



# Small Testate Estates (Scotland) 1876

1876 CHAPTER 24 39 and 40 Vict

**S**

An Act for the Relief of the Executors of Testates in Scotland where the Personal Estate is of small Value. [13th July 1876]

## Modifications etc. (not altering text)

- C1 Act extended to testates 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 Act 1894 \(c. 56\)](#)
- C4 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)
- C5 Confirmation of Executors (Scotland) Act 1858 cited or referred to by its short title under authority of [Statute Law Revision Act 1893 \(c. 14\), s. 3](#)

## 1 Short title. **S**

This Act may be cited for all purposes as The Small Testate Estates (Scotland) Act, 1876.

## 2 Extent of Act. **S**

This Act shall extend to Scotland only.

## 3 Where estate does not exceed [<sup>F1</sup>£17, 000] executor may apply to the commissary clerk to fill up inventory and expedite confirmation. **S**

Where [<sup>F2</sup>the whole estate of a testate is of a value not exceeding [<sup>F1</sup>£17, 000] an applicant for confirmation thereto] may apply to the commissary clerk of the county within which such testate was domiciled at the time of death; and the said

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commissary clerk, on production of the will or other writing of the testate containing the nomination of an executor, shall prepare and fill up an inventory and relative [F3oath][F3declaration] , as nearly as may be in the form of Schedule A. appended to this Act, and, upon such an inventory [F4being duly sworn to][F4and declaration being duly signed] by the executor, shall proceed to record said will or other writing and 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 executor [F2on payment of the requisite fee] ; and such confirmation shall have the same force and effect as that prescribed in Schedule E. annexed to the <sup>M1</sup>Confirmation of Executors (Scotland) Act 1858; . . . <sup>F5</sup>

#### Textual Amendments

- F1 Words substituted by [S.I. 1989/289, art. 3\(a\)](#)
- F2 Words substituted by Confirmation to [Small Estates \(Scotland\) Act 1979 \(c. 22, SIF 116:2\), s. 1\(1\)\(a\)](#)
- F3 Word “declaration” substituted (*prosp.*) for word “oath” by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\), ss. 74\(1\), 75\(2\), Sch. 8 para. 25\(1\)\(a\)](#)
- F4 Words “and declaration being duly signed” substituted (*prosp.*) for words “being duly sworn to” by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\), ss. 74\(1\), 75\(2\), Sch. 8 para. 25\(1\)\(b\)](#)
- F5 Words repealed by [Administration of Estates Act 1971 \(c. 25, SIF 116:1, 2\), s. 12, Sch. 2 Pt. 1](#)

#### Marginal Citations

- M1 [1858 c.56 \(116:2\)](#).

#### 4 Proof of identity. **S**

The commissary clerk of the county may require such proof as he may think sufficient to establish the identify of the executor.

#### 5 Commissary clerk must be satisfied that whole estate is under 150L. **S**

If the commissary clerk of the county has reason to believe that [F6the estate and effects of which the testate died possessed exceed [F7the value] specified in section three of this Act] , he shall refuse to proceed with the application until he is satisfied as to the true value thereof.

#### Textual Amendments

- F6 Words substituted by [Small Estates \(Representation\) Act 1961 \(c. 37\), s. 1\(1\), Sch. 1 para. 2\(2\)](#)
- F7 Words substituted by Confirmation to [Small Estates \(Scotland\) Act 1979 \(c. 22, SIF 116:2\), s. 1\(2\)\(b\)](#)

#### [F8] Who may administer oath. **S**

Oaths or affirmations under this Act or under the <sup>M2</sup>Intestates Widows and Children’s (Scotland) Act, 1875, shall, notwithstanding anything to the contrary in the last-mentioned Act, be administered in the manner provided by section eleven of the <sup>M3</sup>Confirmation and Probate Act, 1858.]

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**Textual Amendments**

**F8** S. 6 repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(2), 75(2), **Sch. 9**

**Marginal Citations**

**M2** 1875 c. 41.

**M3** 1858 c. 56.

**7 Procedure and fees. S**

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 . . . <sup>F9</sup>.

**Textual Amendments**

**F9** Words repealed by Confirmation to Small Estates (Scotland) Act 1979 (c. 22, SIF 116:2), s. 1(2)(c), Sch.

**8** ..... <sup>F10</sup> S

**Textual Amendments**

**F10** S. 8 repealed by Finance Act 1975 (c. 7, SIF 99:3), ss. 50, 52(2)(3), 59, **Sch. 13 Pt. I**

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## SCHEDULES

### SCHEDULE A S

#### FORM OF INVENTORY AND RELATIVE <sup>[F11]</sup>OATH<sup>[F11]</sup>DECLARATION

##### Textual Amendments

**F11** Word “declaration” substituted (*prosp.*) for word “oath” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(1), 75(2), **Sch. 8 para. 25(2)(a)**

Inventory of the Personal Estate and Effects wheresoever situated of *A.B. (design deceased)*, who died, testate, on the day of 18, at, and had at the time of his (*or her*) ordinary or principal domicile in the county of *A.*

#### I. SCOTLAND

1.	Cash in the house	£
2.	Household furniture and other effects in the house	
3.	Stock-in-trade and other effects belonging to deceased	
4.	Money in bank	£

