



Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill

Bill 8 of 2010-11

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The *Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill* is a Private Member's Bill introduced by Greg Knight under the ballot procedure. It is due to have its second reading on 21 January 2011. The Ministry of Justice has indicated to Greg Knight that it will support the Bill and has assisted with drafting both the Bill and the Explanatory Notes published with it.

The Bill would, in certain circumstances, protect the inheritance rights of the descendants of people who have:

- forfeited their inheritance by killing the deceased; or
- decided not to accept their own inheritance.

It would give general effect, with modifications, to the recommendations of the Law Commission in its 2005 report, *The Forfeiture Rule and the Law of Succession*, which were accepted by the Labour Government in 2006. Similar provisions to those contained in the Bill were included in the *Draft Civil Law Reform Bill* which the Labour Government published for consultation in December 2009. The Coalition Government has announced that it does not intend to proceed with that draft Bill.

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Summary

The *Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill* would, in certain circumstances, protect the inheritance rights of the descendants of people who have forfeited their inheritance by killing the deceased; or who have decided not to accept their own inheritance. It is a Private Member's Bill introduced by Greg Knight under the ballot procedure and is due to have its second reading on 21 January 2011.

In general, when a person dies, his or her property passes in accordance with any valid will made by the deceased or, otherwise, in accordance with the intestacy rules. The intestacy rules specify which relatives are entitled to inherit and provide that a grandchild will only inherit if his or her own parent has already died. A person is entitled to disclaim (that is, not accept) any benefit under a will or intestacy.

The forfeiture rule prevents a person who has killed the deceased from inheriting the deceased's property (although the court may modify the effect of the rule where the killer was not convicted of murder). A problem came to light as a result of a Court of Appeal case, *Re DWS (deceased)*. In this case, an only son murdered both his parents. The parents had not left wills and so their property had to be distributed in accordance with the intestacy rules. The son was prevented from inheriting by the forfeiture rule, because he had murdered his parents. If the son had died before his parents, their property would have passed to their only grandchild, who was the son's only child. However, the Court of Appeal decided that the law did not allow the grandson to take the property, because his parent was still alive. Instead, the property would have to go to other relatives.

Following this case, the Department for Constitutional Affairs (as it was then, now the Ministry of Justice) asked the Law Commission to review the relationship between the forfeiture rule and the law of succession. In its 2005 report on this subject, the Law Commission criticised the current law and recommended that where a child or other relative of a deceased person is disqualified from inheriting through having killed the deceased, the property should be distributed as if the killer had died immediately before the deceased (the "deemed predecease" rule). This means that the killer's children would be allowed to inherit.

Disclaiming an inheritance may also affect the inheritance rights of the descendants of the person disclaiming. The Law Commission recommended that the same solution (ie the "deemed predecease" rule) should apply in cases of disclaimer.

In 2006, the Labour Government accepted the Law Commission's recommendations. It included provisions to implement them in Part 3 of the draft *Civil Law Reform Bill* which it published for consultation in December 2009. Seven out of eight respondents to questions on Part 3 supported the reforms and agreed that the new law would be fairer and simple to operate. The House of Commons Justice Committee conducted pre-legislative scrutiny of the draft Bill and broadly welcomed the proposed reforms. The Coalition Government has since announced that it does not intend to proceed with that draft Bill.

Greg Knight's Bill would give general effect, with modifications, to the recommendations of the Law Commission in its 2005 report. Specifically, the Bill would introduce a "deemed predecease" rule. This means that, unless a contrary intention is expressed in any valid will, a deceased person's property would be distributed as if certain people had died immediately before the deceased. These are: any person who disclaims a gift; any person whose gift is forfeited; and any single parent dying under the age of 18 (where there are similar inheritance issues). The provisions in the Bill are similar to those contained in Part 3 of the draft *Civil Law Reform Bill* although there are some differences. Despite the Coalition Government's decision not to continue with that draft Bill, the Ministry of Justice has indicated its support for Greg Knight's Bill.

1 Introduction and background

The *Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill* is a Private Member's Bill. It was presented to Parliament by Greg Knight, through the ballot procedure, on 30 June 2010 as Bill 8 of 2010-11. It is due to have its second reading on 21 January 2011.

The Ministry of Justice has indicated to Greg Knight that it will support the Bill and has assisted with drafting both the Bill and the Explanatory Notes published with it.¹

The Bill would extend to England and Wales.

