

## Grant of Confirmation in Scotland – Lastingpost.com

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### Introduction

The law and procedure relating to probate differs in different parts of the United Kingdom. The information in this section relates to obtaining a Grant of Confirmation in Scotland.

### What is a Grant of Confirmation?

After a person's death, all their assets, including their bank and building society accounts, are automatically frozen. This is the case whether or not they left a Will.

If a person left a Will, the people appointed as Executors in the Will must apply to the Commissary Department of the Sheriff Court serving the area in which the deceased was domiciled at the time of death for a Grant of Confirmation (the Scottish equivalent of probate). Confirmation gives the Executors authority to deal with or "administer" all the property and other assets belonging to the person who has died.

You should be aware that in Scotland, the Executors are known as Executor-datives (male) and Executrix-datives (female).

As part of the application, the Executors will need to provide a valuation of the deceased's assets. Confirmation will not usually be granted until all or some of any Inheritance Tax that is due has been paid.

Only when Confirmation is made, are the assets unfrozen and the Executors can then distribute them in accordance with the deceased's wishes as set out in their Will.

### Is a Grant of Confirmation Always Required?

The Executors will not, however, need to apply for a grant of Confirmation if everything the deceased owned was held in joint names with their husband or wife or if the estate only consists of accounts with Banks or Building Societies that are prepared to pay the money to the person or people entitled to it without seeing the grant. This usually occurs only if the estate has a total (or gross) value of less than £30,000. In this case, the deceased's estate can be distributed immediately.

### Valuation Process

The Executors need to collect details of all the property and all the debts belonging to the deceased.

The property will include any house, car, furniture, savings, life insurance, policies, personal possessions, jewellery and anything capable of being valued and of being transferred to one person to another. Account will also need to be taken of certain

assets that the deceased gave away during the seven years before they died.

The liabilities may include a mortgage, outstanding bills, etc and will also include the funeral expenses.

For help in valuing the deceased's estate, please look at our PDF file. This file is located in the Valuation Process part of the "IF there is a Will" section of the Web-Site.

Unless the deceased's estate is very simple and Confirmation is not required, the Executors should consider appointing a Solicitor for the application for Confirmation and for help administering the estate.

To find a Solicitor in your area of Scotland who specialises in Confirmation work, Please go to <http://www.lawscot.org.uk/find/>

## **Application for Confirmation**

When the valuation has been completed, the Executors must swear an affidavit or oath before a Solicitor.

In the oath, the Executors must confirm that they are appointed by the Will. They must give the value of the gross and net estate of the deceased and they must swear that they will ensure that the estate will be distributed in accordance to the law and the terms of the Will.

It will also be necessary to submit an Inland Revenue Account setting out all the assets and liabilities in the estate. However, the HMRC (HM Revenue & Customs) allows a large number of low value and other estates where no inheritance tax is payable for various reasons to be "excepted estates." In these cases, a brief return of information about the estate as a whole is all that is required.

When the oath has been completed and sworn, the application to the Sheriff Court can be made for Confirmation. The Executors can apply in person or instruct a Solicitor to apply on their behalf.

The Sheriff Court will send Confirmation to you by post along with any Certificates of Confirmation that have been requested.

## **How Long will it Take?**

As each person's circumstances are different, it is difficult to predict with any certainty how long it will take to firstly obtain Confirmation and to then administer the estate. As a rough guide, it should take six to nine months for an estate that includes property.

The reason why the process is slow is that it is normally not possible to collect the assets (apart from joint accounts which automatically pass to the survivor) or indeed to pay the liabilities of the estate out of the assets until Confirmation has been

obtained. This is because all official bodies including Banks, Building Societies, Stockbrokers and Estate Agents will want to see sight of the certificate of Confirmation before proceeding with any sales or transfers to the Executors.

Very often, estates which appear on first sight to be simple prove to be complicated. Conversely, a large estate may prove to be straightforward and problem free.

Typical factors which can create problems and complicate the process include:

1. The need to go through and sort out numerous old papers;
2. Searching for details of lifetime gifts which the deceased may have made;
3. Difficulty in realising assets or in settling tax or other liabilities;
4. Difficulty in tracing beneficiaries or in dealing with beneficiaries who are under age;
5. Foreign property and the need to liaise with foreign lawyers;
6. Trusts in which the deceased had an interest; a
7. Agricultural or business property, especially Lloyd's assets which can't be wound up for at least three years; and
8. Agreeing the values of specific assets with the Inland Revenue.

You should be aware that there may also be an opportunity for tax planning and the use of a Deed of Variation (by which the effect of the Will can be varied in order to reduce tax).

## **Final Winding Up**

Once all the assets have been collected and all the liabilities have been discharged, the net balance of the estate can be ascertained. This balance can then be distributed to the beneficiaries as dictated by the terms of the deceased's Will.

The Executors should not distribute the estate until six months have lapsed from the date of death. This gives individuals or companies with claims on the estate to make themselves known. Once six months have passed, the distribution can be made without any comeback and final winding up can then take place.

When a Solicitor has been employed, they will usually prepare Estate Accounts setting out the full details of the administration of the estate.

## **Legal Rights**

In Scotland, a spouse or a child of the person who has died can claim legal rights over the estate. If this legal right is invoked, any entitlement under the Will is

forfeited. These rights are important as claims can be made for up to twenty years after the death. As good practice, the Executors should obtain formal discharges of these legal rights from the appropriate relatives.

The legal rights state that If the deceased is survived by a spouse and children (or their issue) the spouse has a legal right to one third of the moveable estate (assets other than property and land) and the children have a right to one third of the moveable estate between them.

If the deceased is survived by a spouse only, then this right is increased to one half of the moveable estate. Likewise, if the deceased is survived by children only, their entitlement will be increased to one half equally between them. In the event a child predeceases, their children can raise a claim on behalf of their parent.

## **Further Information**

For further information on obtaining Confirmation in Scotland, please go to [www.scotland.gov.uk/](http://www.scotland.gov.uk/)

For further information on Inheritance Tax, please go to [www.hmrc.gov.uk/cto/pa1.htm](http://www.hmrc.gov.uk/cto/pa1.htm)

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