



# Succession (Scotland) Act 1964

## 1964 CHAPTER 41

### 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.

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**Modifications etc. (not altering text)**

**C1** S. 14(2) amended by [Administration of Estates Act 1971 \(c. 25\), s. 6\(2\)](#)

*Status: Point in time view as at 28/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part III. (See end of Document for details)*

## 15 Provisions as to transfer of heritage.

- (1) Section 5(2) of the <sup>M1</sup>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 [<sup>F1</sup>(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 [<sup>F2</sup>or civil partner] out of the estate, or
  - (b) to any person entitled to share in the estate by virtue of this Act, or
  - (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

**F1** Words inserted retrospectively by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 19

**F2** Words in s. 15(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(2), 263(10)(c), **Sch. 28 para. 7**; S.S.I. 2005/604, {art. (2)(c)}

### Marginal Citations

**M1** 1924 c. 27.

## [<sup>F3</sup>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) [<sup>F4</sup>Subject to subsection (4A),] 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

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- (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 [<sup>F5</sup>section 11 of the 1991 Act][<sup>F6</sup>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, [<sup>F7</sup>subject to subsection (2A) of this section, to transfer the interest.]

[ Transfer by an executor pursuant to subsection (2) of this section—

- <sup>F8</sup>(2A) (a) of an interest under an agricultural lease which is a lease of a croft within the meaning of section 3(1) of the Crofters (Scotland) Act 1993 (c. 44) shall require the consent of the Crofters Commission; and
- (b) of an interest under any other lease (including any agricultural lease which does not fall within paragraph (a) of this subsection) and which is not a transfer to 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 or civil partner out of the estate, in satisfaction of that person's entitlement or claim, shall require the consent of the landlord.]

(3) [<sup>F9</sup>Subject to subsection (4C),] 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 [<sup>F10</sup>relevant court on the application of] the executor—

- (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 [<sup>F5</sup>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,

[<sup>F12</sup>.....  
<sup>F11</sup>(ia)

- (ib) in the case of an interest under an agricultural lease which is the subject of an intimation of objection <sup>F13</sup>... 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.

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[ Where an interest, being an interest under a lease constituting a short limited duration <sup>F14</sup>(4A) tenancy or a limited duration tenancy—

- (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) is the subject of such a bequest, but the bequest is declared null and void by virtue of section 21 of the 2003 Act,

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 a person to whom subsection (4B) below applies; and the executor shall be entitled so to transfer the interest without the consent of the landlord.

(4B) This subsection applies to—

- (a) 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; or
- (b) any other person.

(4C) In the case of any interest under a lease constituting a short limited duration tenancy or a limited duration tenancy—

- (a) if at any time the executor is satisfied that the interest cannot be disposed of according to law and so informs the landlord, the executor may terminate the tenancy (in so far as it relates to the interest); and
- (b) if the interest is not so disposed of within the period referred to in subsection (4D) below, the lease shall (in so far as it relates to the interest) terminate at the expiry of the period,

notwithstanding any provision in the lease, or any enactment or rule of law, to the contrary effect.

(4D) The period is one year or such longer period as may be fixed by agreement or, failing agreement, by the Land Court on the application of the executor—

- (a) in the case of an interest which is the subject of an application to that court by virtue of section 21 of the 2003 Act, from the date of the determination or withdrawal of the application; and
- (b) in any other case, from the date of death of the deceased.

(4E) The—

- (a) interest may be transferred under subsections (4A) and (4B) above; or
- (b) tenancy may be terminated under subsection (4C)(a) above,

only if the transfer, or as the case may be, termination is in the best interests of the deceased's estate.]

(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—

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- (a) an application is made under section 3 of the Act of 1931 [F15 or section 13 of the Act of 1955] to the Land Court for an order for removal, or
- (b) a reference is made under [F16 section 23(2) and (3) of the 1991 Act][F17 for the determination of] any question which has arisen under [F16 section 22(2)(e)] of that Act in connection with a notice to quit,
- the [F18 order or determination shall not be] in favour of the landlord, unless F19 . . . 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.
- (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, [F20 section 11(2) to (8) of the 1991 Act][F21 or, as the case may be, section 21(2) and (3) of the 2003 Act.][F22 or, as the case may be, subsection (2) to (7) of section 10 of the Act of 1955].
- [ For the purposes of subsection (3)(b) above, the “relevant court” is—
- <sup>F23</sup>(8A) (a) in the case of an interest under a lease constituting a 1991 Act tenancy, the Land Court; and
- (b) in any other case, the sheriff,
- and an application to the sheriff in any such other case shall be by summary application.]
- (9) In this section—
- “agricultural lease” means a lease of a holding within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931 [F24, or a lease of a croft within the meaning of section 3(1) of the [F25 Crofters (Scotland) Act 1993 (or of any part of a croft if it is a part consisting of a right mentioned in section 3(4)(a) of that Act)], or a lease constituting a 1991 Act tenancy, or a lease constituting a short limited duration tenancy or a limited duration tenancy];
- “the Act of 1886” means the <sup>M2</sup>Crofters Holdings (Scotland) Act 1886;
- “the Act of 1931” means the <sup>M3</sup>Small Landholders and Agricultural Holdings (Scotland) Act 1931;
- [F26 “the 1991 Act” means the Agricultural Holdings (Scotland) Act 1991;]
- [F27 “the 2003 Act” means the Agricultural Holdings (Scotland) Act 2003 (asp 11);
- [F28 “the Act of 1955” means the <sup>M4</sup>Crofters (Scotland) Act 1955;]
- “lease” includes tenancy;
- [F29 “1991 Act tenancy”, “short limited duration tenancy” and “limited duration tenancy” shall be construed in accordance with the 2003 Act.]]]

