

1964 No. 1143 (S. 77)

## SHERIFF COURT, SCOTLAND

## Act of Sederunt (Confirmation of Executors) 1964

Made - - - - 21st July 1964  
 Coming into Operation 10th September 1964

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 18 of the Confirmation of Executors (Scotland) Act 1858(a), section 16 of the Sheriff Courts and Legal Officers (Scotland) Act 1927(b), section 34 of the Administration of Justice (Scotland) Act 1933(c), section 22 of the Succession (Scotland) Act 1964(d), and of all other powers competent to them in that behalf, do hereby enact and declare as follows :—

1. The inventory embodied in or appended to the confirmation of an executor, or embodied in or appended to the eik to the confirmation of an executor, shall include such a description, including a description by reference, as is acceptable by present law and practice for a conveyance of lands or of an estate in land (including a lease), of any heritable property, as well as any heritable property in which the deceased person had an interest, forming part of the estate of the deceased person and falling to be administered under the law of Scotland.

2.—(1) A note or statement of any property which the executors of a deceased trustee or executor seek to have transmitted to them, appended to the inventory or additional inventory of the estate of the deceased trustee or executor in terms of section 6 of the Executors (Scotland) Act 1900(e), shall include

- (a) a reference to the deed, confirmation or other document whereby any property referred to in the note or statement and not standing or invested in the name of such deceased trustee or executor or to which he had not completed title, became vested in him, and
- (b) a description such as is prescribed by section 1 hereof of any heritable property or interest therein referred to in the note or statement.

(2) A note or statement of any property which the executors of a deceased trustee or executor competently seek to have transmitted to them, appended to the inventory or additional inventory of the estate of the deceased trustee or executor in terms of section 6 of the Executors (Scotland) Act 1900(e), shall be referred to in the confirmation of those executors.

3.—(1) The Act of Sederunt entitled “ Act of Sederunt for preventing Irregularities in the making of Extracts of Decrees, and giving them forth prematurely to the Parties ” dated 6th March 1829, shall no longer apply to extracts of decrees-dative in commissary proceedings.

(a) 21 &amp; 22 Vict. c. 56.

(b) 17 &amp; 18 Geo. 5. c. 35.

(c) 23 &amp; 24 Geo. 5. c. 41.

(d) 1964 c. 41.

(e) 63 &amp; 64 Vict. c. 55.



(2) Extracts of decrees-dative in commissary petitions shall be as nearly as may be in the form set forth in Schedule 1 hereto.

4. The Act of Sederunt of 3rd February 1933(a) shall be amended as follows:—

(1) In Schedule B,

(a) in the heading of the Inventory of estate, by deleting the words “pertaining and”, and by substituting therefor the words “belonging, pertaining or”.

(b) by deleting the word “Personal” wherever it occurs.

(c) in the clause commencing “and Gives and Commits”, by deleting the words “to uplift, receive, administer and dispose of the said Estate and Effects”, and by substituting therefor the words “as appropriate to take possession of, make up title to, uplift or receive the said Estate and Effects, administer and dispose of the same”.

(2) In Schedule C,

(a) in the heading of the Inventory of estate, by deleting the words “pertaining and”, and by substituting therefor the words “belonging, pertaining or”.

(b) by deleting the word “Personal” wherever it occurs.

(c) in the clause commencing “and Gives and Commits”, by deleting the words “to uplift, receive, administer and dispose of the said Estate and Effects contained in the foresaid Corrective or Additional Inventory”, and by substituting therefor the words “as appropriate to take possession of, make up title to, uplift or receive the said Estate and Effects contained in the foresaid Corrective or Additional Inventory, administer and dispose of the same.”.

5. A certificate in the form set out in Schedule D to the Act of Sederunt of 3rd February 1933(a) may be issued in terms of section 3 of that Act of Sederunt in respect of any item of moveable or heritable property, or interest therein, in Scotland.

6.—(1) The form of petition for the appointment of an executor to a deceased person shall be as nearly as may be in the form set forth in Schedule 2 hereto.

(2) The Confirmation of Executors (Scotland) Act 1858(b) shall be amended as follows:—

(a) In section 2, by deleting the words “shall be in the form as nearly as may be of the schedule (A) hereunto annexed, and”.

(b) In section 3, by deleting the words “personal or moveable”.

(c) In sections 5, 8 and 11, by deleting the word “personal” where it occurs in each section.

(3) Schedule A to the Confirmation of Executors (Scotland) Act 1858 is hereby repealed.

7. The Codifying Act of Sederunt dated 4th June 1913(c) shall be amended by deleting the word “personal” where it first occurs in section 5 of Book L Chapter V thereof.

