



# Administration of Estates Act 1971

## 1971 CHAPTER 25

### *Reciprocal recognition of grants*

#### **1 Recognition in England and Wales of Scottish confirmations and Northern Irish grants of representation**

- (1) Where a person dies domiciled in Scotland—
- (a) a confirmation granted in respect of all or part of his estate and noting his Scottish domicile, and
  - (b) a certificate of confirmation noting his Scottish domicile and relating to one or more items of his estate,
- shall, without being resealed, be treated for the purposes of the law of England and Wales as a grant of representation (in accordance with subsection (2) below) to the executors named in the confirmation or certificate in respect of the property of the deceased of which according to the terms of the confirmation they are executors or, as the case may be, in respect of the item or items of property specified in the certificate of confirmation.
- (2) Where by virtue of subsection (1) above a confirmation or certificate of confirmation is treated for the purposes of the law of England and Wales as a grant of representation to the executors named therein then, subject to subsections (3) and (5) below, the grant shall be treated—
- (a) as a grant of probate where it appears from the confirmation or certificate that the executors so named are executors nominate; and
  - (b) in any other case, as a grant of letters of administration.
- (3) Section 7 of the Administration of Estates Act 1925 (executor of executor represents original testator) shall not, by virtue of subsection (2)(a) above, apply on the death of an executor named in a confirmation or certificate of confirmation.
- (4) Subject to subsection (5) below, where a person dies domiciled in Northern Ireland a grant of probate of his will or letters of administration in respect of his estate (or any part of it) made by the High Court in Northern Ireland and noting his domicile there shall, without being resealed, be treated for the purposes of the law of England and Wales as if it had been originally made by the High Court in England and Wales.

- (5) Notwithstanding anything in the preceding provisions of this section, a person who is a personal representative according to the law of England and Wales by virtue only of those provisions may not be required, under section 25 of the Administration of Estates Act 1925, to deliver up his grant to the High Court.
- (6) This section applies in relation to confirmations, probates and letters of administration granted before as well as after the commencement of this Act, and in relation to a confirmation, probate or letters of administration granted before the commencement of this Act, this section shall have effect as if it had come into force immediately before the grant was made.
- (7) In this section " confirmation" includes an additional confirmation, and the term " executors ", where used in relation to a confirmation or certificate of confirmation, shall be construed according to the law of Scotland.

## **2 Recognition in Northern Ireland of English grants of representation and Scottish confirmations**

- (1) Where a person dies domiciled in England and Wales a grant of probate of his will or letters of administration in respect of his estate (or any part of it) made by the High Court in England and Wales and noting his domicile there shall, without being resealed, be treated for the purposes of the law of Northern Ireland as if it had been originally made by the High Court in Northern Ireland.
- (2) Where a person dies domiciled in Scotland—
  - (a) a confirmation granted in respect of all or part of his estate and noting his Scottish domicile, and
  - (b) a certificate of confirmation noting his Scottish domicile and relating to one or more items of his estate,
 shall, without being resealed, be treated for the purposes of the law of Northern Ireland as a grant of representation (in accordance with subsection (3) below) to the executors named in the confirmation or certificate in respect of the property of the deceased of which according to the terms of the confirmation they are executors or, as the case may be, in respect of the item or items of property specified in the certificate of confirmation.
- (3) Where by virtue of subsection (2) above a confirmation or certificate of confirmation is treated for the purposes of the law of Northern Ireland as a grant of representation to the executors named therein then, subject to subsection (4) below, the grant shall be treated—
  - (a) as a grant of probate where it appears from the confirmation or certificate that the executors so named are executors nominate ; and
  - (b) in any other case, as a grant of letters of administration.
- (4) Notwithstanding anything in any enactment or rule of law, subsection (3)(a) above shall not operate to entitle an executor of a sole or last surviving executor of a testator, whose will has been proved in Scotland only, to act as the executor of that testator.
- (5) This section applies in relation to probates, letters of administration and confirmations granted before as well as after the commencement of this Act, and—
  - (a) in relation to a probate, letters of administration or confirmation granted, and resealed in Northern Ireland, before the commencement of this Act, this

section shall have effect as if it had come into force immediately before the grant was so resealed; and

- (b) a probate, letters of administration or confirmation granted but not resealed in Northern Ireland before the commencement of this Act shall, for the purposes of this section, be treated as having been granted at the commencement of this Act.
- (6) In this section "confirmation" includes an additional confirmation, and the term "executors", where used in relation to a confirmation or certificate of confirmation shall be construed according to the law of Scotland.

