

SUCCESSION (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Estate Administration

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

68. This section amends the Trusts (Scotland) Act 1921 by inserting a new section which brings together in one place the protections available to trustees and executors where they distribute an estate in ignorance of certain facts which would affect the proper distribution of the estate. These facts generally relate to making a distribution in ignorance of the existence of either an adoption order or of a child whose parents are not, or have not been married to each other. Subsection (1)(b) of the new section provides that in order for the trustee not to be personally liable, the distribution requires to be made in good faith after having made reasonable enquiries, or, in accordance with an order of the court. What amounts to ‘reasonable enquiries’ will be dictated by the particular circumstances of each case. There is no express requirement to advertise for beneficiaries and it is envisaged that whether this is appropriate will depend on the circumstances and is a matter for the discretion of the executors tasked with distributing the estate.
69. This change does not affect the right of a person under the law of unjustified enrichment to seek restitution in respect of property forming part of the estate from persons to whom it has been distributed in error as provided for in subsection (2). Subsection (3) clarifies that the right to get recompense in relation to an unlawful distribution does not enable a person to get property back from a good faith purchaser as set out in subsection (3). Subsection (4) makes it clear that this section applies only to distributions which occur after the section comes into force (i.e. it does not catch distributions which have already occurred).
70. The protections are currently provided for in section 24(2) of the Succession (Scotland) Act 1964 and section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 which are repealed and replaced by this section.