

ADMINISTRATION AND PROBATE

No. 16 of 1969

An Ordinance to amend the *Administration and Probate Ordinance 1929-1967*.

1.—(1.) This Ordinance may be cited as the *Administration and Probate Ordinance 1969*.^{*} Short title and citation.

(2.) The *Administration and Probate Ordinance 1929-1967*[†] is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Administration and Probate Ordinance 1929-1969*.

2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.[‡] Commencement.

3. Section 4 of the Principal Ordinance is amended by omitting the words and figures “ Part VII.—Testator’s Family Maintenance (Sections 110-117) ”. Parts.

4. Section 5 of the Principal Ordinance is amended by omitting from sub-section (1.) the definition of “ Commonwealth country ”. Interpretation.

5. Section 9B of the Principal Ordinance is amended by omitting paragraph (d) of sub-section (1.) and inserting in its stead the following paragraph:— Grant on presumption of death.

“ (d) the Court may, in giving leave to distribute the estate of the person, direct that the distribution shall not be made unless each person who is to take under the distribution gives an undertaking or security that he will, if the probate or administration is revoked—

- (i) where he has received property other than money under the order, restore the property or, at his option, pay an amount equal to the value of the property at the time he received the property to the person whose death was presumed or, if that person has subsequently died, to the administrator of the estate of that person; or

^{*} Made on 24 July 1969; notified in the *Commonwealth Gazette* on 14 August 1969.

[†] Ordinance No. 18, 1929, as amended by Ordinance No. 11, 1930; No. 13, 1932; No. 9, 1933; Nos. 2 and 6, 1934; Nos. 3, 13 and 27, 1937; No. 35, 1938; No. 7, 1943; No. 15, 1947; No. 16, 1950; No. 5, 1953; No. 2, 1954; No. 6, 1960; No. 20, 1965; and Nos. 9 and 23, 1967.

[‡] The date fixed was 1 September 1969; see *Commonwealth Gazette* 28 August 1969, p. 5072.

- (ii) where he has received money under the order, pay an amount equal to the amount of the money received by him under the order to the person whose death was presumed or, if that person has subsequently died, to the administrator of the estate of that person; and”.

6. Sections 14, 15 and 16 of the Principal Ordinance are repealed and the following section is inserted in their stead:—

Administration
bond to be
given.

“ 14.—(1.) Subject to this section, a person to whom a grant of administration is made shall, before the issue of the administration, enter into, and file with the Registrar, a bond with an Insurance Company as a surety for duly collecting, getting in and administering the real and personal estate of the deceased person.

“(2.) The bond shall acknowledge that the person to whom the grant is made and the surety are bound to the Registrar in a sum to be specified in the bond, being a sum equal to the value of the estate of the deceased person or such lesser sum as the Court or Judge, or in a case where the value of the estate of the deceased person does not exceed Two thousand dollars, as the Registrar, directs.

“(3.) Where all or any portion of the estate of the deceased person passes to—

- (a) the person to whom administration is granted; or
- (b) beneficiaries who are *sui juris* and consent in writing to the bond being dispensed with,

the Registrar may, if he thinks fit, dispense with the requirement of the bond with respect to the estate or that portion of the estate, as the case requires.

“(4.) Sub-section (1.) of this section does not apply in respect of a grant of administration of the estate of a deceased person granted to—

- (a) the Curator;
- (b) a person on behalf of the Crown;
- (c) a trustee company in a case where the company is exempted by law from the obligation of having to enter into and file the bond referred to in that sub-section; or
- (d) a public trustee of a State or Territory of the Commonwealth.

“(5.) In this section, a reference to an Insurance Company shall be read as a reference to a company that is carrying on insurance business within the meaning of the *Insurance Act 1932-1966* and maintains a deposit with the Treasurer in accordance with that Act.”.

7. Section 32B of the Principal Ordinance is amended—

Effect of
revocation
of grant.

- (a) by inserting after paragraph (c) of sub-section (1.) the following paragraph:—

“ (ca) a person entitled to any property that has been distributed by the executor or administrator to whom the grant was made may apply to the Court for an order under the next succeeding sub-section;” and

- (b) by omitting sub-section (2.) and inserting in its stead the following sub-sections:—

“ (2.) Where the Court, upon application made under paragraph (ca) of the last preceding sub-section in respect of property, is satisfied that the applicant is the person entitled to the property and that the respondent to the application is the appropriate person in respect of the property, the Court may make an order directing the respondent—

(a) if the respondent is in possession of the property—to return the property to the applicant or pay to the applicant such sum as the Court considers reasonable in the circumstances; or

(b) in any other case—to pay to the applicant such sum as the Court considers reasonable in the circumstances.

