

1971 No. 1165 (S.147)

COURT OF SESSION, SCOTLAND

SHERIFF COURT, SCOTLAND

Act of Sederunt (Edictal Citations, Commissary Petitions and
Petitions of Service) 1971

Made - - - 16th July 1971

Coming into Operation 16th August 1971

The Lords of Council and Session, by virtue of the powers conferred upon them by sections 16 and 34 of the Administration of Justice (Scotland) Act 1933(a) and section 22 of the Succession (Scotland) Act 1964(b) and of all other powers competent to them in that behalf, do hereby enact and declare as follows :

1.—(1) The provisions of section 51 and 52 of the Court of Session Act 1825(c), in so far as they prescribe procedure for and in connection with edictal citations, charges, publications, citations and services sometime made at the Market Cross of Edinburgh, pier and shore of Leith, as against persons furth of Scotland, shall no longer apply.

(2) All such edictal citations, charges, publications, citations and services shall be done and performed by service of a copy thereof at the office of the Keeper of Edictal Citations of the Court of Session, in the manner now practised in cases of citation or charge at the dwelling house of a party not personally apprehended ; and the Keeper of Edictal Citations or his clerk shall record on each such copy delivered to him the date of receipt by his office.

(3) Each such copy as is referred to in the last foregoing sub-paragraph shall be preserved for three years from the date of the receipt recorded thereon, and it shall at all times be available for inspection at the office of the Keeper of Edictal Citations during that period.

2.—(1) The provisions of section 4 of the Confirmation and Probate Act 1858(d), in so far as they prescribe procedure in petitions for the appointment of an executor, shall no longer apply.

(2) Every petition for the appointment of an executor shall be intimated by the Sheriff Clerk affixing a full copy of the petition on the door of the Sheriff Court house or in some conspicuous place of the Court or of the office of the Sheriff Clerk, in such manner as the Sheriff shall direct.

(a) 1933 c. 41.
(c) 1825 c. 120.

(b) 1964 c. 41.
(d) 1158 c. 56.

3.—(1) The provisions of Section 30 of the Titles to Land Consolidation (Scotland) Act 1868(a), as saved by Section 37 of the Succession (Scotland) Act 1964(b), in so far as they prescribe procedure in petitions of service, shall no longer apply.

(2) A petition presented to the Sheriff of Chancery for general service, where the domicile of the deceased is known and was within Scotland, shall not proceed until the Sheriff Clerk of Chancery shall have received official notice from the Sheriff Clerk of the county of the domicile of the person deceased that publication has been made in such county, and such publication shall be effected by affixing an abstract of the petition on the door of the Sheriff Court house or in some conspicuous place of the Court or of the office of the Sheriff Clerk, in such manner as the Sheriff of the county shall direct.

(3) A petition presented to the Sheriff of Chancery for Special Service or a petition presented to the Sheriff of Chancery under section 10 of the Conveyancing (Scotland) Act 1874(c), shall not proceed until the Sheriff Clerk of Chancery shall have received official notice (i) from the Sheriff Clerk of the county or of each of the counties in which the lands are situated that publication has been made in such county or in each such county as the case may be, and either (ii) where the domicile of the deceased is known and was within Scotland, from the Sheriff Clerk of the county of the domicile of the person deceased that publication has been made in such county, or (iii) where the domicile of the deceased is furth of Scotland or is unknown, from the Sheriff Clerk of the Lothians and Peebles at Edinburgh that publication has been made at Edinburgh; and each such publication shall be effected by affixing an abstract of the petition on the door of the Sheriff Court house or in some conspicuous place of the Court or of the office of the Sheriff Clerk, in such manner as the Sheriff of the county or counties shall direct.

(4) A petition presented to the Sheriff of Chancery for General Service, where the domicile of the deceased was furth of Scotland or where such domicile is unknown and the person deceased died more than ten years prior to the presentation of the petition, shall not proceed until the Sheriff Clerk of Chancery shall have received official notice from the Sheriff Clerk of the Lothians and Peebles at Edinburgh that publication has been made at Edinburgh, and such publication shall be effected by affixing an abstract of the petition on the door of the Sheriff Court house or in some conspicuous place of the Court or of the office of the Sheriff Clerk, in such manner as the Sheriff of the Lothians and Peebles shall direct.

(5) In each such petition as aforesaid, no further publication shall be necessary.

4. This Act of Sederunt may be cited as the Act of Sederunt (Edictal Citations, Commissary Petitions and Petitions of Service) 1971, and shall come into operation on 16th August 1971.

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

Edinburgh,
16th July 1971.

William Grant,
I. P. D.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt.)

This Act of Sederunt makes new provision for the execution of edictal citations, for the publication of petitions for appointment of executors, and for the publication of petitions of service of heirs.