

Forfeiture Act 1982

1982 CHAPTER 34

An Act to provide for relief for persons guilty of unlawful killing from forfeiture of inheritance and other rights; to enable such persons to apply for financial provision out of the deceased's estate; to provide for the question whether pension and social security benefits have been forfeited to be determined by the Social Security Commissioners; and for connected purposes.

[13th July 1982]

Words of enactment omitted under Statute Law Revision Act 1948 (c. 62), s. 3.

1.—(1) In this Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.

The “forfeiture rule”.

(2) References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other and references in this Act to unlawful killing shall be interpreted accordingly.

2.—(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as “the offender”) who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying the effect of that rule.

Power to modify the rule.

(2) The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.

(3) In any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying the effect of the forfeiture rule in that case unless proceedings for the purpose are brought before the expiry of the period of three months beginning with his conviction.

(4) The interests in property referred to in subsection (1) above are—

- (a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—
 - (i) under the deceased's will (including, as respects Scotland, any writing having testamentary effect) or the law relating to intestacy or by way of *ius relictii*, *ius relictæ* or *legitim*;
 - (ii) on the nomination of the deceased in accordance with the provisions of any enactment;
 - (iii) as a *donatio mortis causa* made by the deceased; or
 - (iv) under a special destination (whether relating to heritable or moveable property); or

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- (b) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired in consequence of the death of the deceased, being property which, before the death, was held on trust for any person.

(5) An order under this section may modify the effect of the forfeiture rule in respect of any interest in property to which the determination referred to in subsection (1) above relates and may do so in either or both of the following ways, that is—

- (a) where there is more than one such interest, by excluding the application of the rule in respect of any (but not all) of those interests; and
(b) in the case of any such interest in property, by excluding the application of the rule in respect of part of the property.

(6) On the making of an order under this section, the forfeiture rule shall have effect for all purposes (including purposes relating to anything done before the order is made) subject to the modification made by the order.

(7) The court shall not make an order under this section modifying the effect of the forfeiture rule in respect of any interest in property which, in consequence of the rule, has been acquired before the coming into force of this section by a person other than the offender or a person claiming through him.

- (8) In this section—
“property” includes any chose in action or incorporeal moveable property; and
“will” includes codicil.

Application for financial provision not affected by the rule

3.—(1) The forfeiture rule shall not be taken to preclude any person from making any application under a provision mentioned in subsection (2) below or the make of any order on the application.

(2) The provisions referred to in subsection (1) above are—

- (a) any provision of the Inheritance (Provision for Family and Dependants) Act 1975;
¹(b) sections 31(6) and 36(1) of the Matrimonial Causes Act 1973 (variation by court in England and Wales of periodical payments orders and maintenance agreements in respect of marriages);
(c) paragraphs 60(2) and 73(2) of Schedule 5 to the Civil Partnership Act 2004 (variation by court in England and Wales of periodical payments orders and maintenance agreements in respect of civil partnerships); and
(d) section 13(4) of the Family Law (Scotland) Act 1985 (variation etc. of periodical allowances in respect of marriages and civil partnerships).

[²Upper Tribunal] to decide whether rule applies to social security benefits.

4.—(1) Where a question arises as to whether, if a person were otherwise entitled to or eligible for any benefit or advantage under a relevant enactment, he would be precluded by virtue of the forfeiture rule from receiving the whole or part of the benefit or advantage, that question shall (notwithstanding anything in any relevant enactment) be determined by [²the Upper Tribunal].

[³(1A) Where [²the Upper Tribunal] determines that the forfeiture rule has precluded a person (in this section referred to as “the offender”) who has unlawfully killed another from receiving the whole or part of any such benefit or advantage, [²the Upper Tribunal] may make a decision under this subsection modifying the effect of that rule and may do so whether the unlawful killing occurred before or after the coming into force of this subsection.

¹ s. 3(2)(b)-(d) substituted for (b) (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 27, para. 79.

² Words substituted (3.11.08) by S.I. 2008/2833, art. 38(a)-(c)

³ Subsections inserted (25.7.86) by Social Security Act 1986 (c. 50) s. 76(2).

(1B) [The Upper Tribunal] shall not make a decision under subsection (1A) above modifying the effect of the forfeiture rule in any case unless [it] is satisfied that having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to [the Upper Tribunal] to be material, the justice of the case requires the effect of the rule to be so modified in that case.

