

Chapter 76 - Forfeiture Act 1982

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Chapter 76 - Forfeiture Act 1982

Introduction

- 76001 The forfeiture rule is a long established principle of common law. The rule, which means that no one should benefit from their own wrong¹, also applies to SS benefits².

*1 Cleaver and others v Mutual Reserve Fund Life Assoc [1982] IQB 147;
2 R(G) 2/79; R v Chief National Insurance Commissioner ex parte Connor [1981] IQB 758*

- 76002 For SS purposes the rule means that, in certain circumstances, a person who has unlawfully killed their spouse or civil partner cannot receive SS benefits as a result of the spouse's or civil partner's death¹.

1 Forfeiture Act 1982, s 1(1)

- 76003 The forfeiture rule applies to unlawful killing which includes

1. murder
2. manslaughter
3. culpable homicide¹ in Scotland **and**
4. unlawfully aiding, abetting, counselling or procuring the death of another².

There can be no relief from forfeiture in cases of unlawful killing unless it can be shown that justice requires the rule to be modified³. But see DMG 76006 for modifications to the forfeiture rule for 2. to 4. above.

Note: The forfeiture rule applies where a hospital order is imposed⁴ following a conviction for manslaughter based on diminished responsibility.

1 R(G) 3/90; 2 Forfeiture Act 1982, s 1(2); R(FG) 1/04; 3 R(G) 1/91; 4 Mental Health Act 1983, s 37

- 76004 A forfeiture rule question only arises in cases where there has been an unlawful killing and where the claimant stands to gain an advantage by the death of his/her spouse or civil partner. A question would not arise where, for example, a woman was aged over 60, entitled to a Cat A RP in her own right and would not derive any additional benefit as a direct result of the death of her husband or civil partner.

- 76005 Forfeiture rule questions can be determined only by the UT¹. Before 25.7.86, there could only be a decision whether or not the rule applied. If it did apply the claimant was prevented from deriving benefit directly from the unlawful act. There was no power to modify the effect of the rule².

*1 Forfeiture Act 1982, s 4(1); TP (UT) Rules, Rule 26;
2 R(G) 2/84(T); R(P) 1/84(T)*

- 76006 From 25.7.86 a change in legislation enabled modification of the effect of the rule. However, that modification cannot apply to

any period before 25.7.86. The UT can modify the effect of the rule so that it applies¹

1. only to a specified proportion of the benefit or advantage **and/or**
2. to the benefit or advantage only for a specified period of time.

There can, however, be no modification of the rule in cases of murder².

1 Forfeiture Act 1982, s 4(1C); 2 s 5

76007 The UT can

1. direct that a decision on the forfeiture question should apply also to any future benefit claim arising from the same unlawful killing¹ **and**
2. reconsider any determination of a forfeiture question made before 25.7.86².

Note: It does not matter who determined the forfeiture question for 2. to apply.

1 Forfeiture Act 1982, s 4(1E); 2 s 4(1G)

76008 The benefits most likely affected by the forfeiture rule are WB, BB, BSP, SP and RP based wholly or in part on a late husband's, wife's or civil partner's contributions (see DMG 76032 - 76033).

76009 - 76012

DMs action

- 76013 In most cases it will be for the DM to decide if a forfeiture rule question arises. If it does, the DM should refer the case to DMA Leeds who will refer the case to the UT to decide the question¹ (see DMG 76015).

I TP (UT) Rules, Rule 26(1)

- 76014 The DM should consider whether a forfeiture question arises in any case involving unlawful killing of a spouse or civil partner. Knowledge of unlawful killing is usually available from
1. the Director of Public Prosecutions, who informs the Department of cases where a person has been convicted of the murder or manslaughter of a spouse or civil partner **or**
 2. media reporting of a killing involving a spouse or civil partner.

Referral to Decision Making and Appeals Leeds

- 76015 DMA Leeds will refer cases to the UT. In addition to those cases in DMG 76014, all cases should be referred to DMA Leeds to consider reference to the UT where
1. a reference has been made to the DM to consider the effect of the forfeiture rule **and**
 2. the claimant has been charged with and **acquitted** of an offence outlined in DMG 76003.

It is the circumstances of the unlawful killing and not the conviction which gives rise to a reference¹. The onus of proving that a killing was unlawful will be on the DM.

I R(G) 2/90

- 76016 The papers should also be sent to DMA Leeds for consideration where it is clear that
1. a person has unlawfully killed his/her spouse or civil partner but the coroner has not named the offender **and**
 2. the person has not been convicted of the crime, for example because of old age.

76017 - 76028

Information to be obtained

- 76029 The DM should send the following documents to DMA Leeds
1. the case papers
 2. an assessment of the rate of benefit payable if the forfeiture rule did not apply
 3. a certificate of conviction and sentence (obtainable from the Court)
 4. a transcript of both the judge's summing up and the remarks upon conviction in cases involving a trial. These may be separate documents.
 5. a transcript of the entire proceedings in cases in England and Wales involving a guilty plea
 6. in guilty pleas in Scottish cases, documents as directed by DMA Leeds.
- 76030 Transcripts are obtainable from the official Court shorthand writers at a fee **which should be paid locally**. It may be possible to obtain a transcript at no cost from a defence solicitor.

Determination of forfeiture rule question

- 76031 Having determined the forfeiture rule question the UT will return the case to the DM to dispose of in the light of the UT's decision.

Effect on WB, BB, BSP, SP and RP

- 76032 Where there is reason to believe that
1. a person has been, or is likely to be charged with their spouse's or civil partner's murder, manslaughter or culpable homicide **and**
 2. the person's claim for WB, BB, BSP, SP or RP is based wholly or partly on their late spouse's or civil partner's contributions
- the DM should send the claim to DMA Leeds as soon as possible with the documents in DMG 76029.
- 76033 The DM should also send to DMA Leeds a claim received from a widower whose entitlement to benefit arises directly from his unlawful act of murder or manslaughter. The benefit affected is an IB(LT) or a Category A RP¹.
- Any case in which the survivor's RP entitlement would normally be increased on account of inheritable components should be sent to DMA Leeds.

1 SS CB Act 92, s 41

76034 - 76999

The content of the examples in this document (including use of imagery) is for illustrative purposes only