(a) S.R. & O. 1933/48 (Rev. XX, p. 829: 1933, p. 1784).

(b) 21 & 22 Vict. c. 56.

(c) S.R. & O. 1913/638 (Rev. XX, p. 776: 1913, p. 2013).

8. This Act of Sederunt may be cited as the Act of Sederunt (Confirmation of Executors) 1964, and shall come into operation on 10th September 1964.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

J. L. Clyde,

I.P.D.

Edinburgh.

21st July 1964.

## SCHEDULES

### SCHEDULE 1

*Form of an extract of a decree-dative in a commissary petition*  
Commissariot of Edinburgh

or

Sheriffdom of \_\_\_\_\_ at \_\_\_\_\_

At \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ Nineteen  
hundred and \_\_\_\_\_ SITTING IN JUDGMENT,

Esquire, Sheriff Substitute of the Sheriffdom of \_\_\_\_\_

in a Petition before the Sheriff Court of the said Sheriffdom

, at the instance of A.B. (*design him*), Pursuer, only

at child (*or state what other relationship, character or title the pursuer has, giving him right to apply for the appointment of executor*) of the deceased C.D. (*design him*) who died at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

Nineteen hundred and \_\_\_\_\_ and had at the time of his death his ordinary or principal domicile in the County of \_\_\_\_\_ (*or as the case may be*), for his decerniture as Executor-dative to the said deceased ;

the said Sheriff Substitute DECERNED, and hereby DECERNS, the said A.B. Executor-dative *qua* next of kin (*or as the case may be*) to the said deceased

C.D. Extracted at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Nineteen hundred and \_\_\_\_\_ by me Commissary Clerk (*or Sheriff Clerk of \_\_\_\_\_, or as the case may be*).

(Signed) E.F.

Commissary Clerk (*or as the case may be*).

### SCHEDULE 2

*Form of a petition for appointment of an executor to a deceased person*

Commissariot of Edinburgh

or

Sheriffdom of \_\_\_\_\_ at \_\_\_\_\_  
A.B. (*design him*)— Pursuer

The pursuer craves the Court,—

To decern the pursuer executor-dative *qua* next of kin (*or state the other character in which the pursuer claims to be appointed executor*) to the deceased C.D. (*design him*).

(*To be signed*) A.B. Pursuer.

or

X.Y. (*add designation and business address*)  
Pursuer's Agent.



## CONDESCENDENCE

1. The said C.D. died at (*specify place*) on (*specify date*) intestate (or, if he died testate, here also refer to the testamentary writings and their dates and dates of recording, if any, and state that the same or an extract of the same is produced). He had at the time of his death his ordinary or principal domicile in the county of (*specify county*, or state that he was without any fixed or known domicile except that the same was in Scotland, or as the case may be).

2. The pursuer is a son of the said C.D. and one of his next of kin (or state what other relationship, character, or title the pursuer has, giving him right to apply for the appointment of executor). (Any person who, if he had survived the deceased would have had a prior claim to the office of executor must here be eliminated. If the deceased was survived by a spouse who is not the pursuer, the reason must be given why the application is not made by the surviving spouse unless (a) the deceased died prior to 10th September 1964 leaving no issue and it is averred that the net estate of the deceased exceeds £5,000 or (b) the deceased died on or after 10th September 1964 and it is averred that the estate of the deceased exceeds the prior rights of the surviving spouse.)

## PLEA IN LAW

The pursuer, being one of the next of kin of the said C.D. (or state the other character in which the pursuer claims to be appointed executor), is entitled to be decerned his executor-dative.

(To be signed) A.B. Pursuer.

or

X.Y. (*add designation and business address*)  
Pursuer's Agent.

## EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt, but is intended to indicate its general purport.*)

This Act of Sederunt prescribes the form in which heritable property, or any interest therein, shall be described in the inventory embodied in or appended to the confirmation of an executor and in any note or statement of property appended to an inventory of estate. It makes provision for reference to be made in certain cases in such note or statement to the deed whereby trust property became vested in a deceased trustee or executor. It also prescribes the form of petition for the appointment of an executor and the form of the extract of a decree-dative, and amends the form of confirmation and eik to confirmation set forth in Schedules B and C to the Act of Sederunt of 3rd February 1933. It declares that a certificate of confirmation shall be available in respect of heritable as well as moveable estate. It gives effect to the provisions of the Succession (Scotland) Act 1964, so far as they relate to the confirmation of executors, and makes certain consequential amendments to the Confirmation of Executors (Scotland) Act 1858 and the Codifying Act of Sederunt of 1913.