



Probate and Legacy Duties Act 1808

1808 CHAPTER 149 48 Geo 3

1—34.^{F1}

Textual Amendments

F1 Ss. 1–34, 45, 48, 49 repealed by [Inland Revenue Repeal Act 1870 \(c. 99\)](#)

35—^{F2}
37.

Textual Amendments

F2 Ss. 35–37, 39, 41 repealed (with saving) by [Finance Act 1975 \(c. 7\)](#), ss. 50, 52(2)(3), 59, [Sch. 13 Pt. I](#).

38 **Executors and others intronitting with the effects in Scotland, of any person dying after the 10th Oct. 1808, to exhibit an inventory thereof, in the commissary court there, duly stamped; and an additional inventory, on discovering other effects. Penalty for neglect.**

And all and every person or persons, who as executor or executors, nearest in kin, creditor or creditors, or otherwise, shall intronit with or enter upon the possession or management of any [^{F3}personal or moveable] estate or effects in Scotland, of any person dying after the tenth day of October one thousand eight hundred and eight, shall, on or before disposing of or distributing any part of such estate or effects, or uplifting any debt due to the deceased, and at all events within six calendar months next after having assumed such possession or management, in whole or in part, and before any such person or persons shall be confirmed executor or executors, testamentary or dative, exhibit upon [^{F4}declaration] in the proper commissary court in Scotland ^{F5} . . . ^{F6} . . . a full and true inventory, [^{F3}duly stamped as required by this Act], of all the [^{F3}personal or moveable] estate and effects of the deceased already recovered or known to be existing, distinguishing what shall be situated in Scotland, and what elsewhere, together with any testament or other writing relating to the disposal of

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such estate and effects, or any part thereof, which the person or persons exhibiting such inventory, shall have in his, her, or their custody or power; which said inventory, together with such testament or other writing (if any such there be), shall be recorded in the books of the said court without any other expense to the party than the ordinary fees of registration; and if at any subsequent period a discovery shall be made of any other effects belonging to the deceased, an additional inventory or additional inventories of the same shall, within two calendar months after the discovery thereof, be in like manner exhibited upon [^{F4}declaration], by any person or persons, intromitting with or assuming the management of such effects, which additional inventory or inventories shall also be recorded in the manner aforesaid; [^{F3}and in case any person or persons, hereby required to exhibit any such inventory or inventories as aforesaid, shall refuse or neglect so to do within the time prescribed for that purpose, or shall knowingly omit any part of the estate or effects of the deceased therein, he, she, or they shall, for every such offence, forfeit the sum of twenty pounds, to be recovered by ordinary action or summary complaint, in the sheriff, or borough court, or before any justice of the peace of the shire. or borough, where the person or persons sued or complained of shall reside; which court of justice shall have power, if there shall appear cause, to mitigate such penalty, so that the same be not reduced below one moiety thereof, besides costs of suit; and the person or persons so offending shall also be charged and chargeable with, and be holden liable to the payment of double the amount of the stamp duty, which would have been payable upon such inventory or inventories so neglected to be exhibited, according to the amount or value of the estate and effects, which ought to have been specified therein, or double the amount of the further or increased stamp duty, which would have been payable upon any such inventory or inventories exhibited, in respect of the estate or effects so omitted therein as aforesaid, as the case may require; which double duty shall be deemed and taken to be a debt to his Majesty, his heirs and successors, of the person or persons liable to pay the same, and shall and may be sued for and recovered accordingly.]

Textual Amendments

- F3** Words repealed in relation to deaths occurring after 13.4.1975 and, so far as regards certain duties in relation to any death, by [Finance Act 1975 \(c. 7, SIF 99:3\)](#), [ss. 52\(2\), 59](#), [Sch. 13 Pt. I](#), note (with a saving in s. 52(3) in relation to repayment or allowance in respect of certain sums paid before 13.3.1975 on account)
- F4** Word substituted (S.) (1.3.1997) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 19(a); [S.I. 1996/2894, art. 3](#), [Sch.](#) (as amended by [S.I. 1996/2966, art. 2](#))
- F5** Words repealed (S.) (1.3.1997) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), s. 74, [Sch. 8 para. 19\(b\)](#), [Sch. 9](#); [S.I. 1996/2894, art. 3](#), [Sch.](#) (as amended by [S.I. 1996/2966, art. 2](#))
- F6** Words repealed by [Finance Act 1949 \(c. 47\)](#), [Sch. 11 Pt. V](#)

Modifications etc. (not altering text)

- C1** 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 \(1933, p. 520\)](#)

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Textual Amendments

F7 Ss. 35–37, 39, 41 repealed (with saving) by [Finance Act 1975 \(c. 7\)](#), ss. 50, 52(2)(3), 59, [Sch. 13 Pt. I](#).