### **3 Recognition in Scotland of English and Northern Irish grants of representation**

- (1) Where a person dies domiciled in England and Wales or in Northern Ireland a grant of probate or letters of administration
- (a) from the High Court in England and Wales and noting his domicile there, or
  - (b) from the High Court in Northern Ireland and noting his domicile there
- shall, without being resealed, be of the like force and effect and have the same operation in relation to property in Scotland as a confirmation given under the seal of office of the Commissariat of Edinburgh to the executor or administrator named in the probate or letters of administration.
- (2) This section applies in relation to probates and letters of administration granted before as well as after the commencement of this Act, and in relation to a probate or letters of administration granted before the commencement of this Act, this section shall have effect as if it had come into force immediately before the grant was made.

### **4 Evidence of grants**

- (1) In England and Wales and in Northern Ireland—
- (a) a document purporting to be a confirmation, additional confirmation or certificate of confirmation given under the seal of office of any commissariat in Scotland shall, except where the contrary is proved, be taken to be such a confirmation, additional confirmation or certificate of confirmation without further proof; and
  - (b) a document purporting to be a duplicate of such a confirmation or additional confirmation and to be given under such a seal shall be receivable in evidence in like manner and for the like purposes as the confirmation or additional confirmation of which it purports to be a duplicate.
- (2) In England and Wales and in Scotland—
- (a) a document purporting to be a grant of probate or of letters of administration issued under the seal of the High Court in Northern Ireland or of the principal or district probate registry there shall, except where the contrary is proved, be taken to be such a grant without further proof; and
  - (b) a document purporting to be a copy of such a grant and to be sealed with such a seal shall be receivable in evidence in like manner and for the like purposes as the grant of which it purports to be a copy.
- (3) In Scotland and in Northern Ireland—
- (a) a document purporting to be a grant of probate or of letters of administration issued under the seal of the High Court in England and Wales or of the

principal or a district probate registry there shall, except where the contrary is proved, be taken to be such a grant without further proof ; and

- (b) a document purporting to be a copy of such a grant and to be sealed with such a seal shall be receivable in evidence in like manner and for the like purposes as the grant of which it purports to be a copy.

## **5 Property outside Scotland of which deceased was trustee**

- (1) A confirmation or additional confirmation granted in respect of property situated in Scotland of a person who died domiciled there, which notes that domicile, may contain or have appended thereto and signed by the sheriff clerk a note or statement of property in England and Wales or in Northern Ireland held by the deceased in trust, being a note or statement which has been set forth in any inventory recorded in the books of the court of which the sheriff clerk is clerk.
- (2) Section 1 or, as the case may be, section 2 of this Act shall apply in relation to property specified in such a note or statement as is mentioned in subsection (1) above as it applies in relation to property specified in the confirmation or additional confirmation concerned.

## **6 Inventory of Scottish estate may include real estate in any part of the United Kingdom**

- (1) It shall be competent to include in the inventory of the estate of any person who dies domiciled in Scotland any real estate of the deceased situated in England and Wales or Northern Ireland, and accordingly in section 9 of the Confirmation of Executors (Scotland) Act 1858 the word " personal" wherever it occurs is hereby repealed.
- (2) Section 14(2) of the Succession (Scotland) Act 1964 (act of sederunt to provide for description of heritable property) shall apply in relation to such real estate as aforesaid as it applies in relation to heritable property in Scotland.

## **7 Consequential amendments**

Schedule 1 to this Act, which contains amendments consequential on the preceding provisions of this Act, shall have effect.