



Succession (Scotland) Act 1964

1964 CHAPTER 41

An Act to assimilate and amend the law of Scotland with respect to the succession to the heritable and moveable property of deceased persons; to amend the law in relation to the legal and other prior rights exigible out of such property, to the administration of deceased persons' estates and other property passing on death, to the capacity of minors to test, and to the presumption of survivorship; to provide for certain testamentary dispositions to be probative; to provide for adopted persons to be treated for certain purposes as children of their adopters; to make new provision as to the financial rights and obligations of the parties on the dissolution of a marriage; and for purposes connected with the matters aforesaid. [10th June 1964]

Modifications etc. (not altering text)

- C1 Act applied by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1968 \(c. 70\), s. 8](#)
- C2 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

Commencement Information

- I1 Act wholly in force at 10.9.1964 see [s. 38\(3\)](#).

PART I

INTESTATE SUCCESSION

Modifications etc. (not altering text)

- C3 Pt. I applied (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\), ss. 11\(8\), 89\(2\)](#) (with [ss. 45\(3\), 51\(1\), Sch. 12 para. 3](#))
Pt. I applied (5.1.1994) by [1993 c. 44, ss. 10\(5\), 11\(1\), 64\(2\)](#) (with [ss. 30\(5\), 58\(1\)\(4\), Sch. 6 para. 4](#)).

Status: Point in time view as at 25/09/1991. This version of this Act contains provisions that are not valid for this point in time.

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1 Assimilation of heritage to moveables for purpose of devolution on intestacy.

(1) The whole of the intestate estate of any person dying after the commencement of this Act (so far as it is estate the succession to which falls to be regulated by the law of Scotland) shall devolve, without distinction as between heritable and moveable property, in accordance with—

- (a) the provisions of this Part of this Act, and
- (b) any enactment or rule of law in force immediately before the commencement of this Act which is not inconsistent with those provisions and which, apart from this section, would apply to that person's moveable intestate estate, if any;

and, subject to section 37 of this Act, any enactment or rule of law in force immediately before the commencement of this Act with respect to the succession to intestate estates shall, in so far as it is inconsistent with the provisions of this Part of this Act, cease to have effect.

(2) Nothing in this Part of this Act shall affect legal rights or the prior rights of a surviving spouse; and accordingly any reference in this Part of this Act to an intestate estate shall be construed as a reference to so much of the net intestate estate as remains after the satisfaction of those rights, or the proportion thereof properly attributable to the intestate estate.

2 Rights of succession to intestate estate.

(1) Subject to the following provisions of this Part of this Act—

- (a) where an intestate is survived by children, they shall have right to the whole of the intestate estate;
- (b) where an intestate is survived by either of, or both, his parents and is also survived by brothers or sisters, but is not survived by any prior relative, the surviving parent or parents shall have right to one half of the intestate estate and the surviving brothers and sisters to the other half thereof;
- (c) where an intestate is survived by brothers or sisters, but is not survived by any prior relative, the surviving brothers and sisters shall have right to the whole of the intestate estate;
- (d) where an intestate is survived by either of, or both, his parents, but is not survived by any prior relative, the surviving parent or parents shall have right to the whole of the intestate estate;
- (e) where an intestate is survived by a husband or a wife, but is not survived by any prior relative, the surviving spouse shall have right to the whole of the intestate estate;
- (f) where an intestate is survived by uncles or aunts (being brothers or sisters of either parent of the intestate), but is not survived by any prior relative, the surviving uncles and aunts shall have right to the whole of the intestate estate;
- (g) where an intestate is survived by a grandparent or grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, the surviving grandparent or grandparents shall have right to the whole of the intestate estate;
- (h) where an intestate is survived by brothers or sisters of any of his grandparents (being a parent or parents of either parent of the intestate), but is not survived by any prior relative, those surviving brothers and sisters shall have right to the whole of the intestate estate;

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- (i) where an intestate is not survived by any prior relative, the ancestors of the intestate (being remoter than grandparents) generation by generation successively, without distinction between the paternal and maternal lines, shall have right to the whole of the intestate estate; so however that, failing ancestors of any generation, the brothers and sisters of any of those ancestors shall have right thereto before ancestors of the next more remote generation.
- (2) References in the foregoing subsection to brothers or sisters include respectively brothers and sisters of the half blood as well as of the whole blood; and in the said subsection “prior relative”, in relation to any class of person mentioned in any paragraph of that subsection, means a person of any other class who, if he had survived the intestate, would have had right to the intestate estate or any of it by virtue of an earlier paragraph of that subsection or by virtue of any such paragraph and section 5 of this Act.

3 Succession of collaterals.

Subject to section 5 of this Act, where brothers and sisters of an intestate or of an ancestor of an intestate (in this section referred to as “collaterals”) have right to the whole, or, in a case to which subsection (1)(b) of the last foregoing section applies, to a half, of the intestate estate, the collaterals of the whole blood shall be entitled to succeed thereto in preference to the collaterals of the half blood; but where the collaterals of the half blood have right as aforesaid they shall rank without distinction as between those related to the intestate, or, as the case may be, the ancestor, through their father and those so related through their mother.

4 F1

Textual Amendments

F1 S. 4 repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), s. 10(2), [Sch. 2](#)

5 Representation.

- (1) Subject to section 6 of this Act, where a person who, if he had survived an intestate, would, by virtue of any of the foregoing provisions of this Part of this Act, have had right (otherwise than as a parent or spouse of the intestate) to the whole or to any part of the intestate estate has predeceased the intestate, but has left issue who survive the intestate, such issue shall have the like right to the whole or to that part of the intestate estate as the said person would have had if he had survived the intestate.
- (2) The right of any issue entitled to share in an intestate estate by virtue of the foregoing subsection to be appointed to the office of executor on the intestate estate shall be postponed to the right thereto of any person who succeeds to the whole or part of the intestate estate by virtue of the foregoing provisions of this Act apart from this section and who applies for appointment to that office.

6 Division of intestate estate among those having right thereto.

If, by virtue of the foregoing provisions of this Part of this Act, there are two or more persons having right among them to the whole, or, in a case to which section 2(1)(b)

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of this Act relates, to a half, of an intestate estate, then the said estate, or, as the case may be, that half thereof, shall—

- (a) if all of those persons are in the same degree of relationship to the intestate, be divided among them equally, and
- (b) in any other case, be divided equally into a number of parts equal to the aggregate of—
 - (i) those of the said persons who are nearest in degree of relationship to the intestate (in this section referred to as “the nearest surviving relatives”) and
 - (ii) any other persons who were related to the intestate in that degree, but who have predeceased him leaving issue who survive him;
 and, of those parts, one shall be taken by each of the nearest surviving relatives, and one shall be taken *per stirpes* by the issue of each of the said predeceased persons.

F2

Textual Amendments

- F2** Words (which were added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

7 Saving of right of Crown *asultimus haeres*.

Nothing in this Part of this Act shall be held to affect the right of the Crown *asultimus haeresto* any estate to which no person is entitled by virtue of this Act to succeed.

PART II

LEGAL AND OTHER PRIOR RIGHTS IN ESTATES OF DECEASED PERSONS

8 Prior rights of surviving spouse, on intestacy, in dwelling house and furniture.

- (1) Where a person dies intestate leaving a spouse, and the intestate estate includes a relevant interest in a dwelling house to which this section applies, the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) where the value of the relevant interest does not exceed [^{F3}£30,000 or such larger amount as may from time to time be fixed by order of the Secretary of State]—
 - (i) if subsection (2) of this section does not apply, the relevant interest;
 - (ii) if the said subsection (2) applies, a sum equal to the value of the relevant interest;
 - (b) in any other case, the sum of [^{F3}£30,000 or such larger amount as may from time to time be fixed by order of the Secretary of State]:

Provided that, if the intestate estate comprises a relevant interest in two or more dwelling houses to which this section applies, this subsection shall have effect only in relation to such one of them as the surviving spouse may elect for the purposes of this subsection within six months of the date of death of the intestate.