(1C) Subject to subsection (1D) below, a decision under subsection (1A) above may modify the effect of the forfeiture rule in either or both of the following ways—

- (a) so that it applies only in respect of a specified proportion of the benefit or advantage;
- (b) so that it applies in respect of the benefit or advantage only for a specified period of time.

(1D) Such a decision may not modify the effect of the forfeiture rule so as to allow any person to receive the whole or any part of a benefit or advantage in respect of any period before the commencement of this subsection.

(1E) If [the Upper Tribunal] thinks it expedient to do so, [the Upper Tribunal] may direct that its decision shall apply to any future claim for a benefit or advantage under a relevant enactment, on which a question such as is mentioned in subsection (1) above arises by reason of the same unlawful killing.

(1F) It is immaterial for the purposes of subsection (1E) above whether the claim is in respect of the same or a different benefit or advantage.

(1G) For the purposes of obtaining a decision whether the forfeiture rule should be modified the Secretary of State may refer to [the Upper Tribunal] for review any determination of a question such as is mentioned in subsection (1) above that was made before the commencement of subsections (1A) to (1F) above (whether by [the Upper Tribunal] or not) and shall do so if the offender requests him to refer such a determination.

(1H) Subsections (1A) to (1F) above shall have effect on a reference under subsection (1G) above as if in subsection (1A) the words “it has been “determined” were substituted for the words “[the Upper Tribunal] determines”.]

(2) [Tribunal procedures rules may make provision] for carrying this section into effect; and (without prejudice to the generality of that) [the rules] may, in relation to the question mentioned in subsection (1) above or any determination under that subsection [or any decision under subsection (1A) above]—

- (a) apply any provision of any relevant enactment, with or without modifications, or exclude or contain provisions corresponding to any such provisions;

(3)–(4) [...¹]

(5) In this section—

“[...³”

“relevant enactment” means any provision of the following and any instrument made by virtue of such a provision:

the Personal Injuries (Emergency Provisions) Act 1939.

1939 c. 82.

the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939,

1939 c. 83.

the Polish Resettlement Act 1947.

1947 c. 19.

...⁴,

[⁵the Social Security Acts 1975 to 1991],

[⁶the Social Security Contributions and Benefits Act 1992,]

[⁷the Pension Schemes Act 1993]

¹ Words substituted in s. 4(1B), (1E), (1G), (1H), (2)(b)-(4) omitted (3.11.08) by S.I. 2008/2833, art. 38(b)-(g).

² Words inserted (25.7.86) by Social Security Act 1986 (c. 50), s. 76(3).

³ Defn. of “Commissioner” omitted (3.11.08) by S.I. 2008/2833, art. 38(h).

⁴ See first part of Annex 1 below (repeals in consequence of consolidation).

⁵ Words added to s. (5) (5.7.99) by the S.S. Act 1998 (c. 14), Sch. 7, para 11.

⁶ Words substituted (12.2.91) by Statutory Sick Pay Act 1991 (c. 3), S. 3(1)(c).

⁷ Words inserted (7.2.94) by Pension Schemes Act 1993 (c. 48), Sch. 8, para. 15.

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and any other enactment relating to pensions or social security prescribed by regulations under this section.

Exclusion of murderers

5. Nothing in this Act or in any order made under section 2 or referred to in section 3(1) of this Act [¹or in any decision made under section 4 (1A) of this Act] shall affect the application of the forfeiture rule in the case of a person who stands convicted of murder.

Corresponding provision for Northern Ireland. 1974 c. 28.

6. An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to the purposes of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

Short title, etc.

7.—(1) This Act may be cited as the Forfeiture Act 1982.

(2) Section 4 of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and sections 1 to 3 and 5 of this Act shall come into force on the expiry of the period of three months beginning with the day on which it is passed.

(3) This Act, except section 6, does not extend to Northern Ireland.

(4) Subject to section 2 (7) of this Act, and order under section 2 of this Act or an order referred to in section 3(1) of this Act and made in respect of a person who has unlawfully killed another may be made whether the unlawful killing occurred before or after the coming into force of those sections.

¹ Words inserted (25.7.86) by Social Security Act 1986 (c. 50), s. 76(4).