1.1 Distribution of property on death

When a person dies, his or her property, after taxes and debts have been paid, generally passes in accordance with any valid will or, if the deceased did not leave a valid will, in accordance with the intestacy rules.

Sections 46 and 47 of the *Administration of Estates Act 1925* (as amended) set out the intestacy rules for England and Wales. Much depends on which relatives survive the deceased. A Community Legal Advice publication, *Wills and Probate*, sets out what this means in some of the more common situations.² There is a more detailed summary of the intestacy rules in a *Consultation Paper* ("the Consultation Paper") on the *Draft Civil Law Reform Bill*:

If the deceased leaves a spouse or a civil partner (a person who has entered into a registered civil partnership with someone of the same sex under the Civil Partnership Act 2004) who survives for 28 days and children, which includes legitimate, illegitimate and adopted children, his or her estate is divided as follows:

The spouse or civil partner takes the:

- personal chattels, such as, household articles, including cars, but nothing used for business purposes,
- a statutory legacy of the first £250,000 of the estate free of death duties and costs (with interest payable from the time of the death until payment),
- a life interest in half of the rest of the estate (which can be capitalised by the spouse or civil partner if he or she wishes).

The rest of the estate goes to the children on statutory trust.

If the deceased leaves a spouse or a civil partner who survives for 28 days and parents or siblings, but no children, his or her estate is divided as follows:

The spouse or civil partner takes the:

- personal chattels,
- a statutory legacy of the first £450,000 of the estate free of death duties and costs (interest payable as before),
- full ownership of half of the rest of the estate.

¹ Personal communication, 18 January 2011

² January 2009

The other half of the rest of the estate goes to:

- the parents (equally, if both alive) or, if none,
- to the brothers and sisters of the whole blood on statutory trust.

If there are no issue and no parents or brothers or sisters of the whole blood or their children, the spouse or civil partner takes the whole estate.

If there is no surviving spouse or civil partner, the estate is distributed among those who survive the intestate as follows:

- to surviving children on statutory trusts, but if none to
- parents, but if none to
- brothers and sisters of the whole blood on statutory trusts, but if none to
- brothers and sisters of the half blood on statutory trusts, but if none to
- grandparents, but if none to
- aunts and uncles of the whole blood on statutory trusts, but if none to
- aunts and uncles of the half blood on statutory trusts, but if none to
- the Crown, Duchy of Lancaster or the Duke of Cornwall as bona vacantia.

The estate will be divided equally between each of those entitled.

To inherit, a member of these groups must survive the intestate and attain 18, or marry or form a civil partnership under that age. If a member dies under 18 (unless married or having formed a civil partnership under that age), his or her share goes to others, if any, in the same group.³

Under the statutory trusts referred to in the intestacy rules, the beneficiaries in any relevant class (the deceased's children, siblings or parents' siblings) are entitled to the estate in equal shares on reaching the age of 18 (or marrying or forming a civil partnership under that age). If any member of the class has already died leaving their own surviving children or other descendants, then the share which the deceased beneficiary would have received will pass instead to those descendants in equal shares. Accordingly, no one can benefit if his or her parent is still alive.⁴

1.2 Unlawful killing: the forfeiture rule

The forfeiture rule is an instance of a wider principle that a person should not be allowed to profit from his or her crime. It is defined in the *Forfeiture Act 1982* as meaning "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."⁵ It prevents a person from inheriting property from someone (under a will or intestacy) whom (s)he has unlawfully killed or where (s)he has unlawfully aided, abetted, counselled or procured the death.

³ [Civil Law Reform Bill Consultation](#), CP53/09, 15 December 2009 pp 99-100

⁴ For further information about the statutory trusts and their effect see Law Commission Consultation Paper No 191, [Intestacy and family provision claims on death](#), October 2009

⁵ Section 1

Under provisions contained in the *Forfeiture Act 1982*, the court has discretion to waive the rule in some circumstances, but not where the killer has been convicted of murder.

Where the forfeiture rule operates to prevent a person from acquiring a benefit under a will or intestacy, the rights of inheritance of the killer's own descendants, or of other beneficiaries under a will, may also be affected. The Consultation Paper set out examples of how this might occur:

The forfeiture rule not only affects the inheritance rights of the killer, it also affects the inheritance rights of the killer's descendants who purely as a consequence of the killer's actions are also excluded from inheriting, so that for example, a grandchild is unable to inherit from his or her deceased grandparent. This is because section 47 of the Administration of Estates Act 1925 and section 33 of the Wills Act 1837 have the effect that for a grandchild, for example, to inherit from his or her deceased grandparent his or her parent must have died before the deceased. In cases of forfeiture the killer is still alive and so the grandchild could not inherit in place of his or her parent. This is contrary to the general policy intention of succession law, which is to prefer descendants over other relatives.