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- (2) This subsection shall apply for the purposes of paragraph (a) of the foregoing subsection if—
- (a) the dwelling house forms part only of the subjects comprised in one tenancy or lease under which the intestate was the tenant; or
 - (b) the dwelling house forms the whole or part of subjects an interest in which is comprised in the intestate estate and which were used by the intestate for carrying on a trade, profession or occupation, and the value of the estate as a whole would be likely to be substantially diminished if the dwelling house were disposed of otherwise than with the assets of the trade, profession or occupation.
- (3) Where a person dies intestate leaving a spouse, and the intestate estate includes the furniture and plenishings of a dwelling house to which this section applies (whether or not the dwelling house is comprised in the intestate estate), the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) where the value of the furniture and plenishings does not exceed [^{F3}£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], the whole thereof;
 - (b) in any other case, such part of the furniture and plenishings, to a value not exceeding [^{F3}£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], as may be chosen by the surviving spouse:
- Provided that, if the intestate estate comprises the furniture and plenishings of two or more such dwelling houses, this subsection shall have effect only in relation to the furniture and plenishings of such one of them as the surviving spouse may elect for the purposes of this subsection within six months of the date of death of the intestate.
- (4) This section applies, in the case of any intestate, to any dwelling house in which the surviving spouse of the intestate was ordinarily resident at the date of death of the intestate.
- (5) Where any question arises as to the value of any furniture or plenishings, or of any interest in a dwelling house, for the purposes of any provision of this section the question shall be determined by arbitration by a single arbiter appointed, in default of agreement, by the sheriff of the county in which the intestate was domiciled at the date of his death or, if that county is uncertain or the intestate was domiciled furth of Scotland, the sheriff of the Lothians and Peebles at Edinburgh.
- (6) In this section—
- (a) “dwelling house” includes a part of a building occupied (at the date of death of the intestate) as a separate dwelling; and any reference to a dwelling house shall be construed as including any garden or portion of ground attached to, and usually occupied with, the dwelling house or otherwise required for the amenity or convenience of the dwelling house;
 - (b) “furniture and plenishings” includes garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, articles of household use and consumable stores; but does not include any article or animal used at the date of death of the intestate for business purposes, or money or securities for money, or any heirloom;
 - (c) “heirloom”, in relation to an intestate estate, means any article which has associations with the intestate’s family of such nature and extent that it ought to pass to some member of that family other than the surviving spouse of the intestate;

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- (d) “relevant interest”, in relation to a dwelling house, means the interest therein of an owner, or the interest therein of a tenant, subject in either case to any heritable debt secured over the interest; and for the purposes of this definition “tenant” means a tenant under a tenancy or lease (whether of the dwelling house alone or of the dwelling house together with other subjects) which is not a tenancy to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply.

Textual Amendments

F3 Words substituted by [Succession \(Scotland\) Act 1973 \(c. 25\), s. 1\(1\)\(a\)](#)

Modifications etc. (not altering text)

- C4** S. 8 saved (25.7.1976) by [Prescription and Limitation \(Scotland\) Act 1973 \(c. 52\), s. 6\(2\), Sch. 1 para. 2\(f\)](#)
- C5** S. 8(1)(a)(b): it is provided that the amount fixed shall be £65,000 (1.5.1988) by [S.I. 1988/633, art. 2, Sch.](#) (which S.I. was revoked (26.11.1993) by [S.I. 1993/2690, art. 3](#))
- C6** S. 8(3)(a)(b): it is provided that the amount fixed shall be £12,000 (1.5.1988) by [S.I. 1988/633, art. 2, Sch.](#) (which S.I. was revoked (26.11.1993) by [S.I. 1993/2690, art. 3](#))

9 Prior right of surviving spouse to financial provision on intestacy.

- (1) Where a person dies intestate and is survived by a husband or wife, the surviving spouse shall be entitled to receive out of the intestate estate—
- (a) if the intestate is survived by issue . . . ^{F4}the sum of [^{F5}£4,000 or such larger amount as may from time to time be fixed by order of the Secretary of State, or]
- (b) if the intestate is not survived by issue . . . ^{F4}the sum of [^{F5}£8,000 or such larger amount as may from time to time be fixed by order of the Secretary of State], together with, in either case, interest at the rate of 4 per cent. per annum [^{F6}or, at such rate as may from time to time be fixed by order of the Secretary of State,] on such sum from the date of the intestate’s death until payment:

Provided that where the surviving spouse is entitled to receive a legacy out of the estate of the intestate (other than a legacy of any dwelling house to which the last foregoing section applies or of any furniture and plenishings of any such dwelling house), he or she shall, unless he or she renounces the legacy, be entitled under this subsection to receive only such sum, if any, as remains after deducting from the sum [^{F5}fixed by virtue of paragraph (a) of this subsection or the sum fixed by virtue of paragraph (b) of this subsection], as the case may be, the amount or value of the legacy.

- (2) Where the intestate estate is less than the amount which the surviving spouse is entitled to receive by virtue of subsection (1) of this section the right conferred by the said subsection on the surviving spouse shall be satisfied by the transfer to him or her of the whole of the intestate estate.
- (3) The amount which the surviving spouse is entitled to receive by virtue of subsection (1) of this section shall be borne by, and paid out of, the parts of the intestate estate consisting of heritable and moveable property respectively in proportion to the respective amounts of those parts.

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- (4) Where by virtue of subsection (2) of this section a surviving spouse has right to the whole of the intestate estate, he or she shall have the right to be appointed executor.
- (5) The rights conferred by the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 on a surviving spouse in his or her deceased spouse's estate shall not be exigible out of the estate of any person dying after the commencement of this Act.
- (6) For the purposes of this section—
 - (a) the expression “intestate estate” means so much of the net intestate estate as remains after the satisfaction of any claims under the last foregoing section; and
 - (b) the expression “legacy” includes any payment or benefit to which a surviving spouse becomes entitled by virtue of any testamentary disposition; and the amount or value of any legacy shall be ascertained as at the date of the intestate's death.

Textual Amendments

- F4** Words (which were inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F5** Words substituted by Succession (Scotland) Act 1973 (c. 25), s. **1(1)(b)**
- F6** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. **4(a)**

Modifications etc. (not altering text)

- C7** S. 9 saved (25.7.1976) by Prescription and Limitation (Scotland) Act 1973 (c. 52), s. 6(2), **Sch. 1 para. 2(f)**
- C8** S. 9(1)(a): it is provided that the fixed amount shall be £21,000 (1.5.1988) by S.I. 1988/633, art. 2, **Sch.** (which S.I. was revoked (26.11.1993) by S.I. 1993/2690, **art. 3**)
- C9** S. 9(1)(b): it is provided that the fixed amount shall be £35,000 (1.5.1988) by S.I. 1988/633, art. 2, **Sch.** (which S.I. was revoked (26.11.1993) by S.I. 1993/2690, **art. 3**)

[^{F7}9A. Provisions supplementary to ss. 8 and 9.

Any order of the Secretary of State, under section 8 or 9 of this Act, fixing an amount or rate—

- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and
- (b) shall have effect in relation to the estate of any person dying after the coming into force of the order.]

Textual Amendments

- F7** S. 9A inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. **4(b)**

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10 Abolition of terce and courtesy, and calculation of legal rights.

