

# **SUCCESSION (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Estate Administration*

#### *Section 27 – Additional ground of jurisdiction: executor confirmed in Scotland*

78. As a matter of principle the Scottish courts should have jurisdiction whenever Scots law is the applicable law to the succession issue in question. At present there is a jurisdictional gap where the deceased's executor is not domiciled in Scotland. Unless the will creates an express trust it may be that none of the provisions in Schedule 8 of the Civil Jurisdiction and Judgments Act 1982 which deals with the jurisdiction of the Scottish courts will apply. As a result, those raising actions against executors in connection with the administration of a Scottish estate may have to do so in the courts of the country in which the executors are domiciled.
79. This section amends rule 2 of Schedule 8 of the Civil Jurisdiction and Judgments Act 1982 so that a person wishing to raise an action in respect of the administration of a Scottish estate by an executor who is not domiciled in Scotland may do so in the Scottish courts if the executor obtained the legal documentation necessary to authorise the making and receiving of payments on the estate known as confirmation, in Scotland. 'Confirmation' is a legal document from the court giving the executor(s) authority to uplift any money or other property belonging to a deceased person from the holder (such as the bank), and to administer and distribute it according to law.