This effect of the forfeiture rule also extends to cases where a person leaves a will containing a default gift. For example, a person (the testator) may provide by will that 'A' shall take the estate but if 'A' predeceases the testator, or does not survive the testator by a given number of days, then 'B' shall take the estate. If 'A' kills the testator, 'B' will not take in 'A's' stead because the condition, that 'A' predeceased the testator, has not been met. However, although the result is the same as for a grandchild, because the testator has freedom of testamentary disposition, the default beneficiary may not be a descendant of the deceased or the primary beneficiary: he or she might be the sibling or someone totally unrelated, because the testator has freedom of testamentary disposition.⁶

This problem came to light as a result of a Court of Appeal case, *Re DWS (deceased)*.⁷ In this case, an only son murdered both his parents. The deceased parents had not left wills and so their property had to be distributed in accordance with the intestacy rules. The son was prevented from inheriting by the forfeiture rule, because he had murdered his parents. If the son had died before his parents, their property would have passed to their only grandchild, who was the son's only child. However, the intestacy rules provide that a grandchild will only inherit if their own parent has already died. The Court of Appeal accordingly decided that the law did not allow the grandson to take the property. Instead, the property would have to go to the dead grandfather's sister (or her estate).

As a consequence of this case, the Department for Constitutional Affairs (as it was then, now the Ministry of Justice) asked the Law Commission to review the relationship between the forfeiture rule and the law of succession.

In its 2005 report, *The Forfeiture Rule and the Law of Succession*, the Law Commission criticised the current law for a number of reasons:

- the grandchildren should not be punished for the sins of their parent
- it is more likely that the deceased would have wished to benefit the grandchildren than the other relatives

⁶ pp19-20

⁷ [2001] Ch 568 (CA)

- the general policy of intestacy law is to prefer descendants to siblings and other relatives; the Law Commission considered that to make an exception in the forfeiture case is inconsistent with that policy.⁸

The Law Commission recommended that where a child of a deceased person is disqualified from inheriting (under a will or on intestacy) through having killed the deceased, the property should be distributed as if that child had died immediately before the deceased (the “deemed predecease” rule). This would mean that the killer’s children would be allowed to inherit. A similar rule would also apply when the deceased had been killed by a spouse or other relative. A will could still make specific provision as to the devolution of any property in the event of the forfeiture rule applying. In this event, the provisions of the will would apply rather than the “deemed predecease” rule.

The Law Commission also recommended that where a person forfeits their inheritance through having killed the deceased, but, as a result of the proposed reforms, property is held for a minor descendant of the killer, the court should have power to order that the property be held by the Public Trustee, who should administer it so as to avoid benefit to the killer.

1.3 Disclaimer and death under the age of 18

Disclaimer

Disclaimer is where a person rejects his or her inheritance under a will or intestacy. As with the forfeiture rule, and for similar reasons, disclaimer may affect the inheritance rights of the descendants of the person disclaiming (because the person disclaiming is still alive and, as a result, his or her descendants are not able to take a benefit).

Death of a single parent under the age of 18

The intestacy rules specify what happens to the estate of a deceased person who dies intestate leaving minor children. These children attain a vested interest (that is, they become fully entitled to inherit) when they:

- reach the age of majority; or
- marry or form a civil partnership before that age.

Accordingly, if a child dies after his or her parent, but while still a minor, and without having married or formed a civil partnership, leaving one or more children (grandchildren of the deceased), the property does not pass to the grandchildren because their parent never attained a vested interest. The grandchildren cannot claim under the original intestacy because their parent was alive at that time. The property would pass instead to the deceased’s other relatives. The same problem could also arise where the person who dies under the age of 18 is some other relative of the deceased, but would otherwise have been entitled to inherit under the intestacy rules.

The Law Commission recommended that the same solution (that is, the “deemed predecease” rule) should also apply both in cases of disclaimer and in cases of death of a single parent under the age of 18. Effectively this would mean that property should be distributed as if the person disclaiming, or the single parent dying under the age of 18, had died immediately before the deceased.

