



February 2005
Scotland

Key Points:

- Replaces previous version dated: February 2004

Dealing with someone's estate

When a person dies, someone has to arrange the funeral and deal with his or her estate (which includes money, property and possessions owned by the person who has died). This factsheet briefly explains how the estate is collected in, the debts paid and the balance distributed to those who are entitled to receive a share in the estate. Further reading may be necessary, and a selection of books on the subject is given in Section 12.

This factsheet does not provide a complete guide to the law. Legal advice should be sought if you are in any doubt about your individual situation. Age Concern Scotland is not able to offer this.

Age Concern Factsheet 27s, *Planning for a funeral*, explains how to register a death and to arrange a funeral.

At the time of writing the court fees are correct but these may change and, therefore, you should check with the Scottish Courts Service.

This factsheet is for people living in Scotland. For anyone living in England, Wales and Northern Ireland, a similar Factsheet 14, *Dealing with someone's estate* is available by telephoning 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

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1. Executors

The people who deal with (administer) the estate are called executors. Usually executors are appointed by the deceased's Will, in which case they are called executors-

nominate. If the deceased left a Will but forgot to appoint executors, or all the executors have died before the deceased, the person who inherits the remainder of the estate after all the debts, taxes and legacies have been paid (the residue) is the executor.

Where there is more than one person who inherits the residue all are entitled to be executors. If the deceased left no valid Will an executor has to be appointed by the Court. This person is called an executor-dative. (See Section 2 for further details)

In general, the tasks of the executors in administering the estate are as follows:

- finding out what the estate the deceased possessed;
- drawing up a full list with the value of each item;
- obtaining confirmation from the local Sheriff Court (which gives authority to act as executor);
- collecting in the various assets and selling what needs to be sold;
- paying debts, funeral expenses, taxes and any other expenses; **and**
- distributing the estate to those entitled under the Will or the rules which apply when there is no Will. (These rules are set out in Section 9).

In all of these tasks the correct legal procedures must be followed. Executors may either administer the estate themselves or get professional help from a solicitor or a bank. Where the estate is a 'small estate' (below £25,000 in total value before deducting the debts), the local Sheriff Court will help in obtaining confirmation, see page 13.

Solicitors and banks will charge a fee to administer the estate based mainly on the total value of the estate and the time spent on it. Banks tend to be more expensive than solicitors. The fee is payable out of the estate and not by the executors personally. Executors who are unhappy about the size of the fee that has been charged by solicitors can apply to the local Sheriff Court for it to be independently assessed (taxed) by an official (called the auditor).

Executors should get professional help if:

- the estate is large;
- a business or farm is involved;
- the Will sets up a trust;
- legal rights are going to be claimed; **or**
- the Will is not clear.

Registering the Will

The deceased's Will is an important and valuable document. To guard against its loss it is prudent for the executors to register it promptly. It can be registered in either the Books of Council and Session (sometimes called the Register of Deeds) at the Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AX, tel 0131 659 6111, or in a register of deeds at the local sheriff court (address in phone book). In either case the registration authority keeps the original and issues certified photocopies, called extracts, that have the same legal status as the original. On registration the Will becomes a public document since any person can inspect the register.

Executors can take the Will themselves for registration, but it is usually submitted by registered or recorded delivery post. If post is used it would be wise to take a photocopy first. Registration in the Books of Council and Session costs £10 for a single page Will plus £1 for every additional page. For this you get one extract. Sheriff court registers are cheaper, £5 plus 30p per additional page.

2. Who can be appointed Executor-Dative

Where the deceased died intestate, which means he did not leave a valid Will, the nearest relative over the age of 16 has to apply to the local Sheriff Court for appointment as executor-dative. This application is made by petition. There is no printed form available so it is advisable to ask a solicitor to do the petition. The fee to appoint an executor by petition is £11. In addition, there will be solicitor fees, which may vary.

If the surviving widow/er inherits the whole estate he or she is entitled to be appointed sole executor. If the widow/er does not wish to take on the job of administering the estate, one or more of the deceased's children can be appointed instead.

Many Sheriff Courts will accept the family's decision and will allow one of the children to apply if a letter from the widow/er declining to apply is produced. However, some courts will allow one of the children to apply only if the widow/er is incapable of acting, and require medical evidence of such incapacity, while others will allow children to be appointed only if the widow/er first renounces any entitlement to the estate.

