

Scottish Courts Service

SMALL ESTATES a guide for executors seeking Confirmation

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What is "Confirmation"?

You may have been told by a bank or building society that you need to obtain "Confirmation" or a "letter of Confirmation" before they can release the money and other property to someone who has died. Confirmation is a legal document from the Court. It gives the executor(s) authority to uplift money and other property belonging to a deceased person from the holder (such as the bank), and to administer and distribute it according to law.

To obtain Confirmation, an executor must provide a list of all of the deceased's property at the time of death. The list - called an inventory - might include money, houses, land and shares. The inventory must include:

- all items of property, even those that have already been paid over to the deceased's representative(s); and

- property located in England, Wales or Northern Ireland.

Confirmation is possible only if the inventory includes at least one item of money or other property in **Scotland**.

Small estates - financial limits

If the total amount of the deceased's money, property etc. is **£30,000 or less**, it is called a "small estate", and the Sheriff Clerk's staff will help you prepare the inventory. In calculating, the value of the estate, you should not deduct any debts (such as funeral expenses, gas or electricity bills, balance of mortgage) owed by the deceased and must include interest to date of death on the account etc., of the deceased.

If the estate exceeds the limit of £30,000, the Sheriff Clerk's staff cannot help to prepare the inventory and you should consult a solicitor.

Application forms, guidance leaflets and booklets on raising a large estate are available from the Inland Revenue website at www.hmrc.gov.uk/cto/forms3.htm forms C1, C5 and information booklet C3.

Making an appointment with the Sheriff Clerk's staff and obtaining preliminary advice

If it is a small estate and you want help from the Sheriff Clerk, you should contact the Sheriff Clerk's Office in the area where the deceased last resided, between 9.30am and 3.30pm on any weekday. Please telephone to make an appointment as this will save you time and possible inconvenience when you attend. When you telephone, you may wish to ask a number of important questions, such as:

- Who should attend the appointment?
- What should I bring?
- Is a fee payable?

Who should attend?

If there is a Will, then normally the executor it names should attend. If more than one person is appointed as executor in a Will, only one requires to attend at the Sheriff Clerk's Office to complete the documents. However, all living executors will be confirmed and have equal authority over the distribution of the estate.

If there is no Will, the executor will normally be the next of kin. This means the surviving spouse/civil partner or, if there is no spouse/civil partner, the deceased's nearest relative. If you are not sure who is entitled to act as executor, the Sheriff Clerk will advise you. The usual order of people entitled to act as executor is:

1st — spouse

2nd – child

3rd - brother/sister/parent

If there is any confusion about who the executor is, then the Sheriff Clerk's Office will advise.

If you are unsure about the **validity of a Will** or have any other concerns about **anything left in writing** by the deceased, the Sheriff Clerk's staff will be happy to help. If you wish, you can

bring a relative or friend to the appointment.

What should you bring?

YOU will need to bring the following documents:

- if the deceased left a Will, the original Will or testamentary writing (sometimes kept in solicitor's offices for safekeeping);
- full details of the estate, valued at the date of death (see "details of the estate" below);
- the death certificate of the deceased (no copy);
- the marriage certificate if the surviving spouse is applying for the office of executor, and there is no Will;
- the certificate of registration of civil partnership, if the surviving civil partner is applying for the office of executor, and there is no Will; and
- the divorce certificate, again if there is no Will.

Details of the estate

You must disclose every item of the estate when applying for confirmation. So you will need to provide the following details:

- Who is holding the funds (such as the name of the bank, building society or insurance company).
- The account number or other reference number.

The value of the item at the date of death (**including any interest, bonuses or dividends due**).

- **Bank or building society accounts:** You should take the pass book to the bank or building society branch where the account is held so that the book can be updated with any interest accrued to the date of death - this is often marked on in pencil. If there is no pass book, ask the bank or building society to give you. **Details of joint accounts must also be disclosed even if the holder of the fund has transferred the sum to the other party.**
- **Insurance policies:** You should ask the insurance company to give you a letter detailing the policy number and the value of the policy at the date of death (**including any bonuses payable**).
- **Premium bonds:** You should bring the actual bonds themselves and, if known, the holder's registration number.
- **National Savings Bank:** This includes National Savings Certificates and Granny Bonds. You will need a letter from the Director of Savings giving the value at the date of death including any interest.