- (1) The right of courtesy of a surviving husband in his deceased wife’s estate and the right of terce of a surviving wife in her deceased husband’s estate shall not be exigible out of the estate of a person dying after the commencement of this Act.
- (2) The amount of any claim *tojus relictii, jus relictiae* or legitim out of an estate shall be calculated by reference to so much of the net moveable estate as remains after the satisfaction of any claims thereon under the two last foregoing sections.

10A F8

Textual Amendments

F8 S. 10A (which was added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) s. 2) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

11 Representation in, and division of, legitim.

- (1) Subject to the next following subsection, where a person (hereinafter in this section referred to as “the deceased”) dies predeceased by a child who has left issue who survive the deceased, and the child would, if he had survived the deceased, have been entitled . . . ^{F9}to legitim out of the deceased’s estate, such issue shall have the like right to legitim as the child would have had if he had survived the deceased.

..... F10

- (2) If, by virtue of the foregoing subsection or otherwise, there are two or more persons having right among them to legitim, then the legitim shall—
 - (a) if all of those persons are in the same degree of relationship to the deceased, be divided among them equally, and
 - (b) in any other case, be divided equally into a number of parts equal to the aggregate of—
 - (i) those of the said persons who are nearest in degree of relationship to the deceased (in this paragraph referred to as “the nearest surviving relatives”) and
 - (ii) any other persons who were related to the deceased in that degree and who (if they had survived him) would have been entitled to legitim out of his estate, but who have predeceased him leaving issue who survive him and are entitled to legitim out of his estate;

and, of those parts, one shall be taken by each of the nearest surviving relatives, and one shall be taken *per stirpes* by the issue of each of the said predeceased persons, being issue who are entitled as aforesaid.

..... F10

- (3) Nothing in the last foregoing subsection shall be construed as altering any rule of law as to collation of advances; and where any person is entitled to claim legitim out of the estate of a deceased person by virtue of subsection (1) of this section he shall be under the like duty to collate any advances made by the deceased to him, and the proportion appropriate to him of any advances so made to any person through whom he derives

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such entitlement, as if he had been entitled to claim such legitim otherwise than by virtue of the said subsection (1).

- (4) For the avoidance of doubt it is hereby declared that where any person is entitled by virtue of . . . ^{F11}subsection (1) of this section to legitim out of the estate of the deceased, and the deceased is not survived by any child, the proportion of the estate due to any surviving spouse in respect of *jus relictii* or *jus relictiae* shall be ascertained as if the deceased had been survived by a child.

Textual Amendments

- F9** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F10** Words (which were added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**
- F11** Words (which were inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

12 Legitim not to be discharged by ante-nuptial marriage contract.

Nothing in any ante-nuptial contract of marriage executed after the commencement of this Act shall operate so as to exclude, on the occurrence of the death of either party to the marriage, the right of any child of the marriage (or of any issue of his coming in his place by virtue of the last foregoing section) to legitim out of the estate of that party unless such child or issue shall elect to accept in lieu of legitim the provision made in his favour under the contract.

13 Equitable compensation.

Every testamentary disposition executed after the commencement of this Act by which provision is made in favour of the spouse or of any issue of the testator and which does not contain a declaration that the provision so made is in full and final satisfaction of the right to any share in the testator's estate to which the spouse or the issue, as the case may be, is entitled by virtue of *jus relictii*, *jus relictiae* or legitim, shall (unless the disposition contains an express provision to the contrary) have effect as if it contained such a declaration.

..... ^{F12}

Textual Amendments

- F12** Words (which were added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) Sch. 1) repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(2), **Sch. 2**

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PART III

ADMINISTRATION AND WINDING UP OF ESTATES

14 Assimilation for purposes of administration, etc., of heritage to moveables.

- (1) Subject to subsection (3) of this section the enactments and rules of law in force immediately before the commencement of this Act with respect to the administration and winding up of the estate of a deceased person so far as consisting of moveable property shall have effect (as modified by the provisions of this Act) in relation to the whole of the estate without distinction between moveable property and heritable property; and accordingly on the death of any person (whether testate or intestate) every part of his estate (whether consisting of moveable property or heritable property) falling to be administered under the law of Scotland shall, by virtue of confirmation thereto, vest for the purposes of administration in the executor thereby confirmed and shall be administered and disposed of according to law by such executor.
- (2) Provision shall be made by the Court of Session by act of sederunt made under the enactments mentioned in section 22 of this Act (as extended by that section) for the inclusion in the confirmation of an executor, by reference to an appended inventory or otherwise, of a description, in such form as may be so provided, of any heritable property forming part of the estate.
- (3) Nothing in this section shall be taken to alter any rule of law whereby any particular debt of a deceased person falls to be paid out of any particular part of his estate.

Modifications etc. (not altering text)

C10 S. 14(2) amended by [Administration of Estates Act 1971 \(c. 25\), s. 6\(2\)](#)

15 Provisions as to transfer of heritage.

- (1) Section 5(2) of the ^{M1}Conveyancing (Scotland) Act 1924 (which provides that a confirmation which includes a heritable security shall be a valid title to the debt thereby secured) shall have effect as if any reference therein to a heritable security, or to a debt secured by a heritable security, included a reference to any interest in heritable property which has vested in an executor in pursuance of the last foregoing section by virtue of a confirmation:

Provided that a confirmation [^{F13}(other than an implied confirmation within the meaning of the said section 5(2))] shall not be deemed for the purposes of the said section 5(2) to include any such interest unless a description of the property, in accordance with any act of sederunt such as is mentioned in subsection (2) of the last foregoing section, is included or referred to in the confirmation.

- (2) Where in pursuance of the last foregoing section any heritable property has vested in an executor by virtue of a confirmation, and it is necessary for him in distributing the estate to transfer that property—
 - (a) to any person in satisfaction of a claim to legal rights or the prior rights of a surviving spouse out of the estate, or
 - (b) to any person entitled to share in the estate by virtue of this Act, or

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- (c) to any person entitled to take the said property under any testamentary disposition of the deceased,

the executor may effect such transfer by endorsing on the confirmation (or where a certificate of confirmation relating to the property has been issued in pursuance of any act of sederunt, on the certificate) a docket in favour of that person in the form set out in Schedule 1 to this Act, or in a form as nearly as may be to the like effect, and any such docket may be specified as a midcouple or link in title in any deduction of title; but this section shall not be construed as prejudicing the competence of any other mode of transfer.

Textual Amendments

F13 Words inserted retrospectively by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 19

Marginal Citations

M1 1924 c. 27.

[^{F14}16 Provisions relating to leases.

- (1) This section applies to any interest, being the interest of a tenant under a lease, which is comprised in the estate of a deceased person and has accordingly vested in the deceased's executor by virtue of section 14 of this Act; and in the following provisions of this section "interest" means an interest to which this section applies.
- (2) Where an interest—
- (a) is not the subject of a valid bequest by the deceased, or
 - (b) is the subject of such a bequest, but the bequest is not accepted by the legatee, or
 - (c) being an interest under an agricultural lease, is the subject of such a bequest, but the bequest is declared null and void in pursuance of section 16 of the Act of 1886 or [^{F15}section 11 of the 1991 Act][^{F16}or becomes null and void under section 10 of the Act of 1955,]

and there is among the conditions of the lease (whether expressly or by implication) a condition prohibiting assignation of the interest, the executor shall be entitled, notwithstanding that condition, to transfer the interest to any one of the persons entitled to succeed to the deceased's intestate estate, or to claim legal rights or the prior rights of a surviving spouse out of the estate, in or towards satisfaction of that person's entitlement or claim; but shall not be entitled to transfer the interest to any other person without the consent

[in the case of an interest under an agricultural lease, being a lease of a

^{F17}(i) croft within the meaning of section 3(1) of the Act of 1955, of the Crofters Commission;

(ii) in any other case, of the landlord.]

