

SCHEDULES

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Succession (Scotland) Act 1964

38 At the end of section 21 of the Succession (Scotland) Act 1964 there shall be added the following subsection—

“(2) This section shall not apply to a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995.”.

39 After section 21 of that Act there shall be inserted the following section—

“21A Evidence as to testamentary documents in commissary proceedings

Confirmation of an executor to property disposed of in a testamentary document executed after the commencement of the Requirements of Writing (Scotland) Act 1995 shall not be granted unless the formal validity of the document is governed—

- (a) by Scots law and the document is presumed under section 3 or 4 of that Act to have been subscribed by the granter so disposing of that property; or
- (b) by a law other than Scots law and the court is satisfied that the document is formally valid according to the law governing such validity.”.

40 For section 32 of that Act there shall be substituted the following section—

“32 Certain testamentary dispositions to be formally valid

- (1) For the purpose of any question arising as to entitlement, by virtue of a testamentary disposition, to any relevant property or to any interest therein, the disposition shall be treated as valid in respect of the formalities of execution.
- (2) Subsection (1) above is without prejudice to any right to challenge the validity of the testamentary disposition on the ground of forgery or on any other ground of essential invalidity.
- (3) In this section “relevant property” means property disposed of in the testamentary disposition in respect of which—
 - (a) confirmation has been granted; or
 - (b) probate, letters of administration or other grant of representation—
 - (i) has been issued, and has noted the domicile of the deceased to be, in England and Wales or Northern Ireland; or

Status: This is the original version (as it was originally enacted).

(ii) has been issued outwith the United Kingdom and had been sealed in Scotland under section 2 of the Colonial Probates Act 1892.”.

41 In Schedule 1 to that Act for the words “[To be attested by two witnesses] [Signature of A B]” there shall be substituted the words

“Texting clause+

+Note—Subscription of the document by the granter of it will be sufficient for the document to be formally valid, but witnessing of it may be necessary or desirable for other purposes (see the Requirements of Writing (Scotland) Act 1995).”.