



Intestates Widows and Children (Scotland) Act 1875

1875 CHAPTER 41 38 and 39 Vict

An Act for the relief of Widows and Children of Intestates in Scotland where the Personal Estate is of small value. [19th July 1875]

Modifications etc. (not altering text)

- C1 Act amended by [Small Testate Estates \(Scotland\) Act 1876 \(c. 24\), s. 6](#); extended to intestates who have died domiciled furth of Scotland by [Customs and Inland Revenue Act 1881 \(c. 12\), s. 34](#)
- C2 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)
- C3 Preamble omitted under authority of [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)
- C4 Words of enactment repealed by [Statute Law Revision \(No. 2\) Act 1893 \(c. 54\)](#)
- C5 Confirmation of Executors (Scotland) Act cited or referred to by its short title under authority of [Statute Law Revision Act 1893 \(c. 14\), s. 3](#)

1 Short title.

This Act may be cited for all purposes as The Intestates Widows and Children (Scotland) Act, 1875.

2 Extent of Act.

This Act shall extend to Scotland only.

3 Where estate does not exceed [^{F1}£36,000] widow or children may apply to commissary clerk to fill up inventory and expedite confirmation.

Where [^{F2}the whole estate of an intestate is of a value not exceeding ; [^{F1}£36,000] an applicant for confirmation thereto] may apply to the commissary clerk of the county within which the intestate was domiciled at the time of death; and the said commissary

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clerk shall prepare and fill up an inventory and relative [^{F3}declaration], as nearly as may be in the form of Schedule A. appended to this Act, and [^{F4}on the inventory and declaration being signed by the applicant] , and [^{F5}without requiring the applicant to find caution] shall proceed to record said inventory and expedite confirmation in the form as nearly as may be of Schedule B. annexed to this Act, and shall deliver the same to the applicant [^{F2}on payment of the requisite fee] : . . . ^{F6}; and such confirmation shall have the same force and effect as that prescribed in Schedule D. annexed to the ^{M1}Confirmation of Executors (Scotland) Act, 1858 . . . ^{F7}

Textual Amendments

- F1** Sum in s. 3 substituted (1.2.2012) by [The Confirmation to Small Estates \(Scotland\) Order 2011 \(S.S.I. 2011/435\)](#), arts. 1, **2(a)**
- F2** Words in s. 3 substituted by Confirmation to [Small Estates \(Scotland\) Act 1979 \(c. 22, SIF 116:2\)](#), s. **1(1)(a)**
- F3** Word in s. 3 substituted (1.3.1997) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), s. 74(1), **Sch. 8 para. 24(1)(a)**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, art. 2)
- F4** Words in s. 3 substituted (1.3.1997) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#) s. 74(1), Sch. 8 para 24(1)(b); S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, art. 2)
- F5** Words in s. 3 substituted (4.3.2016) by [Succession \(Scotland\) Act 2016 \(asp 7\)](#), ss. **18(1)(a)**, 31(1) (with s. 18(2))
- F6** Words in s. 3 repealed by [Finance Act 1975 \(c. 7, SIF 99:3\)](#), ss. 52(2)(3), 59, **Sch. 13 Pt. I**
- F7** Words in s. 3 repealed by [Administration of Estates Act 1971 \(c. 25, SIF 116:1, 2\)](#), s. 12, **Sch. 2 Pt. I**

Marginal Citations

- M1** 1858 c. 56 (116:2).

4 Proof of identity and relationship may be required.

The commissary clerk of the county may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

5 Commissary clerk may refuse to proceed if not satisfied that whole estate not more than 150*l*.

If the commissary clerk of the county has reason to believe that [^{F8}the estate and effects of which the intestate died possessed exceed [^{F9}the value] specified in section three of this Act] , he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Textual Amendments

- F8** Words substituted by [Small Estates \(Representation\) Act 1961 \(c. 37\)](#), s. 1(1), **Sch. 1 para.1(2)**
- F9** Words in s. 5 substituted by Confirmation to [Small Estates \(Scotland\) Act 1979 \(c.22, SIF 116:2\)](#), s. **1(1)(b)** ([Small Estates \(Representation\) Act 1961 \(c.37\)](#), s. 1(1), **Sch. 1 para. 1(2)** repealed (S.) by Confirmation to [Small Estates \(Scotland\) Act 1979 \(c. 22, SIF 116:2\)](#), s. 2, **Sch.**)

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6 Commissary clerk may administer oath. “Commissary clerk” to include “commissary clerk depute.”

^{F10} . . . The term “commissary clerk” shall throughout this Act include “commissary clerk depute.”

Textual Amendments

F10 Words in s. 6 repealed (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(2), Sch. 9; S.I. 1996/2894, art. 3 Sch. (as amended by S.I. 1996/2966, art. 2)

7 Procedure and fees under this Act to be regulated by Act of sederunt.

Any rules and orders and tables of fees requisite for carrying this Act into operation shall be framed and may from time to time be altered by the Court of Session by act of sederunt . . . ^{F11}.

Textual Amendments

F11 Words in s. 7 repealed by Confirmation to Small Estates (Scotland) Act 1979 (c. 22, SIF 116:2), s. 1(1)(c), Sch.

[^{F128} Inventory duty not affected by this Act.

Provided always, that nothing herein contained shall be construed to effect any duty now payable on inventories of personal estate.]

