



# Succession (Scotland) Act 2016

## 2016 asp 7

### *Estate administration*

#### **18 Confirmation of executors: no requirement to find caution in relation to small intestate estate**

- (1) The Small Intestate Estates Act is amended as follows—
  - (a) in section 3, for “on caution being found by the applicant according to the practice of the commissary court” substitute “without requiring the applicant to find caution”,
  - (b) in the form of confirmation in Schedule B, the words “, and that has [or have] likewise found caution for acts and intromissions as executor [or executors]” are repealed.
- (2) As well as in relation to applications under section 3 of the Small Intestate Estates Act made after this section comes into force, the amendments made by subsection (1) apply in relation to applications under that section of that Act made before this section comes into force which are not by then determined.
- (3) In this section, “the Small Intestate Estates Act” means the Intestates Widows and Children (Scotland) Act 1875.
- (4) In section 2 of the Confirmation of Executors (Scotland) Act 1823—
  - (a) after paragraph (b), insert—

“See also section 3 of the Intestates Widows and Children (Scotland) Act 1875.”,
  - (b) for “all other cases” substitute “cases where caution is required to be found”.

#### **19 Confirmation of executors: general exceptions to requirement to find caution**

- (1) In section 2 of the Confirmation of Executors (Scotland) Act 1823, in paragraph (b) after “spouse” insert “or civil partner”.
- (2) The Scottish Ministers may by regulations make provision modifying section 2 of the Confirmation of Executors (Scotland) Act 1823 to the effect that cases additional to those for the time being set out there are cases in which caution is not to be required to be found.

**20 Confirmation of executors: power of Ministers to abolish requirement for executors dative to find caution**

The Scottish Ministers may by regulations make provision to the effect that persons appointed as executors dative are not in any circumstances to be required to find caution before confirmation is granted.

**21 Power of Ministers to make provision requiring conditions to be met before courts appoint persons as executors dative**

- (1) The Scottish Ministers may by regulations make provision to the effect that courts are not to appoint persons as executors dative unless particular conditions are met.
- (2) Such conditions may, in particular, include—
  - (a) the court being satisfied that the person is suitable for appointment,
  - (b) the court being provided with particular information about—
    - (i) the person seeking appointment,
    - (ii) the estate in respect of which the appointment is to be made.
- (3) Regulations under this section may make provision in relation to—
  - (a) all appointments of persons as executors dative, or
  - (b) appointments of persons of particular descriptions as executors dative.
- (4) Regulations under this section making provision to the effect that the courts are not to appoint persons as executors dative unless satisfied that they are suitable for appointment may include provision enabling or requiring a court—
  - (a) to have regard to particular factors, or consider particular information, in determining whether a person is suitable for appointment,
  - (b) to be satisfied that a person is suitable for appointment if particular conditions are met,
  - (c) to impose particular conditions which must be satisfied before the court may be satisfied that a person is suitable for appointment.
- (5) Regulations under this section may make different provision in relation to appointments of persons of different descriptions as executors dative.

**22 Sections 19, 20 and 21: regulations**

- (1) This section applies in relation to regulations under section 19, 20 or 21.
- (2) The regulations may include such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (3) The regulations may modify any enactment (including, in the case of regulations under section 20, this Act).
- (4) The regulations are subject to the affirmative procedure.

**23 Errors in distribution: protection of trustees and executors in certain circumstances**

In the Trusts (Scotland) Act 1921, after section 29 insert—

**“29A Errors in distribution: circumstances in which trustee not personally liable**

- (1) A trustee is not personally liable for any error in the distribution of any property, or the income of property, vested in the person as trustee if—
  - (a) the error was caused by the trustee not knowing (either or both)—
    - (i) of the existence, or non-existence, of a person,
    - (ii) of a person’s relationship, or lack of relationship, to another person, and
  - (b) the distribution takes place—
    - (i) in good faith and after such enquiries as any reasonable and prudent trustee would have made in the circumstances of the case, or
    - (ii) in accordance with an order of the court.
- (2) Subsection (1) does not affect any right which a person entitled to the property or income concerned has to recover it from another person.
- (3) Subsection (2) is without prejudice to section 24 of the Succession (Scotland) Act 2016.
- (4) This section applies only in relation to a distribution which takes place on or after the day on which section 23 of the Succession (Scotland) Act 2016 comes into force”.

**24 Protection of persons acquiring title**

- (1) This section applies where a person, in good faith and for value (whether by purchase or otherwise)—
  - (a) acquires property which has vested, by virtue of confirmation, in an executor, and
  - (b) acquires title to that property directly or indirectly—
    - (i) from the executor, or
    - (ii) from a person (“A”) who derived title directly from the executor.
- (2) It is not a ground of challenge to the title—
  - (a) that the confirmation is reducible or has been reduced,
  - (b) that the property was distributed in accordance with a will which, by virtue of section 3, has been rectified after distribution, or
  - (c) where the title was acquired from A, that it should not have been transferred to A.