- **Stocks and shares:** You will need to get their value at the date of death, normally from a stockbroker, bank manager or company secretary. In some cases a fee may be charged. The valuer should give you a letter showing the value of the item, plus any dividends etc. accrued.
- **Heritage:** If the deceased owned heritable property (such as a house, shop, strip of land) a valuation from an estate agent, solicitor or other similar person may be necessary. The Sheriff Clerk's staff will be unable to advise or help in the legal transfer or sale of any heritable property. If such an item forms part of the deceased's estate, you should consider seeking advice from a solicitor. In normal circumstances where heritable property is involved. This will not qualify as a small estate. **No sale of heritable property can take place until a transfer of property has been correctly carried out and registered.**

Attending for interview

When you have details of the whole estate, **and it is under £30,000**, please make an appointment to attend the Sheriff Clerk's Office to complete the application form. If the deceased did not leave a Will, you will need to bring, with you proof of your identity (such as a birth certificate or passport).

In some Courts you may be asked to bring two witnesses who can testify to your identity and relationship to the deceased. The witnesses will be put on oath (this is now very rare therefore please ask the Sheriff Clerk in advance if this will be necessary).

The interview normally lasts 30-45 minutes. At the end of the interview you will have to make a Declaration that the details and information are true and complete.

You can ask your local Sheriff Clerk to complete the inventory for you even if the person who died lived in an area covered by a different Sheriff Court.

Bond of Caution

If the deceased **did not leave a Will** and you are **not** the spouse/civil partner, you will need to obtain a Bond of-Caution before Confirmation is issued. This is an insurance against someone applying for Confirmation when they are not entitled to do so or an executor failing, to distribute the estate according to law.

After applying for Confirmation at the Sheriff Clerk's Office, the executor- takes the form to a specified insurance company to obtain a Bond of Caution before Confirmation is issued. The Sheriff Clerk's office will provide you with information on Bonds of Caution and application forms and inform you of the company who will carry this out for you. The insurance company will charge a fee for this. The executor returns the application for Confirmation and the Bond along with any fee payable to the Sheriff Clerk's Office which will prepare the Confirmation without delay. Please be advised that normally, the Bond of Caution will not be produced immediately.

Court fees

The Sheriff Clerk does not charge for advice, information or completing the inventory and other documents. However, you will require to pay the statutory Court fee for issuing Confirmation (unless the gross estate is under £5000, in which case no fee is payable). The fee is payable whether or not a solicitor is acting. It is based on the gross (pre-tax) value of the estate:

Fee if the value of the estate is £5,000 or less	Nil
Fee if the value of the estate is over £5,000	£195
Certificates of Confirmation (see below)	£5 each

Please note that fees are changed periodically so you should ask what fee will be payable when you telephone the Sheriff Clerk's Office to arrange an appointment

Issue of Confirmation

The Sheriff Clerk's Office will normally issue Confirmation to you within 3 working days of receiving the inventory, fee and any Bond of Caution. You should take or send this to the holders of the funds to arrange to release any money due. If there are several items of estate in the inventory, you can ask for separate Certificates of Confirmation for specific items. The certificates have the same effect as the original Confirmation but can save you time when collecting the estate. The fee for each certificate is £5.

Liability

You, as executor, must pay from the estate any debts due that the deceased owed. Debts could include overpayments from the Department of Work and Pensions. Debts can be claimed up to 6 months from the date of death, therefore you should keep enough money to pay any debts. If you do not, you may run the risk of being held personally liable for the debt.

If you want to know more about obtaining Confirmation

If you need more information, please contact:

- Your local Sheriff Clerk's Office or
- the Policy and Legislation Branch at our Headquarters Office

Checklist for applicants This checklist may help you remember what to bring to Court. If you are able to print off a copy it will help us complete the application form, but it is not essential. The checklist is available to download on the Scottish Courts Service website — www.scotcourts.gov.uk