



# Administration of Estates Act 1971

## 1971 CHAPTER 25

An Act to provide for the recognition, without resealing, of certain grants of administration and confirmations throughout the United Kingdom; to allow for the inclusion of real estate in any part of the United Kingdom in the inventory of the estate of a person dying domiciled in Scotland; to amend the law with respect to the grant of administration by the High Court and resealing by that Court of administration granted outside the United Kingdom and to exempt from stamp duty guarantees given under the law so amended; to make provision with respect to the duties and rights of personal representatives; and for connected purposes. [12th May, 1971]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *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 thereshall, 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.

*Rights and duties of personal representatives in England and Wales*

**8 Power to require administrators to produce sureties**

For section 167 of the Supreme Court of Judicature (Consolidation) Act 1925 (administration bonds) there shall be substituted the following section:—

**“167 Power to require administrators to produce sureties.**

- (1) As a condition of granting administration to any person the High Court may, subject to the following provisions of this section and subject to and in accordance with probate rules and orders, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.
- (2) A guarantee given in pursuance of any such requirement shall enure for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.
- (3) No action shall be brought on any such guarantee without the leave of the High Court.
- (4) Stamp duty shall not be chargeable on any such guarantee.
- (5) This section does not apply where administration is granted to the Treasury Solicitor, the Public Trustee, the Solicitor for the affairs of the Duchy of Lancaster or the Duchy of Cornwall or the Chief Crown Solicitor for Northern Ireland, or to the consular officer of a foreign state to which section 1 of the Consular Conventions Act 1949 applies, or in such other cases as may be prescribed by probate rules and orders.”

**9 Duties of personal representatives**

For section 25 of the Administration of Estates Act 1925 (duty of personal representatives as to inventory and account) there shall be substituted the following section:—

**“25 Duty of personal representatives.**

The personal representative of a deceased person shall be under a duty to—

- (a) collect and get in the real and personal estate of the deceased and administer it according to law;
- (b) when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court;
- (c) when required to do so by the High Court, deliver up the grant of probate or administration to that court.”

**10 Retainer, preference and the payment of debts by personal representatives**

- (1) The right of retainer of a personal representative and his right to prefer creditors are hereby abolished.
- (2) Nevertheless a personal representative—
- (a) other than one mentioned in paragraph (b) below, who, in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate ; or
  - (b) to whom letters of administration had been granted solely by reason of his being a creditor and who, in good faith and at such a time pays the debt of another person who is a creditor of the estate;
- shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

*Miscellaneous and supplemental***11 Sealing of Commonwealth and Colonial grants**

- (1) The following provisions of section 2 of the Colonial Probates Act 1892, that is to say—
- (a) subsection (2)(b) (which makes it a condition precedent to sealing in the United Kingdom letters of administration granted in certain overseas countries and territories that a sufficient security has been given to cover property in the United Kingdom); and
  - (b) subsection (3) (power of the court in the United Kingdom to require that adequate security is given for the payment of debts due to creditors residing in the United Kingdom);
- shall not apply to the sealing of letters of administration by the High Court in England and Wales under that section, and the following provisions of this section shall apply instead.
- (2) A person to whom letters of administration have been granted in a country or territory to which the said Act of 1892 applies shall on their being sealed by the High Court in England and Wales under the said section 2 have the like duties with respect to the estate of the deceased which is situated in England and Wales and the debts of the deceased which fall to be paid there as are imposed by section 25(a) and (b) of the Administration of Estates Act 1925 on a person to whom a grant of administration has been made by that court.
- (3) As a condition of sealing letters of administration granted in any such country or territory, the High Court in England and Wales may, in cases to which section 167 of the Supreme Court of Judicature (Consolidation) Act 1925 (power to require administrators to produce sureties) applies and subject to the following provisions of this section and subject to and in accordance with probate rules and orders, require one or more sureties, in such amount as the court thinks fit, to guarantee, that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased in England and Wales may suffer in consequence of a breach by the administrator of his duties in administering it there.