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### Textual Amendments

- F3** 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
- F4** Words in s. 16(2) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(a\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F5** 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)
- F6** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 22(a)
- F7** Words in s. 16(2) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 15\(2\)](#), 43 (with ss. 40,43(2)); S.S.I. 2007/568, [art. 2](#)
- F8** S. 16(2A) inserted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 15\(3\)](#), 43 (with ss. 40,43(2)); S.S.I. 2007/568, [art. 2](#)
- F9** Words in s. 16(3) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(b\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F10** Words in s. 16(3)(b) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(b\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F11** 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
- F12** S. 16(3)(b)(ia) repealed (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), ss. 42, 43(3), [Sch. 2](#) (with ss. 40,43(2)); S.S.I. 2007/568, [art. 2](#)
- F13** Words in s. 16(3)(b)(ib) repealed (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), ss. 42, 43, [Sch. 2](#) (with ss. 40,43(2)); S.S.I. 2007/568, [art. 2](#)
- F14** S. 16(4A)-(4E) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), [ss. 20](#), 95(3)(4) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(a\)](#) (with art. 3, Sch.)
- F15** Words inserted by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8 Sch. 2 Pt. I para. 24
- F16** 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)
- F17** Words in s. 16(6) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(c\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F18** Words in s. 16(6) substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(c\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F19** Words in s. 16(6) repealed (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(c\)\(iii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F20** 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)
- F21** Words in s. 16(8) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(d\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F22** Words added by [Law Reform \(Miscellaneous Provisions\)\(Scotland\) Act 1968 \(c. 70\)](#), s. 8, Sch. 2 Pt. I para. 25
- F23** Words in s. 16(8A) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(e\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F24** S. 19(9): words in definition of "agricultural lease" substituted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(f\)\(i\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F25** Words in s. 16(9) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), [ss. 15\(4\)](#), 43 (with ss. 40,43(2)); S.S.I. 2007/568, [art. 2](#)
- F26** 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)

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- F27** S. 16(9): definition of "the 2003 Act" inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(f\)\(ii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)
- F28** 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)
- F29** S. 16(9): definition of "1991 Act tenancy" inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), ss. 94, 95(3)(4), [Sch. para. 2\(1\)\(f\)\(iii\)](#) (with s. 95(2)); S.S.I. 2003/548, [art. 2\(i\)](#) (with art. 3, Sch.)

#### Marginal Citations

- M2** 1886 c. 29.  
**M3** 1931 c. 44.  
**M4** 1955 c. 21.

### [<sup>F30</sup>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.

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- (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.
- (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**

**F30** 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)**

**C2** S. 17 saved by Law Reform (Miscellaneous Provisions)(Scotland) Act 1968 (c. 70), s. 7

### **18 Provisions as to entails and special destinations.**

<sup>F31</sup>(1) .....

- (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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#### Textual Amendments

**F31** S. 18(1) repealed (28.11.2004) by 2000 asp 5, ss. 76(2), 77(4), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### [<sup>F32</sup>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

**F32** 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<sup>M5</sup>

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Trusts (Scotland) Acts 1921 and <sup>M6</sup>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.

#### 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.

[<sup>F33</sup>(2) This section shall not apply to a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995.]

#### Textual Amendments

**F33** S. 21(2) added (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 38** (with ss. 9(3)(5)(7), 13, 14(3))

## [<sup>F34</sup>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

**F34** 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 <sup>M7</sup>Confirmation of Executors (Scotland) Act 1858, section 16 of the <sup>M8</sup>Sheriff Courts and Legal Officers (Scotland) Act 1927 and section 34 of the <sup>M9</sup>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

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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) ..... F35

[<sup>F36</sup>(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**

**F35** S. 22(3) repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1966 (c. 19), Sch. Pt. I

**F36** 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.

**Status:**

Point in time view as at 28/01/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Succession (Scotland) Act 1964, Part III.