



Probate and Legacy Duties Act 1808

1808 CHAPTER 149 48 Geo 3

42 Confirmations of testaments not to be granted for effects not included in such inventory. Executors not to recover effects unless so included.

^{F1}[(1)] [^{F2}Subject to subsection (2) below,] it shall not be lawful for any commissary court in Scotland, to grant confirmation of any testament, testamentary or dative, or eik thereto, of or for any estate or effects whatever, of any person dying after the tenth day of October one thousand eight hundred and eight, unless the same shall be mentioned and included in some such inventory, exhibited and recorded as aforesaid [^{F3}nor unless that inventory shows by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either that the capital transfer tax payable on the delivery of the inventory has been paid or that no capital transfer tax is so payable]; and it shall not be competent to any executor or executors, or other person or persons, to recover any debt or other effects, in Scotland, of or belonging to any person dying after the said tenth day of October, unless the same shall have been previously included in some such inventory, exhibited and recorded as aforesaid; except the same respectively were vested in the deceased as a trustee for any other person or persons, and not beneficially; but these provisions are not, in other respects, to prejudice the law of Scotland, regarding total or partial confirmations, or the rules of succession there established

[^{F4}Provided that arrangements may be made between the Court of Session and the said Commissioners providing for the purposes of this section in such cases as may be specified that the said inventory shall be effective without such receipt or certification as aforesaid, or that some other document may be substituted for the inventory].

[^{F5}(2) In a case to which regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (c. 51) apply (excepted estates), it shall not be lawful to grant confirmation such as is mentioned in subsection (1) above except on the production of information or documents in accordance with those regulations.]

Textual Amendments

F1 S. 42 renumbered as s. 42(1) (1.11.2004) by [Finance Act 2004 \(c. 12\), s. 294\(2\)\(a\)\(5\)](#); S.I. 2004/2571, [art. 2](#)

Changes to legislation: There are currently no known outstanding effects for the Probate and Legacy Duties Act 1808, Section 42. (See end of Document for details)

- F2** Words in s. 42(1) substituted (1.11.2004) by Finance Act 2004 (c. 12), s. 294(2)(b)(5); S.I. 2004/2571, art. 2
- F3** Words inserted by Finance Act 1975 (c. 7, SIF 65), s. 19(2), Sch. 4 para. 38(2)(4)
- F4** Proviso added by Finance Act 1975 (c. 7, SIF 65), s. 19(2), Sch. 4 para. 38(2)(4)
- F5** S. 42(2) inserted (1.11.2004) by Finance Act 2004 (c. 12), s. 294(2)(c)(5); S.I. 2004/2571, art. 2

Modifications etc. (not altering text)

- C1** Functions of Commissary Courts and Commissary Clerks in Scotland (except Commissary Clerk of Edinburgh) now exercisable by Sheriffs and Sheriff Clerks: Sheriff Courts (Scotland) Act 1876 (c. 70), ss. 35-39, 54, Sheriff Courts and Legal Officers (Scotland) Act 1927 (c. 35), ss. 10, 11(1) and S.R. & O. 1933/1089 (1933, p. 520)
- C2** S. 42 applied by Colonial Probates Act 1892 (c. 6, SIF 116:3), s. 2(1) as amended by Finance Act 1975 (c. 7), s. 52, Sch. 12 para. 4

Changes to legislation:

There are currently no known outstanding effects for the Probate and Legacy Duties Act 1808, Section 42.