \(c. 25\), Sch. 1 para. 5](#)

Marginal Citations

M4 [1892 c. 6.](#)

Status: Point in time view as at 01/02/1991.

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

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 *tojus relictī, jus relictæ* or *legitim* shall be construed as a reference to the right *tojus relictī, jus relictæ* or *legitim*, as the case may be, as modified by Part II of this Act . . . ^{F3}; and any reference in any [^{F4}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 [^{F5}or section 5 of the Divorce (Scotland) Act 1976][^{F6}or section 29 of the Matrimonial and Family Proceedings Act 1984][^{F7}or section 8 of the Family Law (Scotland) Act 1985].

Textual Amendments

- F3** 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**
- F4** 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)**
- F5** Words added by Divorce (Scotland) Act 1976 (c. 39, SIF 49:3), s. 12(1), **Sch. 1**
- F6** Words added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), s. 46(1), **Sch. 1 para. 6**
- F7** 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) ^{F8}

Textual Amendments

- F8** 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.
- (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.

Status: Point in time view as at 01/02/1991.

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

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 . . . ^{F9}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 relictæ*, and legitim;

“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, 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; 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.

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- (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.
- [^{F10}(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

- F9** Word repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\), s. 10\(2\), Sch. 2](#)
- F10** [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, [^{F11}nothing in this Act or (as respects paragraph (a) of this subsection) in the Children Act 1975 or the Adoption (Scotland) Act 1978 shall]—
- 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;
 -^{F12}
 - 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;
 - 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;
 - affect any claim for legal rights arising out of an action of divorce commenced before the commencement of this Act;
- 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

- F11** Words substituted by the [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\), s. 66, Sch. 3 para. 5](#)

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F12 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**

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.

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

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