In 2006, the Labour Government accepted the Law Commission’s recommendations.⁹

⁸ [The Forfeiture Rule and the Law of Succession](#), LAW COM No 295, Cm 6625, July 2005, p2

⁹ HL Deb 18 December 2006 c221WS

2 Previous proposals: the draft *Civil Law Reform Bill*

2.1 Consultation on the draft Bill

On 15 December 2009, the Labour Government published the [draft Civil Law Reform Bill](#), together with Explanatory Notes. A [consultation paper](#) (“the Consultation Paper”) was published at the same time as the draft Bill.¹⁰ The draft Bill proposed reforms in four separate and independent areas, one of which was the distribution of estates on death. Provisions in Part 3 of the draft Bill were intended to protect the inheritance rights of the descendants of someone whose own inheritance under a will or intestacy was forfeited or disclaimed. They largely mirrored the recommendations of the Law Commission in its 2005 report, and were broadly similar to those included in the present Bill (with some differences of substance which are considered in Section 3 of this paper below). Annex E to the Consultation Paper is an Impact Assessment on the distribution of estates provisions.

There were two questions on Part 3 in the Consultation Paper, asking for comments respectively on the draft clauses in the Bill dealing with the distribution of estates of deceased persons, and on the Impact Assessment at Annex E.

The consultation period ended on 9 February 2010.

There were eight responses in relation to these provisions, seven of whom supported the reforms and agreed that the new law would be fairer and simple to operate.

2.2 Consideration by the Justice Committee

The House of Commons Justice Committee conducted pre-legislative scrutiny of the draft Bill. The Committee published its report, [Draft Civil Law Reform Bill: pre-legislative scrutiny](#), on 31 March 2010.¹¹

The Committee welcomed the proposed changes to the forfeiture rule and the application of a “deemed predeceased” rule:

185. We welcome this clause as ending the current rule which penalises the children or other heirs of a killer who are themselves not only entirely innocent but are the people whom the deceased would probably have wanted to benefit from the estate in any event. We also welcome the proposal to ensure that minors who inherit under this provision have their inheritance protected.

It did, however recommend that the drafting should be re-examined in the light of comments made by the Bar Council and the Law Society:

183. However, Mr Evans queried the drafting where it referred to a “child or remoter descendent of the offender”: “The assumption is made that the person we are trying to protect or help here is the child of the offender, but it may be some completely different infant; it may be a stepson, it may be a sister, it could be a whole range of people who are infants.”

184. Des Hudson, of the Law Society, also expressed concerns about the drafting of the bill and the potential for unintended consequences on extant wills:

we need to be very, very careful to ensure that nothing is done or not done that might create doubt as to the validity of all the existing wills all over the country. It might well be sensible...to ensure that the face of the Bill makes it absolutely

¹⁰ [Civil Law Reform Bill Consultation](#), CP53/09, 15 December 2009

¹¹ Justice Committee, [Draft Civil Law Reform Bill: pre-legislative scrutiny](#), Sixth Report of 2009-10, HC 300

clear that nothing here is intended to revoke any existing wills made before the date of the Act coming into effect.¹²

2.3 The Coalition Government's response to the consultation

On 10 January 2011, the Coalition Government published a response to the consultation on the draft Bill.¹³ In a written ministerial statement made on the same day, the Government confirmed that it would not be proceeding with the proposed *Civil Law Reform Bill*, stating, "in the present financial situation we need to focus our resources on delivering our key priorities".¹⁴

However, in the response document, the Government noted that the Private Member's Bill introduced by Greg Knight would implement the distribution of estates provisions in the draft Bill, subject to some modifications, and said that it would defer any further decision on these provisions until the outcome of the Bill was clear.¹⁵

The response document stated that the proposals relating to distribution of estates had been well supported by respondents and noted that the Justice Committee was broadly content.¹⁶

3 The Bill

3.1 Clauses

Greg Knight's Bill has four clauses dealing respectively with disclaimer or forfeiture on intestacy; disclaimer or forfeiture of a gift under a will; death of a single parent under 18; and short title, commencement and extent. [Explanatory notes](#) have also been published which give a detailed explanation of each provision.¹⁷

Broadly, the Bill would implement, with modifications, a number of the recommendations of the Law Commission in its 2005 report, [The Forfeiture Rule and the Law of Succession](#).¹⁸ Specifically, it would introduce a "deemed predecease" rule. This means that, unless a contrary intention is expressed in any valid will, a deceased person's property would be distributed as if certain people had died immediately before the deceased. These are:

- any person who disclaims a gift
- any person whose gift is forfeited and
- any single parent dying under the age of 18.

This would protect the inheritance rights of the children and other heirs of these people.

