



Law Reform (Miscellaneous Provisions) (Scotland) Act 1980

1980 CHAPTER 55

Trusts, factors and succession

4 Prior rights in estate of deceased person

In the Succession (Scotland) Act 1964—

- (a) in section 9(1) (prior right of surviving spouse to financial provision on intestacy), after the words " at the rate of 4 per cent, per annum " there shall be inserted the words " , or at such rate as may from time to time be fixed by order of the Secretary of State, "; and
- (b) after section 9 there shall be inserted the following section—

“9A Provisions supplementary to ss. 8 and 9.

—Any order of the Secretary of State, under section 8 or 9 of this Act, fixing an amount or rate—

- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament ; and
- (b) shall have effect in relation to the estate of any person dying after the coming into force of the order.”.

5 Finding of caution by intestate's spouse

In section 2 of the Confirmation of Executors (Scotland) Act 1823 (court to regulate caution to be found), for the words " executors-nominate; and in" there shall be substituted the words—

- “(a) an executor-nominate ; or
- (b) an intestate's spouse who shall be executor-dative and has right, by virtue of sections 8 and 9(2) of the Succession (Scotland) Act 1964, to the whole estate.

In”.

6 Procedure whereby heir of provision may establish entitlement to act as trustee

Without prejudice to section 37(1)(d) of the Succession (Scotland) Act 1964, sections 27 to 50 of the Titles to Land Consolidation (Scotland) Act 1868 (with such amendments as had been made to them prior to the coming into force of the said Act of 1964) are hereby revived—

- (a) in so far as they provide ; and
- (b) for the purpose only of providing,

a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

7 Amendment of Judicial Factors Act 1849

In the Judicial Factors Act 1849—

- (a) section 5 (factor to lodge monies in one of the banks of Scotland) shall be amended as follows—
 - (i) for the words "fifty pounds" in both places where they occur there shall be substituted the words " five hundred pounds "; and
 - (ii) that section as amended by sub-paragraph (i) above shall be subsection (1) of that section, and after that subsection there shall be added the following subsections—
 - “(2) The Secretary of State may by order made by regulations amend subsection (1) above by substituting for any sum for the time being specified in that subsection such other sum as appears to him to be justified by a change in the value of money.
 - (3) The power to make regulations under subsection (2) above shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of them has been approved by resolution of each House of Parliament.”; and
- (b) in section 19 (accountant to make requisitions and orders on the factor) for the words " forty-eight hours " there shall be substituted the words " seven days ".

8 Amendment of section 2 of Trusts (Scotland) Act 1961

In section 2 of the Trusts (Scotland) Act 1961 (validity of certain transactions by trustees), for subsection (2) there are substituted the following subsections—

- “(2) Nothing in subsection (1) of this section shall affect any question of liability between any of the trustees on the one hand and any co-trustee or any of the beneficiaries on the other hand.
- (3) Without prejudice to the operation of subsection (1) of this section, where in relation to the trust estate or any part thereof a judicial factor thinks it expedient to do any of the acts mentioned in that subsection but the act in question might be at variance with the terms or purposes of the trust, he may, subject to the

following provisions of this section, apply to the Accountant of Court for his consent to the doing of the act.

- (4) Where an application is made under subsection (3) of this section to the Accountant of Court for his consent to the doing of an act to which that subsection applies, he may grant the application subject to such conditions (including conditions as to price) as he thinks fit if—
- (a) he considers that the doing of the act is in the best interests of the owner of the trust estate to which the judicial factor's appointment relates or of any person to whom the owner owes a duty of support ; and
 - (b) he is satisfied—
 - (i) that the judicial factor is not expressly prohibited by the terms of his appointment from doing the act; and
 - (ii) that there has been compliance with the provisions of subsection (5) of this section and of any rules made thereunder; and
 - (c) no objection is made to the doing of the act under subsection (5) of this section.
- (5) A judicial factor proposing to make an application under subsection (3) of this section to the Accountant of Court shall notify such persons or such class or classes of persons as may be specified in rules of court in such manner as may be so specified of the proposed application, the act to which it relates, and of their right to object to him doing that act within such time and in such manner as the rules may specify; and the rules may make different provision in respect of different classes of judicial factors, and may make provision exempting a judicial factor or a class of judicial factors from giving notification under this subsection in such circumstances as the rules may specify.
- (6) Where a judicial factor does any act in accordance with the consent of the Accountant of Court granted under subsection (4) of this section and in compliance with the provisions of this section and of any rules made thereunder, it shall be treated as being not at variance with the terms or purposes of the trust.”.

9 Removal of obligation to preserve inventories

In section 12 of the Customs, Inland Revenue, and Savings Banks Act 1877 (transmission and custody of inventories in Scotland)—

- (a) for the words " Controller of Legacy and Succession Duties, at his office in" there shall be substituted the words " Registrar, Capital Taxes Office at ";
- (b) the words from " instead " to " same at his office in Edinburgh " shall cease to have effect; and
- (c) for the words " Controller of Legacy and Succession Duties in " there shall be substituted the words " Registrar, Capital Taxes Office at ".