40 †**Additional inventories to specify the amount of the effects in former inventories, and the stamp duty to be according to the total of both; and the duty on the former to be repaid.**

And where any such additional inventory shall be exhibited to be recorded as aforesaid, the same shall also specify the amount or value of the estate and effects of the same person, comprized in any former inventory or inventories; . . . ^{F8}

Textual Amendments

F8 Words repealed by [Statute Law Revision Act 1890 \(c. 33\)](#)

Modifications etc. (not altering text)

C2 Unreliable marginal note

41 ^{F9}

Textual Amendments

F9 Ss. 35–37, 39, 41 repealed (with saving) by [Finance Act 1975 \(c. 7\)](#), ss. 50, 52(2)(3), 59, [Sch. 13 Pt. I](#).

42 **Confirmations of testaments not to be granted for effects not included in such inventory. Executors not to recover effects unless so included.**

^{F10}[(1)] [^{F11}Subject to subsection (2) below,] it shall not be lawful for any commissary court in Scotland, to grant confirmation of any testament, testamentary or dative, or eik thereto, of or for any estate or effects whatever, of any person dying after the tenth day of October one thousand eight hundred and eight, unless the same shall be mentioned and included in some such inventory, exhibited and recorded as aforesaid [^{F12}nor unless that inventory shows by means of such receipt or certification as may be prescribed by the Commissioners of Inland Revenue either that the capital transfer tax payable on the delivery of the inventory has been paid or that no capital transfer tax is so payable]; and it shall not be competent to any executor or executors, or other person or persons, to recover any debt or other effects, in Scotland, of or belonging to any person dying after the said tenth day of October, unless the same shall have been previously included in some such inventory, exhibited and recorded as aforesaid; except the same respectively were vested in the deceased as a trustee for any other person or persons, and not beneficially; but these provisions are not, in other respects, to prejudice the law of Scotland, regarding total or partial confirmations, or the rules of succession there established

[^{F13}Provided that arrangements may be made between the Court of Session and the said Commissioners providing for the purposes of this section in such cases as may be specified that the said inventory shall be effective without such receipt or certification as aforesaid, or that some other document may be substituted for the inventory].

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[^{F14}(2) In a case to which regulations under section 256(1)(aa) of the Inheritance Tax Act 1984 (c. 51) apply (excepted estates), it shall not be lawful to grant confirmation such as is mentioned in subsection (1) above except on the production of information or documents in accordance with those regulations.]

Textual Amendments

- F10** S. 42 renumbered as s. 42(1) (1.11.2004) by [Finance Act 2004 \(c. 12\)](#), **s. 294(2)(a)(5)**; S.I. 2004/2571, **art. 2**
- F11** Words in s. 42(1) substituted (1.11.2004) by [Finance Act 2004 \(c. 12\)](#), **s. 294(2)(b)(5)**; S.I. 2004/2571, **art. 2**
- F12** Words inserted by [Finance Act 1975 \(c. 7, SIF 65\)](#), s. 19(2), **Sch. 4 para. 38(2)(4)**
- F13** Proviso added by [Finance Act 1975 \(c. 7, SIF 65\)](#), s. 19(2), **Sch. 4 para. 38(2)(4)**
- F14** S. 42(2) inserted (1.11.2004) by [Finance Act 2004 \(c. 12\)](#), **s. 294(2)(c)(5)**; S.I. 2004/2571, **art. 2**

Modifications etc. (not altering text)

- C3** 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)
- C4** S. 42 applied by [Colonial Probates Act 1892 \(c. 6, SIF 116:3\)](#), **s. 2(1)** as amended by [Finance Act 1975 \(c. 7\)](#), s. 52, **Sch. 12 para. 4**

43 ^{F15}

Textual Amendments

- F15** **Ss. 43, 46, 47** repealed by [Statute Law Revision Act, 1872 \(No. 2\) \(c. 97\)](#)

44 ^{F16}

Textual Amendments

- F16** **S. 44** repealed (with savings) by [Finance Act 1949 \(c. 47\)](#), s. 52(9)(10), **Sch. 11 Pt. IV**.

45 ^{F17}

Textual Amendments

- F17** **Ss. 1-34, 45, 48, 49** repealed by [Inland Revenue Repeal Act 1870 \(c. 99\)](#)

46, 47. ^{F18}

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Textual Amendments

F18 Ss. 43, 46, 47 repealed by Statute Law Revision Act, 1872 (No. 2) (c. 97)

48, 49. **F19**

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Textual Amendments

F19 Ss. 1–34, 45, 48, 49 repealed by Inland Revenue Repeal Act 1870 (c. 99)

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