

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Estate Administration

Section 18 - Confirmation of executors: no requirement to find caution in relation to small intestate estates

54. Currently all executors dative, except spouses whose prior rights exhaust an estate, are required to find caution. Caution is a guarantee that the executor – dative will perform his or her duties and not embezzle the estate.
55. Subsection (1) amends the Intestates Widows and Children (Scotland) Act 1875 to remove the requirement for an executor-dative to find caution in estates subject to the ‘small estates’ confirmation process. A “small estate” is one whose gross value, without deducting debts and funeral expenses, does not exceed £36,000. This figure is subject to change from time to time.
56. Subsection (2) provides that the changes in subsection (1) to section 3 of the Intestate Widows and Children (Scotland) Act 1875 apply to applications under that Act which have been made before the section comes into force but have not been determined at that point.