Where the deceased's widow/er and children share the estate, any or all of them can apply to be appointed executor. If only children survive the deceased parent, any or all of them can apply. If the deceased leaves no widow/er or children, one or more relatives who are to share the estate will be appointed.

There is no limit to the number of relatives who can apply for appointment, although normally just one is appointed. More than three executors can slow down the winding up of the estate.

Once decree has been granted, the executor-dative can apply for confirmation, using the appropriate form, subject to the need for a Bond of Caution. (See Section 4 below).

3. Inheritance Tax

This is a tax payable on the estate left at death plus non-exempt gifts made within 7 years before death. There is no tax due where everything is left between husband and wife and the survivor is domiciled (has their permanent home) in the United Kingdom. Beyond that relationship, tax may be payable, so it is advisable to seek professional help about tax planning. The amount of tax depends on the tax rates and limits. These vary from year to year. Currently no tax is charged on estates where the net value is under £263,000 for the year 2004-2005. It is likely this figure will increase when the next Budget is announced. Inheritance Tax is paid at the rate of 40% of any excess over the inheritance tax limit. Gifts made by the deceased within seven years before death are included in the estate for tax purposes, except for those items, outlined below, which are exempted.

The amount of gifts which may be exempted is to the value of £3,000 in each tax year, plus £3,000 from the previous year if this was not used. Outright gifts to any one person of £250 or less are also exempt.

Exemption is also allowed on wedding gifts - up to £5,000 by each parent or step-parent, £2,500 by each grandparent or great-grandparent, or £1,000 by other people. Lifetime gifts and legacies to charities established in the United Kingdom, political parties, and housing associations or for 'national purposes' eg a museum or university, are also exempt. Again, be aware that the Budget in 2005 may also change any of these figures, as well as making new exemptions or deleting exemptions.

Inheritance tax is administered by the Capital Taxes Office, Meldrum House, 15 Drumsheugh Gardens, Edinburgh EH3 7UG. Its helpline numbers are: 0131 777 4050 and 0131 777 4060. Inheritance tax forms and leaflets are available on the Inland Revenue's website at www.inlandrevenue.gov.uk. Inheritance tax can be complicated and it may be advisable to seek some professional help if you need it.

Inheritance tax is due six months after the end of the month of death, although the account does not have to be submitted for 12 months after the end of the month of death. A penalty is due for late submission without a reasonable excuse.

The tax due on heritable property such as houses and land can generally be paid by instalments over ten years, but tax on non-heritable property must be paid immediately. Also when heritable property is sold, that part of the tax bill must be paid immediately out of the sale proceeds.

Any inheritance tax due by the executors must be paid before confirmation can be obtained. You may have to ask a bank for a loan to pay the tax, since you will not have yet been confirmed and therefore cannot access money in the estate. The loan is repaid from the estate you ingather after you obtain confirmation. Sometimes a bank or building society will issue a cheque payable to the Inland Revenue out of money held in the deceased's account. You can also use any National Savings items to pay the tax.

4. Applying for Confirmation

Executors, whether appointed by the Will or by the Court, normally have to obtain confirmation in Scotland before they can act. Confirmation is a legal document giving the executors authority to receive money and other property belonging to a deceased person from other parties such as a Bank and to administer and distribute it according to the law. The confirmation consists of a photocopy of those parts of the inventory form showing details of the deceased, the executors and a list of all the assets of the estate together with an extra page in which the Sheriff Principal confirms the executors and grants them authority to administer the estate.

Confirmation is obtained from the Sheriff Court for the Sheriff Court District in which the deceased died domiciled, the area in which the deceased was regarded as having his or her permanent home at the date of death. If the deceased was domiciled in Edinburgh Sheriff Court District or was domiciled in Scotland but not in any particular part (for example a Scot working abroad) or died domiciled abroad leaving estate in Scotland confirmation is obtained from HM Commissary Office, 27 Chambers Street, Edinburgh, EH1 1LB. If you are not sure where you should be applying, ask your local Sheriff Court.

Scotland, England, Wales and Northern Ireland are each separate domiciles. If the deceased died domiciled in England, Wales or Northern Ireland, the procedures in those places need to be followed. Special rules apply if the deceased was not domiciled in the UK, such as the Channel Islands and Isle of Man.