- (3) If in the case of any interest—
- (a) at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, or
 - (b) the interest is not so disposed of within a period of one year or such longer period as may be fixed by agreement between the landlord and the executor or, failing agreement, by the sheriff on summary application by the executor—

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- (i) in the case of an interest under an agricultural lease which is the subject of a petition to the Land Court under section 16 of the Act of 1886 or an application to that court under ^{F15}section 11 of the 1991 Act], from the date of the determination or withdrawal of the petition or, as the case may be, the application,
- [in the case of an interest under an agricultural lease which is the
- ^{F18}(ia) subject of an application by the legatee to the Crofters Commission under section 10(1) of the Act of 1955, from the date of any refusal by the Commission to determine that the bequest shall not be null and void,
- (ib) in the case of an interest under an agricultural lease which is the subject of an intimation of objection by the landlord to the legatee and the Crofters Commission under section 10(3) of the Act of 1955, from the date of any decision of the Commission upholding the objection,]
- (ii) in any other case, from the date of death of the deceased,
- either the landlord or the executor may, on giving notice in accordance with the next following subsection to the other, terminate the lease (in so far as it relates to the interest) notwithstanding any provision therein, or any enactment or rule of law, to the contrary effect.
- (4) The period of notice given under the last foregoing subsection shall be—
- (a) in the case of an agricultural lease, such period as may be agreed, or, failing agreement, a period of not less than one year and not more than two years ending with such term of Whitsunday or Martinmas as may be specified in the notice; and
- (b) in the case of any other lease, a period of six months:
- Provided that paragraph (b) of this subsection shall be without prejudice to any enactment prescribing a shorter period of notice in relation to the lease in question.
- (5) Subsection (3) of this section shall not prejudice any claim by any party to the lease for compensation or damages in respect of the termination of the lease (or any rights under it) in pursuance of that subsection; but any award of compensation or damages in respect of such termination at the instance of the executor shall be enforceable only against the estate of the deceased and not against the executor personally.
- (6) Where an interest is an interest under an agricultural lease, and—
- (a) an application is made under section 3 of the Act of 1931 ^{F19}or section 13 of the Act of 1955] to the Land Court for an order for removal, or
- (b) a reference is made under ^{F20}section 23(2) and (3) of the 1991 Act] to an arbiter to determine any question which has arisen under ^{F20}section 22(2)(e)] of that Act in connection with a notice to quit,
- the Land Court shall not make the order, or, as the case may be, the arbiter shall not make an award in favour of the landlord, unless the court or the arbiter is satisfied that it is reasonable, having regard to the fact that the interest is vested in the executor in his capacity as executor, that it should be made.
- (7) Where an interest is not an interest under an agricultural lease, and the landlord brings an action of removing against the executor in respect of a breach of a condition of the lease, the court shall not grant decree in the action unless it is satisfied that the condition alleged to have been breached is one which it is reasonable to expect the executor to have observed, having regard to the fact that the interest is vested in him in his capacity as an executor.

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(8) Where an interest is an interest under an agricultural lease and is the subject of a valid bequest by the deceased, the fact that the interest is vested in the executor under the said section 14 shall not prevent the operation, in relation to the legatee, of paragraphs (a) to (h) of section 16 of the Act of 1886, or, as the case may be, [^{F21}section 11(2) to (8) of the 1991 Act], [^{F22}or, as the case may be, subsection (2) to (7) of section 10 of the Act of 1955].

(9) In this section—

“agricultural lease” means a lease of a holding within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931 or of [^{F23}the 1991 Act], [^{F24}or a lease of a croft within the meaning of section 3(1) of the Act of 1955];

“the Act of 1886” means the ^{M2}Crofters Holdings (Scotland) Act 1886;

“the Act of 1931” means the ^{M3}Small Landholders and Agricultural Holdings (Scotland) Act 1931;

[^{F25}“the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991;]

[^{F26}“the Act of 1955” means the ^{M4}Crofters (Scotland) Act 1955;]

“lease” includes tenancy.]

Textual Amendments

- F14** S. 16 is set out as it has effect in accordance with [Law Reform \(Miscellaneous Provisions\) Act 1968 \(c. 70\)](#), [s. 8](#), and as subsequently amended
- F15** Words in s. 16(2)(c) and s. 16(3)(b)(i) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(a\)](#) (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))
- F16** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 22\(a\)](#)
- F17** Words substituted by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 22\(b\)](#)
- F18** S. 16(3)(b)(ia)(ib) added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 23](#)
- F19** Words inserted by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#) [Sch. 2 Pt. I para. 24](#)
- F20** Words in s. 16(6)(b) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(b\)](#) (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))
- F21** Words in s. 16(8) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(c\)](#) (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))
- F22** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 25](#)
- F23** Words in definition in s. 16(9) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(d\)\(i\)](#) (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))
- F24** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 26\(a\)](#)
- F25** S. 16(9): definition of "the 1991 Act" substituted (25.9.1991) for definition of "the Act of 1949" by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 88\(1\), 89\(2\)](#), [Sch. 11 para. 24\(d\)\(ii\)](#) (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))
- F26** S. 16(9): definition of "the Act of 1955" added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), [s. 8](#), [Sch. 2 Pt. I para. 26\(b\)](#)

Marginal Citations

- M2** [1886 c. 29](#).
- M3** [1931 c. 44](#).

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M4 1955 c. 21.

VALID FROM 28/01/2008

[^{F27}16A Leases of crofts: special provision relating to the Crofters (Scotland) Act 1993

- (1) The requirement in section 16(2A)(a) of this Act to obtain the consent of the Crofters Commission shall be treated as if it were a requirement under the Crofters (Scotland) Act 1993 (c. 44) and accordingly section 58A of that Act shall apply for the purposes of the requirement as it applies for the purposes of a requirement under that Act.
- (2) In the case of an application for the consent of the Crofter's Commission made by virtue of section 16(2A)(a) of this Act in respect of a transfer to a person other than a member of the crofter's family, the following special conditions apply for the purposes of section 58A(6)(b)(ii) of the Crofters (Scotland) Act 1993—
 - (a) that the proposed transferee lives, or intends to live, more than 16 kilometres distant from the croft;
 - (b) that he already owns or is tenant of a croft;
 - (c) that he lacks the knowledge, abilities and experience to cultivate the croft or as the case may be to put it to such other purposeful use as he intends;
 - (d) that he is the grazings clerk or a member of the grazings committee;
 - (e) where the landlord is not a natural person, that the proposed transferee is a member or employee, or is a member of the family of a member or employee, of the body which constitutes the landlord;
 - (f) that there are reasonable grounds for concern over the use to which the proposed transferee intends to put the croft.
- (3) Where the consent of the Crofter's Commission to a transfer is required by section 16(2A)(a) of this Act, and the executor transfers the interest without the consent of the Commission—
 - (a) the transfer and any deed purporting so to transfer the interest shall be null and void; and
 - (b) the Commission may declare the croft to be vacant.
- (4) A transfer to which the Crofter's Commission have given their consent under section 16(2A)(a) of this Act shall take effect on such date as the Commission shall specify in the consent (being a date not less than two months after that on which the consent was intimated to the executor) unless before that date the executor and the transferee jointly give to the Commission notice in writing that they do not intend to proceed with the transfer.
- (5) An appeal shall lie on any question of fact or law to the Land Court against a decision of the Crofters Commission on an application made to them under section 16(2A)(a) of this Act.
- (6) The appellant may be the applicant or any person with an interest in the application.
- (7) An appeal under subsection (5) of this section must be brought within 42 days after the Commission dispose of the application.