The Bill would not limit the court's power to modify the effect of the forfeiture rule where the offender has not been convicted of murder.

3.2 Differences from the draft *Civil Law Reform Bill*

The provisions are similar to those contained in Part 3 of the draft *Civil Law Reform Bill*, but there are three main differences:

¹² p53

¹³ [Civil Law Reform Bill Response to Consultation](#), CP(R) CP53/09, 10 January 2011

¹⁴ HC Deb 10 January 2011 c8WS

¹⁵ p3

¹⁶ p7

¹⁷ Bill 8-EN

¹⁸ Law Com No 295

Safeguarding an infant's share following forfeiture

The Law Commission recommended that where a person forfeits their inheritance through having killed the deceased, but, as a result of the proposed reforms, property devolves on, or is held for, a minor descendant of the killer, the court should have the power to order that the property be held by the Public Trustee, who should administer it so as to avoid benefit to the killer. A provision to this effect was included in the draft Bill, modified to require the court to consult the Public Trustee, who might then advise on a more suitable private trustee. It was intended that the court would have a discretionary power to appoint the Public Trustee, or another person recommended by the Public Trustee, to hold the infant's inheritance on trust during the infant's minority. In exercising its power, the court and any trustees appointed were to ensure that the offender would not benefit directly or indirectly from the trust.

Two responses to the consultation considered that legislation already protects an infant's inheritance and were concerned about the limited application of the proposed safeguards:

Two respondents (Law Society and the Bar) considered that the safeguard provisions were not necessary because legislation already exists that would protect an infant beneficiary's inheritance in forfeiture cases if such protection were to be needed. Both referred to section 116 of the Senior Courts Act 1981, which provides the court with a discretion to pass over any prior claims to a grant and appoint someone else if by reason of any special circumstances it appears necessary or expedient to do so. The Bar also mentioned section 114(2) of that Act, which provides that, wherever a minority interest arises under a will or on intestacy, a grant should be made to a trust corporation or to two individuals unless it appears to the court to be expedient that there should be a sole personal representative.

The same two respondents also expressed concern about the limited application of the safeguard provisions, which is restricted to the infant children or remoter issue of the offender and only then if (as the Bar noted) the infant inherits by virtue of the reform rather than, say, under a default gift in a will. They considered that there may be cases where court intervention is needed to prevent potential abuse of the inheritance where those inheriting are infants but who are not directly related to the offender.

The Bar also objected to the width of the power of the court to allocate any property in which the infant had an interest to the trust and raised a fundamental concern about the workability of the provisions where both the infant and the disqualified person would inevitably benefit from the trust property: for example, where the former matrimonial home was held under the trust and the infant and the disqualified person were both living there.

The Bar's conclusion was: On balance, we consider the [provisions safeguarding an infant after forfeiture] to be unhelpful, and likely to lead to increased expense in the administration of estates in circumstances which are bound to be tragic but are otherwise unpredictable.¹⁹

In the Bill, there is no provision relating to safeguarding an infant's share following forfeiture.

The construction of wills following disclaimer or forfeiture

The draft Bill provided that, in relation to disclaimer or forfeiture of a gift under a will, the deemed predecease provision was to be "subject to any provision in the will about how the

¹⁹ [Civil Law Reform Bill Response to Consultation](#), CP(R) CP53/09, 10 January 2011, p36

devise or bequest is to take effect".²⁰ The Explanatory Notes published with the draft Bill indicated the intended meaning of this provision:

Subsection (4) of the new section 33A provides that the new rule gives way to any specific provision in the will about what happens to the gift in circumstances of forfeiture or disclaimer. This ensures the express wishes of the testator take priority.²¹

In response to the consultation on the draft Bill, the Law Society thought that this 'any provision' test was more demanding than the 'unless a contrary intention appears by the will' test found in other related statutory provisions.

In the Bill, the wording has been changed. Clause 2(2) would introduce a new section 33A to the *Wills Act 1837* and new section 33A(2) would provide:

The person is, unless a contrary intention appears by the will, to be treated for the purposes of this Act as having died immediately before the testator.²²

Deaths to which Bill would apply

Clause 4(4) specifies that the Act would not apply in the case of a death that occurs before the commencement of the substantive provisions (which would be by statutory instrument). This is a new provision which was not included in the draft Bill.

There are also some other minor drafting changes.

²⁰ Clause 16(2)

²¹ [Draft Civil Law Reform Bill](#) p34

²² New Section 33A(2) of the *Wills Act 1837* which would be inserted by Clause 2 of the Bill