Interest thereon to date of <sup>[F11]</sup>oath<sup>[F11]</sup>declaration] to inventory ———

Amount of personal estate in Scotland £————

#### II. ENGLAND

1.	Principal sum in policy of insurance on life of deceased by the <i>A.B. Insurance Co.</i> , numbered and dated 18	£
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Vested bonuses

Amount of personal estate in England £————

Total amount of personal estate in Scotland and England £————

*(Add under Scotland or England any other estate in usual)*

At on the day of 18. <sup>[F12]</sup>In presence of Appeared *C.D.* (design <sup>[F13]</sup>deponent<sup>[F13]</sup>applicant), who being solemnly sworn and examined depones<sup>[F12]</sup><sup>[F13]</sup>*[name and address of applicant]* (hereinafter referred to “the applicant”) hereby declares]: That the said *A.B. (repeat designation)*, died, testate, on the day of 18, at, and had at the time of death his (*or her*) ordinary or principal domicile in the said county of *A.*: That the <sup>[F13]</sup>deponent<sup>[F13]</sup>applicant] is the executor of the said *A.B.*, and

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has entered upon the possession and management of his or her estate as executor nominated by him or her (*along with* ) in his or her will (*or other testamentary settlement or writing*) dated the day of 18 , and now exhibited and signed by the [F13deponent][F13applicant], and as relative hereto: That the [F13deponent][F13applicant]does not know of any other will or 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 [F13deponent][F13applicant], and the said as relative hereto is a full and complete inventory of the personal estate and effects of the said deceasedA.B. wheresoever situated and belonging or due to him (*orher*) beneficially at the time of death in so far as the same has come to the knowledge of the [F13deponent][F13applicant]: That the value at this date of the whole real and personal estate and effects, including the proceeds accrued thereon down to this date, does not exceed [F14£17, 000] sterling: That confirmation of the said personal estate and effects in Scotland (England and Ireland,*as the case may be*) is required in favour of the [F13deponent][F13applicant](*and the said* ). [F15All which is truth, as the [F13deponent][F13applicant]shall answer to God.]

#### Textual Amendments

- F12** Words “[*name and address of applicant*] (hereinafter referred to “the applicant”) hereby declares”substituted (*prosp.*) for words from “In presence of” to “depones” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(1), 75(2), **Sch. 8 para. 25(2)(b)**
- F13** Word “applicant” substituted (*prosp.*) for word “deponent” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(1), 75(2), **Sch. 8 para. 25(2)(c)**
- F14** Words substituted by virtue of Confirmation to Small Estates (Scotland) Act 1979 (c. 22, SIF 116:2), s. **1(2)(d)** and S.I. 1989/289, **art. 3(b)**
- F15** Words repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), Sch. 8 para. 25(2)(a), **Sch. 9**

## SCHEDULE B **S**

### 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 39 & 40*

*Vict. c. 24 Confirmation in favour of*

*C.D.*, residing at , executor nominate of *A.B.* (design deceased), who died testate, on the day of 18 , at , and had at the time of death his (*orher*) ordinary or principal domicile in the county of *A.*

The said deceased *A.B.* had pertaining and resting owing to him (*orher*) at the time of his (*orher*) death the following personal estate and effects, viz.:

[*Take in particulars of estate as specified in the inventory*]

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I, *E.F.*, Esq., Commissary of the said county of *A.*, considering that the said *A.B.* died, testate, on the day of , 18 , at , and had at the time of death his (*or*her) ordinary or principle domicile in the said county of *A.*; and farther considering that the said *A.B.* by his (*or*her) will (or other writing containing the nomination of executor) dated the day of 18 , and recorded in my court books upon the day of 18 , nominated and appointed the said *C.D.* to be his (*or*her) executor; and now seeing that the said *C.D.* as executor nominate foresaid, has given up on [F16oath][F16declaration]an inventory of the whole personal estate and effects of the said *A.B.* at the time of his (*or*her) death, situated in Scotland (and England and Ireland, as the case may be), amounting in value to £ , as therein and herein-before set forth, and that the said inventory has likewise been recorded in my court books on the said day of 18 : Therefore I, in Her Majesty's name and authority, ratify, approve, and confirm the nomination of executor contained in the foresaid will (or other writing containing the nomination of executor), and I give and commit to the said *C.D.* full power to uplift, receive, administer, and dispose of the said personal estate and effects, grant discharges thereof, if needful to pursue therefor, and generally everything concerning the same to do that to the office of an executor nominate is known to belong: Providing always, that he shall render just count and reckoning for his intrusions therewith, when and where the same shall be legally required.

#### Textual Amendments

**F16** Word “declaration” substituted (*prosp.*) for word “oath” by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2, ss. 74\(1\), 75\(2\), Sch. 8 para. 25\(3\)\)](#)

Given under the seal of office of the commissariat of the county of *A.*, and signed by the clerk of court at on the day of , 18 .

*Commissary Clerk.*

## F17F17 SCHEDULE C S

#### Textual Amendments

**F17** [Sch. C](#) repealed by [Confirmation to Small Estates \(Scotland\) Act 1979 \(c. 22, SIF 116:2\), s. 1\(2\)\(e\)](#), [Sch.](#)

F17

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