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(8) In an appeal under subsection (5) of this section, the Land Court may confirm the decision or direct the Commission to come to a different decision.]

Textual Amendments

F27 S. 16A inserted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), ss. 16, 43 (with ss. 40,43(2)); S.S.I. 2007/568, art. 2

17 Protection of persons acquiring title.

Where any person has in good faith and for value acquired title to any interest in or security over heritable property which has vested in an executor as aforesaid directly or indirectly from—

- (a) the executor, or
- (b) a person deriving title directly from the executor,

the title so acquired shall not be challengeable on the ground that the confirmation was reducible or has in fact been reduced, or, in a case falling under paragraph (b) above, that the title should not have been transferred to the person mentioned in that paragraph.

Modifications etc. (not altering text)

C11 S. 17 saved by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 7

18 Provisions as to entails and special destinations.

- (1) On the death of the heir of entail in possession of any property subject to an entail, the entailed property shall, if the executor of the deceased is confirmed thereto, vest in the executor for the purpose of enabling it to be conveyed to the heir of entail next entitled thereto under the entail (if such conveyance is necessary) and for that purpose only.
- (2) On the death of a person entitled to any heritable property subject to a special destination in favour of some other person, being a destination which the deceased could not competently have, or in fact has not, evacuated by testamentary disposition or otherwise, the property shall, if the executor of the deceased is confirmed thereto, vest in the executor for the purpose of enabling it to be conveyed to the person next entitled thereto under the destination (if such conveyance is necessary) and for that purpose only.
- (3) Section 14(2) of this Act shall apply in relation to property to which this section refers as it applies to property to which the said section 14(2) refers.
- (4) Sections 15 and 17 of this Act shall apply to property which has vested in an executor by virtue of this section as they apply to property which has vested in an executor by virtue of section 14 of this Act, as if the person next entitled to the first mentioned property were a person entitled to share in the estate of the deceased.

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[^{F28}19 Estate Duty.

- (1) The executor of a deceased person shall be accountable for all estate duty which may become leviable or payable on the death of the deceased in respect of heritable property which vests in such executor.
- (2) For the purpose of raising the duty and the expenses of so doing, the executor shall have all the powers which are by any enactment conferred for raising the duty.
- (3) Nothing in this Act shall alter any duty payable in respect of heritable property or impose any new duty thereon or affect the remedies of the Commissioners of Inland Revenue against any person or property.
- (4) Nothing in this Act shall be held to require the payment of estate duty on any estate or any part of an estate at a date earlier than the date on which such payment would have been exigible if this Act had not passed.
- (5) Notwithstanding that any estate duty is by this Act made payable by the executor, nothing in this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty and they shall accordingly account for or repay the duty and any interest and expenses attributable thereto to the Commissioners of Inland Revenue or to the executor, as the case may require.
- (6) Nothing in this section shall impose on the executor as such any liability for payment of duty in excess of the assets (including any heritable property) which shall for the time being be available in his hand for the payment of the duty or which would have been so available but for his own neglect or default.
- (7) The Commissioners of Inland Revenue, on being satisfied that the executor or other person accountable has paid or commuted or will pay or commute all estate duty for which he is accountable in respect of the heritable property vested in him or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for estate duty the property to which the certificate extends.]

Textual Amendments

F28 Ss. 19, 22(4) repealed in relation to deaths occurring after 13.4.1975 and, so far as regards certain duties in relation to any death, by [Finance Act 1975 \(c. 7, SIF 99:3\)](#), ss. 52(2), 59, [Sch. 13 Pt. I](#), note (with a saving in s. 52(3) in relation to repayment or allowance in respect of certain sums paid before 13.3.1975 on account)

20 Executor dative to have powers of a trustee.

An executor dative appointed to administer the estate of a deceased person shall have in his administration of such estate the whole powers, privileges and immunities, and be subject to the same obligations, limitations and restrictions, which gratuitous trustees have, or are subject to, under any enactment or under common law, and the ^{M5} Trusts (Scotland) Acts 1921 and ^{M6} 1961 shall have effect as if any reference therein to a trustee included a reference to such an executor dative:

Provided that nothing in this section shall exempt an executor dative from finding caution for his intromissions or confer upon him any power to resign or to assume new trustees.

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Marginal Citations

- M5 1921 c. 58.
- M6 1961 c. 57.

21 Evidence as to holograph wills in commissary proceedings.

Notwithstanding any rule of law or practice to the contrary, confirmation of an executor to property disposed of in a holograph testamentary disposition shall not be granted unless the court is satisfied by evidence consisting at least of an affidavit by each of two persons that the writing and signature of the disposition are in the handwriting of the testator.

VALID FROM 01/08/1995

[^{F29}21A Evidence as to testamentary documents in commissary proceedings.

Confirmation of an executor to property disposed of in a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995 shall not be granted unless the formal validity of the document is governed—

- (a) by Scots law and the document is presumed under section 3 or 4 of that Act to have been subscribed by the granter so disposing of that property; or
- (b) by a law other than Scots law and the court is satisfied that the document is formally valid according to the law governing such validity.]

Textual Amendments

- F29** S. 21A inserted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 39** (with ss. 9(3)(5)(7), 13, 14(3))

22 Court of Session may regulate procedure in commissary proceedings.

(1) The powers exercisable by the Court of Session by act of sederunt under section 18 of the ^{M7}Confirmation of Executors (Scotland) Act 1858, section 16 of the ^{M8}Sheriff Courts and Legal Officers (Scotland) Act 1927 and section 34 of the ^{M9}Administration of Justice (Scotland) Act 1933 (which empower the court to regulate *inter alia* procedure in proceedings in the sheriff court and in proceedings for the confirmation of executors) shall include power to regulate the procedure to be followed, and to prescribe the form and content of any petition, writ or other document to be used, in connection with the confirmation of executors in cases where, by virtue of this Act, heritable property devolves upon the executor.

(2) Without prejudice to the generality of the powers conferred on the court by the said sections and by this section, the power conferred by the said section 34 to modify, amend or repeal by act of sederunt enactments relating to certain matters shall include power so to modify, amend or repeal any enactment relating to the procedure to be followed in proceedings for the confirmation of executors in such cases as aforesaid.

(3) ^{F30}

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[^{F31}(4) Nothing in the foregoing provisions of this section shall affect the power conferred by section 8(14) of the Finance Act 1894 or otherwise on the Commissioners of Inland Revenue to prescribe the form of, or the particulars to be contained in, affidavits and other documents used for the purposes of Part I of that Act.]

Textual Amendments

F30 S. 22(3) repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1966 (c. 19), Sch. Pt. I

F31 Ss. 19, 22(4) repealed in relation to deaths occurring after 13.4.1975 and, so far as regards certain duties in relation to any death, by Finance Act 1975 (c. 7, SIF 99:3), ss. 52(2), 59, Sch. 13 Pt. I, note (with a saving in s. 52(3) in relation to repayment or allowance in respect of certain sums paid before 13.3.1975 on account)

Marginal Citations

M7 1858 c. 56.

M8 1927 c. 35.

M9 1933 c. 41.

PART IV

ADOPTED PERSONS

23 Adopted person to be treated for purposes of succession etc. as child of adopter.

(1) For all purposes relating to—

- (a) the succession to a deceased person (whether testate or intestate), and
- (b) the disposal of property by virtue of any *inter vivos* deed,

an adopted person shall be treated as the child of the adopter and not as the child of any other person.