“ (3.) For the purposes of this section, the appropriate person, in respect of property distributed under a probate or administration that has been revoked, is—

(a) if the person to whom the property was so distributed is alive—that person; or

(b) if the person to whom the property was so distributed is dead—the executor of the will or administrator of the will or estate of that person or a person who has benefited as a result of the property having been distributed to that person.

“ (4.) This section does not affect any entitlement of an executor or administrator to commission, or to any protection, indemnity, reimbursement or right under any other section of this Ordinance.”.

8.—(1.) Section 80 of the Principal Ordinance is amended—

Reseal of grant
made in certain
countries.

- (a) by inserting in sub-section (1.), after the words “ competent jurisdiction”, the words “ in a State or Territory of the Commonwealth or ”;

- (b) by omitting from sub-section (1.) the words “ apply to the Court to have it sealed with the seal of the Court, and the Court may seal it accordingly” and inserting in their

stead the words “ apply to the Registrar to have it sealed with the seal of the Court, and the Registrar may seal it accordingly ”; and

- (c) by inserting after sub-section (1.) the following sub-sections:—

“(1A.) The Registrar shall not, without an order of the Court, seal a probate or administration under this section if a caveat against the sealing of the probate or administration has been lodged with the Registrar.

“(1B.) The Registrar may, at any time, refer an application under this section to the Court and, where an application is so referred, the probate, administration or order to collect and administer an estate to which the application relates shall not be sealed except in accordance with an order of the Court.”.

(2.) Where, on or after the date of commencement of the *Administration and Probate Ordinance* 1965, probate of a will, administration of an estate, or an order to collect and administer an estate, granted by a court of competent jurisdiction in a State or Territory of the Commonwealth or in a Commonwealth country has, on an application made to the Registrar, been sealed with the seal of the Court, the probate, administration or order as so sealed shall be deemed to have had, and shall have, the same force, effect and operation as if the amendment made by paragraph (b) of the last preceding sub-section had been made before the date on which the probate, administration or order was so sealed.

Estates to
the value of
Five hundred
dollars
or less.

9. Section 87B of the Principal Ordinance is amended by omitting from paragraph (a) of sub-section (1.) the words “ Two hundred dollars ” and inserting in their stead the words “ Five hundred dollars ”.

Election to
administer
estate.

10. Section 87C of the Principal Ordinance is amended by omitting from sub-section (8.) the words “ One thousand pounds ” and inserting in their stead the words “ Two thousand dollars ”.

11. Section 103 of the Principal Ordinance is repealed and the following section inserted in its stead:—

Accounts to
be audited
by Auditor-
General.

“ 103. The accounts kept by the Curator under section one hundred and one of this Ordinance in relation to an estate are subject to audit by the Auditor-General.”.

12. Sections 108 and 109 of the Principal Ordinance are repealed and the following section is inserted in their stead:—

Unclaimed
moneys.

“ 108.—(1.) Where any moneys under the control of the Curator become unclaimed moneys, the Curator shall forthwith pay those moneys into the Consolidated Revenue Fund.

“(2.) Moneys under the control of the Curator are unclaimed moneys for the purposes of this section if—

- (a) the moneys form part of an estate under the control of the Curator;
- (b) the moneys have been under the control of the Curator for a period of not less than six years; and
- (c) for a period of six years the Curator has had no knowledge of the existence or address of a person who is, or claims to be, entitled to the moneys or a part of the moneys.

“(3.) A person who claims to be entitled to any moneys that have been paid into the Consolidated Revenue Fund by the Curator in pursuance of the last preceding sub-section may apply to the Court for an order under this sub-section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.

“(4.) Upon receipt by the Attorney-General of an office copy of an order under the last preceding sub-section, the Attorney-General shall pay to the person in whose favour the order was made the amount specified in the order out of moneys lawfully available for the purpose.”.

13. Part VII. of the Principal Ordinance is repealed.

Repeal of
Part VII.

14. The Fifth Schedule to the Principal Ordinance is repealed.

Fifth Schedule.