STATUTORY INSTRUMENTS

1982 No. 1082 (N.I. 14)

The Forfeiture (Northern Ireland) Order 1982

- - - - - - *30th July 1982*

Annotations:

Modifications etc. (not altering text)

C1 Order: functions transferred from Lord Chancellor to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 38** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

Title and commencement

1.—(1) This Order may be cited as the Forfeiture (Northern Ireland) Order 1982.

(2) This Order, except Article 6 which shall come into operation on such day as the Head of the Department of Health and Social Services may by order appoint[F1], shall come into operation on 13th October 1982.

(3) Subject to Article 4 (7), an order under Article 4 or an order referred to in Article 5 (1) and made in respect of a person who has unlawfully killed another may be made whether the unlawful killing occurred before or after the commencement of those Articles.

Annotations:

F1 fully exercised by SR 1982/405

Interpretation

2. The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

Annotations:

F2 1954 c. 33 (NI)

The " forfeiture rule "

3.—(1) In this Order, 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.

(2) References in this Order 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 Order to unlawful killing shall be interpreted accordingly.

Power to modify the rule

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

(2) The court shall not make an order under this Article 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 Article 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 paragraph (1) are—

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased's will or the law relating to intestacy;

(ii) on the nomination of the deceased in accordance with the provisions of any statutory provision; or

(iii) as a donatio mortis causa made by the deceased; or

(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 Article may modify the effect of the forfeiture rule in respect of any interest in property to which the determination referred to in paragraph (1) 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 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 Article, the forfeiture rule shall have effect for all purposes (including purposes relating to anything done before the order is made) subject to the modifications made by the order.

(7) The court shall not make an order under this Article 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 commencement of this Article by a person other than the offender or a person claiming through him.

(8) In this Article—

"property" includes any chose in action; and

"will" includes codicil.

Application for financial provision not affected by the rule

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

(2) The provisions referred to in paragraph (1) are—

(a) Articles 33 (6) (variation, etc., of periodical payments orders) and 38 (1) (variation of maintenance agreements) of the Matrimonial Causes (Northern Ireland) Order 1978[F3]; and

(b) any provision of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979[F4]**[**[F5] and**]**

[[F5](c) paragraphs 53 (variation of secured periodical payments order) and 66 (alteration of maintenance agreements by court) of Schedule 15 to the Civil Partnership Act 2004**]**

Annotations:

F3 1978 NI 15

F4 1979 NI 8

F5 2004 c. 33

Social Security Commissioner to decide whether rule applies to social security benefits

6 [F6]**.**—(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 a Commissioner.

[[F7](1A) Where a Commissioner determines that the forfeiture rule has precluded a person (in this Article referred to as "the offender") who has unlawfully killed another from receiving the whole or part of any such benefit or advantage, the Commissioner may make a decision under this paragraph modifying the effect of that rule and may do so whether the unlawful killing occurred before or after the coming into operation of this paragraph.

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

(1C) Subject to paragraph (1D), a decision under paragraph (1A) 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 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 paragraph.

(1E) If the Commissioner thinks it expedient to do so,he may direct that his 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 paragraph (1) arises by reason of the same unlawful killing.

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

(1G) For the purpose of obtaining a decision whether the forfeiture rule should be modified the Department of Health and Social Services may refer to a Commissioner for review any determination of a question such as is mentioned in paragraph (1) that was made before the commencement of paragraphs (1A) to (1F) (whether by a Commissioner or not) and shall do so if the offender requests that Department to refer such a determination.