In this subsection and in the following provisions of this Part of this Act any reference to succession to a deceased person shall be construed as including a reference to the distribution of any property in consequence of the death of the deceased person and any claim to legal rights or the prior rights of a surviving spouse out of his estate.

(2) In any deed whereby property is conveyed or under which a succession arises, being a deed executed after the making of an adoption order, unless the contrary intention appears, any reference (whether express or implied)—

- (a) to the child or children of the adopter shall be construed as, or as including, a reference to the adopted person;
- (b) to the child or children of the adopted person's natural parents or either of them shall be construed as not being, or as not including, a reference to the adopted person; and
- (c) to a person related to the adopted person in any particular degree shall be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter and were not the child of any other person:

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Provided that for the purposes of this subsection a deed containing a provision taking effect on the death of any person shall be deemed to have been executed on the date of death of that person.

- (3) Where the terms of any deed provide that any property or interest in property shall devolve along with a title, honour or dignity, nothing in this ^{F32}section or in the Children Act 1975 or in the Adoption (Scotland) Act 1978 shall prevent] that property or interest from so devolving.
- (4) Nothing in this section shall affect any deed executed, or the devolution of any property on, or in consequence of, the death of a person who dies, before the commencement of this Act.
- (5) In this Part of this Act the expression “adoption order”^{F32} has the same meaning as in section 38 of the Adoption (Scotland) Act 1978 (whether the order took effect before or after the commencement of this Act); and “adopted” means adopted in pursuance of an adoption order]

Textual Amendments

F32 Words substituted by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 3 para. 4](#)

Modifications etc. (not altering text)

C12 [S. 23](#) saved by [Legitimation \(Scotland\) Act 1968 \(c. 22\)](#), [ss. 2\(6\)](#), 6(2)

C13 [S. 23\(1\)](#) excluded by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1966 \(c. 19\)](#), s. 5(1)

C14 Definition in [s. 23\(5\)](#) applied (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), [ss. 25\(5\)](#), 89(2), [Sch. 2 Pt. III](#), para.1 (with [s. 45\(3\)](#), [Sch. 12 para. 3](#))

24 Provisions supplementary to s. 23.

- (1) For the purposes of the law regulating the succession to any property and for the purposes of the construction of any such deed as is mentioned in the last foregoing section, an adopted person shall be deemed to be related to any other person, being the child or the adopted child of the adopter or (in the case of a joint adoption) of either of the adopters,
 - (a) where he or she was adopted by two spouses jointly and that other person is the child or adopted child of both of them, as a brother or sister of the whole blood;
 - (b) in any other case, as a brother or sister of the half blood.

^{F33}(1A) Where, in relation to any purpose specified in section 23(1) of this Act, any right is conferred or any obligation is imposed, whether by operation of law or under any deed coming into operation after the commencement of the Children Act 1975, by reference to the relative seniority of the members of a class of persons, then, without prejudice to any entitlement under Part I of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 of an illegitimate child who is adopted by one of his parents,

- (a) any member of that class who is an adopted person shall rank as if he had been born on the date of his adoption, and
- (b) if two or more members of the class are adopted persons whose dates of adoption are the same, they shall rank as between themselves in accordance with their respective times of birth.]

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- (2) Notwithstanding anything in the last foregoing section, a trustee or an executor may distribute any property for the distribution of which he is responsible without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim he has not had notice at the time of the distribution; but (without prejudice to section 17 of this Act) nothing in this subsection shall affect any right of any such person to recover the property, or any property representing it, from any person who may have received it.
- (3) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of the last foregoing section in relation to the devolution of any property on the death of any person dying after the date of the subsequent adoption order, and in relation to any deed executed after that date whereby property is conveyed or under which a succession arises.
- (4) F34

Textual Amendments

F33 S. 24(1A) added by Children Act 1975 (c. 72, SIF 49:9, 10), s. 8(10), **Sch. 2 para. 5(3)**

F34 S. 24(4) repealed by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, **Sch. 4**

Modifications etc. (not altering text)

C15 S. 24 saved by Legitimation (Scotland) Act 1968 (c. 22), **ss. 2(6), 6(2)**

PART V

FINANCIAL PROVISION ON DIVORCE

- 25— F35
- 27.

Textual Amendments

F35 Ss. 25–27 repealed by Divorce (Scotland) Act 1976 (c. 39, SIF 49:3), s. 12(2), **Sch. 2** (with savings in s. 12(3) for proceedings brought, anything done or the operation of any order made, under the repealed enactment)

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

- F36 28

Status: Point in time view as at 25/09/1991. This version of this Act contains provisions that are not valid for this point in time.

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Textual Amendments

- F36** S. 28 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), **Sch.2** (with s. 1(3))

29 Right of tenant to bequeath interest under lease.

- (1) A bequest by a tenant of his interest under a tenancy or lease to any one of the persons who, if the tenant had died intestate, would be, or would in any circumstances have been, entitled to succeed to his intestate estate by virtue of this Act shall not be treated as invalid by reason only that there is among the conditions of the tenancy or lease an implied condition prohibiting assignation.
- (2) This section shall not prejudice the operation of section 16 of the ^{M10} Crofters Holdings (Scotland) Act 1886 or [^{F37}section 11 of the Agricultural Holdings (Scotland) Act 1991] (which relate to bequests in the case of agricultural leases) [^{F38}or of section 10 of the ^{M11}Crofters (Scotland) Act 1955 (which makes similar provisions in relation to crofts.)]

Textual Amendments

- F37** Words in s. 29(2) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(1), 89(2), **Sch. 11 para.25** (with s. 45(3), **Sch. 12 para. 3**)
- F38** Words added by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 8, Sch. 2 Pt. I para. 27

Marginal Citations

- M10** 1886 c. 29.
M11 1955 c. 21.

30 Effect of testamentary dispositions on special destinations.

A testamentary disposition executed after the commencement of this Act shall not have effect so as to evacuate a special destination (being a destination which could competently be evacuated by the testamentary disposition) unless it contains a specific reference to the destination and a declared intention on the part of the testator to evacuate it.

31 Presumption of survivorship in respect of claims to property.

- (1) Where two persons have died in circumstances indicating that they died simultaneously or rendering it uncertain which, if either, of them survived the other, then, for all purposes affecting title or succession to property or claims to legal rights or the prior rights of a surviving spouse,
 - (a) where the persons were husband and wife, it shall be presumed that neither survived the other; and
 - (b) in any other case, it shall be presumed that the younger person survived the elder unless the next following subsection applies.
- (2) If, in a case to which paragraph (b) of the foregoing subsection would (apart from this subsection) apply, the elder person has left a testamentary disposition containing

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a provision, however expressed, in favour of the younger if he survives the elder and, failing the younger, in favour of a third person, and the younger person has died intestate, then it shall be presumed for the purposes of that provision that the elder person survived the younger.

32 Certain testamentary dispositions to be probative.

- (1) For the purpose of any question arising as to entitlement to any property by virtue of a testamentary disposition to which this section applies, the testamentary disposition shall (notwithstanding anything in any Act passed before this Act) be treated as probative.
- (2) This section applies to any testamentary disposition (not being a testamentary disposition which would be treated as probative apart from this section) if—
 - (a) confirmation of an executor to property disposed of in the disposition has been granted in Scotland, or
 - (b) probate, letters of administration or other grant of representation [^{F39}has been issued in England and Wales or Northern Ireland in respect of property disposed of in the disposition and notes the domicile of the deceased in England and Wales or in Northern Ireland, as the case may be, or probate, letters of administration or other grant of representation issued out with the United Kingdom in respect of such property has been] sealed in Scotland under section 2 of the ^{M12} Colonial Probates Act 1892.