- (4) A guarantee given in pursuance of any such requirement shall enure for the benefit of every person interested in the administration of the estate in England and Wales as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly or severally.
- (5) No action shall be brought on any such guarantee without the leave of the High Court.
- (6) Stamp duty shall not be chargeable on any such guarantee.
- (7) Subsections (2) to (6) above apply to the sealing by the High Court in England and Wales of letters of administration granted by a British court in a foreign country as they apply to the sealing of letters of administration granted in a country or territory to which the Colonial Probates Act 1892 applies.
- (8) In this section—
  - " letters of administration " and " British court in a foreign country " have the same meaning as in the Colonial Probates Act 1892; and
  - " probate rules and orders " has the same meaning as in the Supreme Court of Judicature (Consolidation) Act 1925.

## 12 Repeals and savings

- (1) The enactments specified in Part I of Schedule 2 to this Act (which include an enactment of the Parliament of Northern Ireland) are hereby repealed to the extent specified in the third column of that Schedule and the Government of Ireland (Re-sealing of Probates etc.) Order 1923 is hereby revoked.
- (2) So far as they relate to England and Wales only, the enactments specified in Part II of Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Nothing in this Act shall affect the liability of any person for, or alter the incidence of, estate duty, including estate duty payable under the law for the time being in force in Northern Ireland.
- (4) The following provisions of this Act, that is to say—
  - (a) section 8 ;
  - (b) section 11 (other than subsection (2)); and
  - (c) the repeals specified in Part II of Schedule 2 to this Act, other than the repeal of section 34(2) of the Administration of Estates Act 1925 ;shall not apply in relation to grants of administration made by the High Court before the commencement of this Act or to sealing by that court before the commencement of this Act of administration granted in any country or territory outside the United Kingdom.
- (5) Any administration bond given before the commencement of this Act under section 167 of the Supreme Court of Judicature (Consolidation) Act 1925 or under the Colonial Probates Act 1892 may be enforced and assigned as if this Act had not been passed.
- (6) Section 10 of this Act and the repeal by this section of section 34(2) of the Administration of Estates Act 1925 shall not apply in relation to the estates of persons dying before the commencement of this Act.

**13 Extension of powers of Parliament of Northern Ireland**

No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act 1920 shall apply in relation to legislation for any purpose similar to the purpose of any provision in sections 8 to 12 of this Act so as to preclude that Parliament from enacting a provision corresponding to any such provision.

**14 Short title, commencement and extent**

- (1) This Act may be cited as the Administration of Estates Act 1971.
- (2) Section 13 of this Act and this section shall come into force on the passing of this Act and the remaining provisions of this Act shall come into force on 1st January 1972; and, notwithstanding anything in section 36 of the Interpretation Act 1889, any reference in this Act, or in any Act passed after the passing of this Act, to the commencement of this Act shall be construed as a reference to 1st January 1972.
- (3) Sections 1 and 8 to 11 of this Act and subsections (2) and (4) to (6) of section 12 of this Act extend to England and Wales only.
- (4) Sections 3 and 6 of this Act extend to Scotland only.
- (5) Section 2 of this Act extends to Northern Ireland only.



## SCHEDULES

### SCHEDULE 1

Section 7.

#### AMENDMENTS CONSEQUENTIAL ON SS. 1-6

- 1 In section 1 of the Confirmation and Probate Amendment Act 1859 (indemnification of persons making payments upon confirmations etc.) for the words from " any such instrument" to " prescribed " there shall be substituted the words " any instrument purporting to be a probate or letters of administration issued by any court in England and Wales or Northern Ireland and noting the domicile of the deceased as being in England and Wales or in Northern Ireland, as the case may be ".
- 2 In section 6 of the Executors (Scotland) Act 1900 (transmission of trust funds by executors of sole or last surviving trustees), for the words from " or Ireland " to " Edinburgh " there shall be substituted the words " and Wales or Northern Ireland to his executors and noting his domicile in England and Wales or in Northern Ireland, as the case may be ".
- 3 In section 5(2)(b) of the Conveyancing (Scotland) Act 1924 (executor to have title to debt secured by heritable security), for the words from " issued by any court " to " that effect, and " there shall be substituted the words—  
“issued—
  - (a) by any court in England and Wales or Northern Ireland and noting his domicile in England and Wales or in Northern Ireland, as the case may be, or
  - (b) by any court outwith the United Kingdom and sealed in Scotland under section 2 of the Colonial Probates Act 1892 and”.
- 4 In section 6(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (estate falling to Crown) for the words from " as well as " to the end of the subsection there shall be substituted the words " and Wales as well as in Scotland as an executor nominate to whom confirmation has been granted as mentioned in section 1 of the Administration of Estates Act 1971
- 5 In section 32(2)(b) of the Succession (Scotland) Act 1964 (certain testamentary dispositions to be probative), for the words from " issued " to " 1858 or " there shall be substituted the words " 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 outwith the United Kingdom in respect of such property has been ".

