

SHERIFFDOM OF LOTHIAN AND BORDERS

PRACTICE NOTE NO 3, 2004

DATIVE PETITIONS: PERSONS WITH PARENTAL RESPONSIBILITIES AND RIGHTS

1. Where the parent of a child has died and a person has obtained an order under section 11(1)(a) and (b) of the Children (Scotland) Act 1995 ('the Act') conferring on him or her parental responsibilities and parental rights in relation to the child, that person has the right to act as the child's legal representative unless the order otherwise provides (Act, sections 1(1)(d) and 2(1)(d)). He or she may therefore petition for appointment as executor-dative or executrix-dative to the deceased *qua* legal representative of the child. It is incorrect for such a person to petition for appointment *qua* 'guardian' of the child.
2. The following style may be employed:

Instance

A B [*design*], legal representative of C D [*design*], conform to decree of the Sheriff of [*specify sheriffdom*] at [*place*] on [*date*] - Pursuer.

Crave

The pursuer craves the court –

To decern the pursuer executor-dative to the deceased E F [*design*] *qua* legal representative of her son [*or as appropriate*].

Condescendence

The condescendence should include the following averments:

The said C D is the child of the said E F and has right to her intestate estate. The pursuer is his legal representative conform to an official certified copy interlocutor conferring on him parental responsibilities and rights which is produced herewith. Reference is made to the Children (Scotland) Act 1995, sections 1(1)(d) and 2(1)(d).

Plea-in-law

The pursuer, being the legal representative of the child of the said E F, is entitled to be decerned her executor-dative.

Iain Macphail

Sheriff Principal of Lothian and Borders

20 December 2004