Commissary business is dealt with at some but not all Sheriff Courts within each of the six Sheriffdoms. They are listed below:

1. The Sheriffdom or Grampian, Highland and Islands at Aberdeen, Banff, Dingwall, Dornach, Elgin, Inverness, Kirkwall, Lerwick, Peterhead, Stonehaven, Wick.
2. The Sheriffdom of Tayside, Central and Fife - at Alloa, Arbroath, Cupar, Dundee, Dunfermline, Falkirk, Forfar, Kirkcaldy, Perth, Stirling.
3. The Sheriffdom of Lothian and Borders - at Edinburgh, Haddington, Jedburgh, Linlithgow, Peebles, Selkirk.
4. The Sheriffdom of Glasgow and Strathkelvin - at Glasgow.
5. The Sheriffdom of North Strathclyde - at Dumbarton, Greenock, Kilmarnock and Paisley.
6. The Sheriffdom of South Strathclyde, Dumfries and Galloway - at Airdrie, Ayr, Dumfries, Hamilton, Kirkcudbright, Lanark, Stranraer.

The process begins by obtaining the correct forms. These are not only used for confirmation but are also used by the Capital Taxes Office to assess Inheritance Tax. There is now one inventory form for all types of estates called Form C1 which can be obtained from the Capital Taxes Office, Meldrum House, 15 Drumsheugh Gardens, Edinburgh EH3 7UG, tel: 0131 777 4050/60, HM Commissary Office, 27 Chambers Street, Edinburgh EH1 1LB (tel: 0131 225 2525), any Sheriff Court, or main post office in Scotland.

The Estate

The executors are expected to make the fullest enquiries to find out what estate the deceased possessed in Scotland, England, Wales, Northern Ireland and elsewhere. The deceased's share of common property and partnership property are part of the estate. Everything must be included since anybody holding an item is not bound to hand it over to the executors unless it is included in the confirmation. Executors do not need to include in the inventory of the estate property acquired after death, foreign property owned by individuals domiciled outside the UK, certain Government Securities owned by foreigners, certain savings by persons domiciled in the Channel Islands or the Isle of Man, certain Government overseas service pensions, and visiting forces members' moveable property.

The executors will also need to value each item of the estate. The value used for inheritance tax and confirmation purposes is the open market value at the date of death.

The home, other buildings or land

The executors will need to find out from the title deeds exactly what the deceased's interest in the property was, such as sole owner or part owner. A professional valuation is not necessary but may be desirable. Where the deceased owned the property with others and the title contains a survivorship clause (see Section 4) the deceased's share

is dealt with slightly differently. The value of the share has to be entered on the form but not in the section for confirmation.

This is because the share passes automatically to the surviving owners, bypassing the executors, but the share still counts as part of the deceased's estate for inheritance tax purposes.

A tenancy of a croft, farm or business premises are part of the estate and can be very valuable.

Household goods and personal possessions

Normally these need not be listed separately. They can simply be described as such and the aggregate value mentioned. However, valuable items such as jewellery, pictures or antique furniture should be itemised and a professional valuation obtained unless they are going to be sold. In that case, an estimate is sufficient as the sale price can be substituted later.

Banks and Building Societies need to be asked about the balances in accounts held by the deceased. You should send any passbooks or account details. In the case of a joint bank account the deceased is usually taken to own one half of the balance. Any accrued interest due to the deceased up to date of death has to be included.

Cash includes cash held by the deceased or kept at home or elsewhere, cash kept by someone else on behalf of the deceased such as a stockbroker, and uncashed cheques payable to the deceased.

Stocks and shares etc

The deceased's holdings of stocks, shares, and unit trusts must be detailed. A stockbroker will value these for a small fee. Form C3 sets out how to value different stocks and shares.

National Savings Investments must also be mentioned. The Department of National Savings will provide the date of death value of these. The methods of valuation will differ for the various holdings. Do not forget about PEPs, ISAs, bonds, dividends, bonuses, accrued income, accrued interest, and any other sum arising from any policies.

Pensions and Life Policies

The Department for Work & Pensions should be contacted and any Pension or Benefits Book returned to them. It is useful to keep a copy of the page of the book giving the rates of pension or benefit so that this information is available when completing the deceased's Tax Return for the period to date of death. If pension is paid quarterly then the Pensions Central Office at Newcastle on Tyne should be contacted.

If the deceased had an occupational pension or personal pension plan, the provider should be contacted to notify them of the death and to find out whether any arrears of pension or other sums are due. When writing to them, executors should ask for the amount paid in the tax year to date of death since it is needed for the Tax Return.