Textual Amendments

F39 Words substituted by [Administration of Estates Act 1971 \(c. 25\), Sch. 1 para. 5](#)

Marginal Citations

M12 1892 c. 6.

33 Construction of existing deeds.

- (1) Subject to subsection (2) of this section, any reference in any deed taking effect after the commencement of this Act to *jus relictii*, *jus relictæ* or *legitim* shall be construed as a reference to the right to *jus relictii*, *jus relictæ* or *legitim*, as the case may be, as modified by Part II of this Act . . . ^{F40}; and any reference in any [^{F41}such deed] to courtesy or terce shall be of no effect.
- (2) Any reference to legal rights in a marriage contract made before the commencement of this Act and taking effect in consequence of a decree of divorce granted in an action commenced after the commencement of this Act shall be construed as a reference to any right which the husband or the wife, as the case may be, might obtain by virtue of the provisions of section 26 of this Act [^{F42}or section 5 of the Divorce (Scotland) Act 1976][^{F43}or section 29 of the Matrimonial and Family Proceedings Act 1984][^{F44}or section 8 of the Family Law (Scotland) Act 1985].

Textual Amendments

F40 Words (which were inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1968 \(c. 70\), Sch. 1](#)) repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\), s. 10\(2\), Sch. 2](#)

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- F41** Words substituted by virtue of Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), s. 10(1), **Sch. 1 para. 7(1)**
- F42** Words added by Divorce (Scotland) Act 1976 (c. 39, SIF 49:3), s. 12(1), **Sch. 1**
- F43** Words added by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), s. 46(1), **Sch. 1 para. 6**
- F44** Words added by Family Law (Scotland) Act 1985 (c. 37, SIF 49:3), s. 28(1), **Sch. 1 para. 4**

34 Modification of enactments and repeals.

(1) Subject to the provisions of section 37 of this Act, the enactments mentioned in Schedule 2 to this Act shall have effect subject to the modifications specified in that Schedule, being modifications consequential on the provisions of this Act.

(2) **F45**

Textual Amendments

F45 S. 34(2), Sch. 2 para. 13(a) and Sch. 3 repealed by Statute Law (Repeals) Act 1974 (c. 22), **Sch. Pt. XI**

35 Transfer of certain jurisdiction to Sheriff of Chancery.

(1) If at any time it appears to the Secretary of State expedient to do so he may by order transfer to the Sheriff of Chancery the jurisdiction of any other sheriff in relation to the service of heirs.

(2) An order made under this section may contain such consequential provisions as appears to the Secretary of State to be necessary, including provisions for the consequential repeal or consequential modification of any enactment relating to the matters dealt with in the order.

(3) Any order made under this section shall be made by statutory instrument.

36 Interpretation.

(1) In this Act the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them, that is to say—

“deed” includes any disposition, contract, instrument or writing, whether *inter vivos* or *mortis causa*;

“an intestate” means a person who has died leaving undisposed of by testamentary disposition the whole or any part of his estate, and “intestate” shall be construed accordingly;

“intestate estate”, in relation to an intestate, means (subject to sections 1(2) and 9(6)(a) of this Act) so much of his estate as is undisposed of by testamentary disposition;

“issue” means . . . ^{F46}issue however remote;

“Land Court” means the Scottish Land Court;

“lease” and “tenancy” include sub-lease and sub-tenancy, and tenant shall be construed accordingly;

“legal rights” means *jus relictii*, *jus relictæ*, and legitim;

“net estate” and “net intestate estate” mean respectively so much of an estate or an intestate estate as remains after provision for the satisfaction of

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estate duty and other liabilities of the estate having priority over legal rights, the prior rights of a surviving spouse and rights of succession, or, as the case may be, the proportion thereof properly attributable to the intestate estate;

“owner” in relation to any heritable property means the person entitled to receive the rents thereof (other than rents under a sub-lease or sub-tenancy);

“prior rights”, in relation to a surviving spouse, means the rights conferred by sections 8 and 9 of this Act;

“testamentary disposition”, in relation to a deceased, includes any deed taking effect on his death whereby any part of his estate is disposed of or under which a succession thereto arises.

- (2) Any reference in this Act to the estate of a deceased person shall, unless the context otherwise requires, be construed as a reference to the whole estate, whether heritable or moveable, or partly heritable and partly moveable, belonging to the deceased at the time of his death or over which the deceased had a power of appointment and, where the deceased immediately before his death held the interest of a tenant under a tenancy or lease which was not expressed to expire on his death, includes that interest:

Provided that—

- (a) where any heritable property belonging to a deceased person at the date of his death is subject to a special destination in favour of any person, the property shall not be treated for the purposes of this Act as part of the estate of the deceased unless the destination is one which could competently be, and has in fact been, evacuated by the deceased by testamentary disposition or otherwise; and in that case the property shall be treated for the purposes of this Act as if it were part of the deceased’s estate on which he has tested; and
- (b) where any heritable property over which a deceased person had a power of appointment has not been disposed of in exercise of that power and is in those circumstances subject to a power of appointment by some other person, that property shall not be treated for the purposes of this Act as part of the estate of the deceased.
- (3) Without prejudice to the proviso to section 23(2) of this Act, references in this Act to the date of execution of a testamentary disposition shall be construed as references to the date on which the disposition was actually executed and not to the date of death of the testator.
- (4) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment, including this Act.
- [^{F47}(5) Section 1(1) (legal equality of children) of the Law Reform (Parent and Child) (Scotland) Act 1986 shall apply to this Act; and any reference (however expressed) in this Act to a relative shall be construed accordingly.]

Textual Amendments

F46 Word repealed by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\), s. 10\(2\), Sch. 2](#)

F47 [S. 36\(5\)](#) added by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\), s. 10\(1\), Sch. 1 para. 7\(2\)](#)

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37 Exclusion of certain matters from operation of Act.

(1) Save as otherwise expressly provided, [^{F48}nothing in this Act or (as respects paragraph (a) of this subsection) in the Children Act 1975 or the Adoption (Scotland) Act 1978 shall]—

- (a) apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof;
- (b)^{F49}
- (c) affect any right on the part of a surviving spouse to claim from the representatives of his or her deceased spouse payment of aliment out of the estate of that spouse;
- (d) affect the administration, winding up or distribution of or the making up of title to any part of the estate of any person who died before the commencement of this Act or the rights of succession to such an estate or any claim for legal rights or terce or courtesy or any rights arising under the Intestate Husband's Estate (Scotland) Acts 1911 to 1959 out of such an estate or the right to take any legal proceedings with respect to any such matters;
- (e) affect any claim for legal rights arising out of an action of divorce commenced before the commencement of this Act;

and in relation to the matters aforesaid the law in force immediately before the commencement of this Act shall continue to have effect as if this Act had not passed.

(2) Nothing in this Act shall be construed as affecting the operation of any rule of law applicable immediately before the commencement of this Act to the choice of the system of law governing the administration, winding up or distribution of the estate, or any part of the estate, of any deceased person.

Textual Amendments

F48 Words substituted by the Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, **Sch. 3 para. 5**

F49 S. 37(1)(b) repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), ss. 8, 22(3), Sch. 2 Pt. I para. 28, **Sch. 3**

Modifications etc. (not altering text)

C16 S. 37(1) modified (1.11.1994) by S.I. 1994/2804, reg. 3, **Sch. 2 para. 1**

38 Citation, extent and commencement.

- (1) This Act may be cited as the Succession (Scotland) Act 1964.
- (2) This Act shall extend to Scotland only.
- (3) This Act shall come into operation on the expiration of the period of three months beginning with the date on which it is passed.

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SCHEDULES

SCHEDULE 1

Section 15.