Textual Amendments

F12 S. 8 repealed in relation to deaths occurring after 13. 4. 1975 and, so far as regards certain duties in relation to any death, by Finance Act 1975 (c. 7, SIF 99:3), ss. 52(2), 59, Sch. 13 Pt. I, note (with a saving in s. 52(3) in relation to repayment or allowance in respect of certain sums paid before 13. 3. 1975 on account)

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SCHEDULE A

FORM OF INVENTORY AND RELATIVE ^{F13}DECLARATION]

Textual Amendments

F13 Words in Sch. A substituted (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 24(2)(a)**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)

Inventory of the Personal Estate, wheresoever situated, of [*name and description of deceased*] who died at on the day of 18.

Scotland.	£	s.	d.
1.	Cash in the house		
2.	Household furniture and other effects in the deceased's house		
3.	Stock in trade and other effects belonging to deceased		
4.	Sum in bank; viz., [<i>specify it with interest thereon to date of ^{F13}declaration</i>] to Inventory.]*		
	* <i>[Add any other estate in the usual form.]—</i>		

At , the day of one thousand eight hundred and, ^{F14}[*name and address of applicant*] (hereinafter referred to “the applicant”) hereby declares], that the said died at upon the day of , and had at the time of his [*or her*] death his [*or her*] ordinary or principal domicile in the county of : That the ^{F15}applicant] is the [*widow or son or daughter of the said deceased* , and is desirous to enter upon the possession and management of the deceased's estate as his [*or her*] executor: That the ^{F15}applicant] does not know of any testamentary settlement or writing relative to the disposal of the deceased's personal estate or effects, or any part thereof: That the foregoing inventory, signed by the ^{F15}applicant] and the said as relative hereto, is a full and complete inventory of the personal estate and effects of the said deceased wheresoever situated and belonging or due to him [*or her*] beneficially at the time of his [*or her*] death, in so far as the same has come to the ^{F15}applicant's] knowledge: That the value at this date of the said personal estate and effects, including the proceeds accrued thereon down to this date, does not exceed ^{F16}£36,000] sterling: That confirmation of the said personal estate in Scotland [*England and Ireland as the case may be*] is required in favour of the ^{F15}applicant]. ^{F17}. . .

Textual Amendments

F14 Words in Sch. A substituted (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 24(2)(b)**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)

F15 Words in Sch. A substituted (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 24(2)(c)**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)

F16 Sum in Sch. A substituted (1.2.2012) by The Confirmation to Small Estates (Scotland) Order 2011 (S.S.I. 2011/435), arts. 1, **2(b)**

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- F17** Words in Sch. A repealed (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 para. 24(2)(d), **Sch. 9**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)

SCHEDULE B

FORM OF CONFIRMATION

Modifications etc. (not altering text)

- C6** Forms prescribed by S.I. 1967/789 are to be used by Sheriff Clerks and may be used with modifications by Commissary Clerk of Edinburgh in lieu of form prescribed by Sch. B

Confirmation issued under the Act 38 & 39 Vict. cap. 41

Confirmation Dative of *A.B.*, who resided at [*name and description of deceased*]

The said *A.B.* had pertaining and resting owing to at the time of his [*or her*] decease.

[*Take in inventory of estate to be confirmed.*]

I, , Esquire, Commissary of the county of , considering that the said *A.B.* died at on , and had at the time of death his [*or her*] ordinary or principal domicile in the county of . And seeing that *C.D.*, his [*widow or son or daughter, or her son or daughter*] has given up, on [^{F18}declaration] , an inventory of the personal estate and effects of the said *A.B.*, at the time of death, including the proceeds accrued thereon to date of [^{F18}declaration] , situated in Scotland [*England and Ireland as the case may be*], amounting in value to , and has [^{F19}declared] that the whole personal estate and effects of the said *A.B.* does not exceed in value [^{F20}£36,000], which inventory, as before written, has been recorded in my court books, of date ^{F21}... . Therefore I, in Her Majesty's name and authority, decern, make, constitute, ordain, and confirm the said *C.D.* executor, [*or executors*] dative qua [*relict or next of kin*] to the deceased, with full power to to uplift, receive, administer, and dispose of the said personal estate and effects, and grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of executor dative qua is known to belong: Providing always, that shall render just count and reckoning for intromissions therewith, when and where the same shall be legally required. Given under the seal of office of the commissariot of and signed by the clerk of court at , the day of one thousand eight hundred and

Textual Amendments

- F18** Words in Sch. B substituted (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 24(3)(a)**; S.I. 1996/2894, art.3, **Sch.** (as amended by S.I. 1996/2966, **art.2**)
- F19** Word in Sch. B substituted (1.3.1997) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 24(3)(b)**; S.I. 1996/2894, art. 3, **Sch.** (as amended by S.I. 1996/2966, **art. 2**)
- F20** Sum in Sch. B substituted (1.2.2012) by The Confirmation to Small Estates (Scotland) Order 2011 (S.S.I. 2011/435), arts. 1, **2(c)**

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F21 Words in Sch. B repealed (4.3.2016) by Succession (Scotland) Act 2016 (asp 7), ss. 18(1)(b), 31(1) (with s. 18(2))

Commissary Clerk.

F22F22 SCHEDULE C

Textual Amendments

F22 Sch. C repealed by Confirmation to Small Estates (Scotland) Act 1979 (c. 22, SIF 116:2), s. 1(1)(f), Sch.

F22

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