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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE 2

Section 12.

## ENACTMENTS REPEALED

## PART I

## ENACTMENTS RELATING TO ABOLITION OF RESEALING

Chapter	Short Title	Extent of Repeal
20 & 21 Vict. c. 79.	The Probate and Letters of Administration Act (Ireland) 1857.	In section 27 the words " probates, letters of administration ". Sections 94 and 95.
21 & 22 Vict. c. 56.	The Confirmation and Probate Act 1858.	In section 9 the word " personal" in each place where it occurs. Sections 13 and 14. Schedule (F).
22 & 23 Vict. c. 31.	The Court of Probate Act (Ireland) 1859.	Section 25.
23 & 24 Vict. c. 5.	The Indian Securities Act 1860.	In section 1 the words from " and probate or " to the end of the section.
38 & 39 Vict. c. 41.	The Intestates Widows and Children (Scotland) Act 1875.	In section 3, the words from " and where such " to the end of the section.
39 & 40 Vict. c. 24.	The Small Testate Estates (Scotland) Act 1876.	In section 3, the words from " and where such " to the end of the section.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act 1876.	Sections 42 and 43.
44 & 45 Vict. c. 12.	The Customs and Inland Revenue Act 1881.	In section 34 the words from " and the fees " to the end of the section.
57 & 58 Vict. c. 30.	The Finance Act 1894.	Section 16(4). Section 23(7).
10 & 11 Geo. 5. c. 67.	The Government of Ireland Act 1920.	Section 28(5).
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act 1925.	Section 168. Section 169. In section 174(2) the words " probates, letters of administration ".

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Chapter	Short Title	Extent of Repeal
18 & 19 Geo. 5. c. 26.	The Administration of Justice Act 1928.	Section 10.
22 & 23 Geo. 5. c. 11.	The Northern Ireland (Miscellaneous Provisions) Act 1932.	Section 2.
1955 c. 24. (N.I.).	The Administration of Estates Act (Northern Ireland) 1955.	Section 27.
4 & 5 Eliz. 2. c. 46.	The Administration of Justice Act 1956.	Section 17(3).
1970 c. 31.	The Administration of Justice Act 1970.	In section 54(6) the words from " and the amendment " to the end of the section. In Schedule 2, paragraph 1.

## PART II

### ENACTMENTS RELATING TO ADMINISTRATION IN ENGLAND AND WALES

Chapter	Short Title	Extent of Repeal
20 & 21 Vict. c. 77.	The Court of Probate Act 1857.	In section 73, the words " upon his giving such security (if any) as the court shall direct ". Section 82.
39 & 40 Vict. c. 18.	The Treasury Solicitor Act 1876.	In section 2, the last paragraph, both as originally enacted and as applied by section 3 of the Duchy of Lancaster Act 1920.
54 & 55 Vict. c. 39.	The Stamp Act 1891.	In Schedule 1, in the heading beginning "Bond on obtaining letters of administration " the words " England or ".
6 Edw. 7. c. 55.	The Public Trustee Act 1906.	In section 11(4), the words " upon the grant to him of administration, or" and the words " if administration is granted to him or".
15 & 16 Geo. 5. c. 23.	The Administration of Estates Act 1925.	Section 34(2).

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*Status: This is the original version (as it was originally enacted).*

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Chapter	Short Title	Extent of Repeal
12, 13 & 14 Geo. 6. c. 29.	The Consular Conventions Act 1949.	In section 1(3) the words " (including liabilities under the administration bond) ". Section 1(5).
12, 13 & 14 Geo. 6. c. 47.	The Finance Act 1949.	In Schedule 8, in paragraph 8, the words " and Bond on obtaining letters of administration ".