FORM OF DOCKET

I, AB, being by virtue of the within confirmation [*or certificate of confirmation*] the executor on the estate of the deceased CD so far as specified in the confirmation [*or certificate or inventory attached hereto*] hereby nominate EF [*design*] as the person entitled—

(a) in [part] satisfaction of his claim to prior rights, as a surviving spouse, on the death of the deceased,

(b) in [part] satisfaction of his claim to legal rights on the death of the deceased,

(c) in [part] satisfaction of his share in the said estate,

(d) in [part] implement of a trust disposition and settlement, [*or will, or as the case may be*] of the deceased dated, and registered in the Books of Council and Session ,

to the following item of estate, that is to say, [*short description*] being number of the items of the estate specified in the said confirmation [*or certificate or inventory*].

[*signature of AB*]

[*To be attested by two witnesses*]

SCHEDULE 2

Section 34.

MODIFICATION OF ENACTMENTS

General modifications

- 1 Subject to the specific modifications made by the following provisions of this Schedule, references in any enactment to the heir-at-law of a deceased person in relation to any heritable property . . . ^{F50} shall be construed as references to the persons who by virtue of this Act are entitled to succeed to such property on intestacy.

Textual Amendments

F50 Words repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), ss. 8, 22(3), Sch. 2 Pt. I para. 29, Sch. 3

- 2 Subject as aforesaid references in general terms in any enactment to the heirs of a deceased person shall include—
- (a) the persons entitled by virtue of this Act to succeed on intestacy to any part of the estate of the deceased; and

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- (b) so far as is necessary for the purposes of Part III of this Act, the executor of the deceased.
- 3 References in any enactment relating to the confirmation of executors or the administration of the moveable estates of deceased persons to the moveable or personal property or estate of a deceased person shall, except where the context otherwise requires, be construed as references to the whole estate of the deceased person.
- 4 References in any enactment (other than in this Act) to courtesy or terce shall be of no effect.

Specific modifications

The Registration of Leases (Scotland) Act 1857.

20 & 21 Vict. c. 26.

- 5 In sections 8 and 9, and Schedules (C) and (F), for references to the heir or heirs or to the general disponee (other than a general disponee under an *inter vivos* deed) of a person in right of a lease to which the Act applies or of an assignation in security of such a lease there shall be substituted references to the executor of such a person; and for any reference to service there shall be substituted a reference to confirmation.
- 6 In Schedule (C), for the words from “court before which” to “retoured to Chancery” there shall be substituted the words “ court by which confirmation has been granted ”.

Modifications etc. (not altering text)

C17 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

- 7 In Schedule (F), for the words “court before which the heir has been served” there shall be substituted the words “ court by which confirmation has been granted ”.

Modifications etc. (not altering text)

C18 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Titles to Land Consolidation (Scotland) Act 1868.

31 & 32 Vict. c. 101.

- 8 In section 20, for the words from “equivalent to a general disposition” to “competent to a general disponee” there shall be substituted the words “ valid as a settlement on a grantee or legatee of the lands to which it applies; and the executor of the grantor may complete title to such lands by expediting and recording a notarial instrument as aforesaid ”.

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Modifications etc. (not altering text)

C19 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Crofters Holdings (Scotland) Act 1886.

49 & 50 Vict. c. 29.

9 In section 16, for the words from “a member” to “case of intestacy” there shall be substituted the words “ his son-in-law or any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964 ”.

Modifications etc. (not altering text)

C20 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

10 In section 16, at end of paragraph (e) there shall be inserted the words “ and shall be intimated by the landlord to the executor of the deceased tenant ”.

Modifications etc. (not altering text)

C21 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

11 In section 16, in paragraph (f), after the word “legatee”, where that word second occurs, there shall be inserted the words “ with the consent of the executor in whom the tenancy is vested under section 14 of the Succession (Scotland) Act 1964 ”.

Modifications etc. (not altering text)

C22 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

12 In section 16, for paragraph (h) there shall be substituted the following paragraph:—
 “(h) if the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the right to the holding shall be treated as intestate estate of the deceased tenant in accordance with Part I of the Succession (Scotland) Act 1964; and where a tenancy is transferred under section 16 of the said Act of 1964, the executor of the deceased tenant shall as soon as may be furnish particulars of the transferee to the landlord who shall accept the transferee as tenant.”.

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Modifications etc. (not altering text)

C23 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Executors (Scotland) Act 1900.

63 & 64 Vict. c. 55.

13 In section 6—

- (a) **F51**
- (b) for the words “funds in Scotland standing or invested in his name” there shall be substituted the words “ property (whether heritable or moveable) in Scotland vested in him ”; and
- (c) for any other reference to funds there shall be substituted a reference to property.

Textual Amendments

F51 S. 34(2), Sch. 2 para. 13(a) and Sch. 3 repealed by [Statute Law \(Repeals\) Act 1974 \(c. 22\)](#), [Sch. Pt. XI](#)

Modifications etc. (not altering text)

C24 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

14 In section 7, after the words “estate contained therein”, there shall be inserted the words “ and it shall be competent to specify such confirmation as a midcouple or link of title for the purposes of any deduction of title in relation to such estate from the former executors ”.

Modifications etc. (not altering text)

C25 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Small Landholders (Scotland) Act 1911.

1 & 2 Geo. 5. c. 49.

15 In section 21, for the words from “a member” to “case of intestacy” there shall be substituted the words “ his son-in-law or any one of the persons who would be, or would in any circumstances have been, entitled to succeed to the estate on intestacy by virtue of the Succession (Scotland) Act 1964 ”.

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Modifications etc. (not altering text)

C26 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

16 In section 31, after the words “whether as” there shall be inserted the words “a person to whom a tenancy is transferred under section 16 of the Succession (Scotland) Act 1964 or the executor or”.

Modifications etc. (not altering text)

C27 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Conveyancing (Scotland) Act 1924.

14 & 15 Geo. 5. c. 27.

17 In section 32, after the words “person be dead, the” insert the words “ executor or”.

Modifications etc. (not altering text)

C28 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

18 In section 33, after the words “then to the” insert the words “ executor or”.

Modifications etc. (not altering text)

C29 The text of Sch. 2 paras. 6–12, 13(b)(c), 14–23 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

The Agricultural Holdings (Scotland) Act 1949.

12, 13 & 14 Geo. 6. c. 75.

F52 19

Textual Amendments

F52 Sch. 2 para. 19 repealed (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(2), 89(2), **Sch.13 Pt. I** (with s. 45(3), Sch. 12 paras. 1, 3)

F53 20

SCHEDULE 3

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Textual Amendments

F53 Sch. 2 para. 20 repealed (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(2), 89(2), **Sch.13 Pt. I** (with s. 45(3), Sch. 12 paras. 1, 3)

^{F54}21

Textual Amendments

F54 Sch. 2 para. 21 repealed (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3) ss. 88(2), 89(2), Sch.13 Pt. I (with s. 45(3), Sch. 12 paras. 1, 3)

^{F55}22

Textual Amendments

F55 Sch. 2 para. 22 repealed (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(2), 89(2), **Sch.13 Pt. I** (with s. 45(3), Sch. 12 paras. 1, 3)

The Agriculture Act 1958.

6 & 7 Eliz. 2. c. 71.

^{F56}23

Textual Amendments

F56 Sch. 2 para. 23 repealed (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88(2), 89(2), Sch.13 Pt. I (with s. 45(3), Sch. 12 paras. 1, 3)

^{F57}^{F57}SCHEDULE 3

Textual Amendments

F57 S. 34(2), Sch. 2 para. 13(a) and Sch. 3 repealed by Statute Law (Repeals) Act 1974 (c. 22), **Sch. Pt. XI**

^{F57}

Status:

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