For a life policy you need to obtain from the company concerned the amount due under the policy. Write giving details of the policy and enclose a certificate of death.

Debts

You should also find out what debts were owed by the deceased since these will reduce the amount of estate . Debts include items such as the funeral account, unpaid household bills, unpaid taxes already assessed and the amounts due on the mortgage and other loans. The lenders will have to be asked for the balance due for the last items. If the deceased was in business there is a greater probability of substantial unknown debts. It would be prudent to advertise for creditors in a local newspaper or trade journal.

If the estate seems to be insolvent (more debts than assets) you should not obtain confirmation. Seek legal advice at once. Executors should not continue to run the deceased's business in this situation as they will become personally liable for the debts.

Other details

The inventory form also asks for details of the deceased (such as full name, address and date of birth and death), how you and any other executors came to be appointed, what relatives survived the deceased and whether the deceased had made substantial gifts within a certain period before death.

You may be able to get help from the Capital Taxes Office, the local Sheriff Court or one of the Citizens Advice Bureaux to complete the form.

The oath

Once you have got all the information and completed the form, the executors applying for confirmation have to swear that it is a full and accurate account of the deceased's estate. One of the executors will take the oath on behalf of all of them. The oath has to be sworn before a Notary Public, a Justice of the Peace or certain officials at the local Sheriff Court. Most solicitors are notaries and may charge about £20 for taking an oath if

they are not involved in obtaining confirmation. You will also have to produce the deceased's last Will and any relevant Codicils and swear under oath that these are the only operative ones known to you.

How to obtain Confirmation in an Excepted Estate

If the deceased's estate is an excepted estate confirmation is obtained by lodging the inventory form C1 together with the Will and any Codicils, other relevant documents (as mentioned on page 3 of Form C1) and a cheque for confirmation dues at the appropriate Sheriff Court or HM Commissary Office (see Section 4 above). The Inland Revenue leaflet IHT 12 (available on www.inlandrevenue.gov.uk) sets out the classes of excepted estates. In outline they are:

- (a) estates below the IHT threshold (£263,000 in 2004/2005) in gross value and where the deceased had made no lifetime gifts with reservation of benefit
- (b) estates below £1m gross where no IHT is payable due to the exemptions for surviving spouses or charities.
- (c) estates of persons domiciled abroad where the gross value of the UK assets does not exceed £100,000.

The court sends the Form C1 to the Inland Revenue for checking and it may turn out that you are liable to pay tax. But the Inland Revenue must notify you of this within 60 days of your receiving confirmation.

How to obtain Confirmation in a Small Estate

If the deceased's estate has a gross value of less than £25,000 (a small estate) you can ask the Sheriff Clerk to prepare the inventory Form C1 for you .

The Scottish Court Service have published Small-Estates: A guide for executors seeking confirmation which is available on its website (www.scotcourts.gov.uk) under the heading "Leaflets and Publications". It contains helpful practical information in an easy to read format and provides a checklist to assist you.

How to obtain Confirmation in Large Estates

For estates other than small or excepted estates, you should fill in Form IHT200, relevant supplementary pages and Form C1. Follow instructions in the Guide How to fill in Form IHT200. Page 29 of that Guide tells you what to do after you have filled in the forms. The Capital Taxes Office will provide help if needed to work out the tax. When the inheritance tax is paid, the Inland Revenue will give you a reference number on Form C1, receipt the form and return it to you. Then send Form C1 and other documents required for confirmation to the Sheriff Clerk as for an excepted estate.

General procedure

The documents are usually sent to the Sheriff Court or HM Commissary Office by post (registered or recorded delivery to ensure they arrive safely) but you can take them along yourself. For small estates personal attendance is preferred and the Sheriff Clerk will complete the forms from the information provided.

There are no confirmation dues if the gross value of the estate does not exceed £5,000. For estates of gross value between £5001 and £50,000 the dues are £81. For larger estates the amount is £114.

If the estate consists of many items you should ask for certificates of confirmation for specified individual items as this speeds up the ingathering of the estate. Certificates cost £3 each if ordered at the same time as lodging the inventory.

If ordered later, the first certificate costs £10 and each subsequent one £3. Certificates are cheaper than a copy or duplicate confirmation which costs £5 if ordered when the inventory is lodged or £12 for the first one (and £5 for each subsequent one) if ordered later.

If everything is in order, the confirmation and any certificates of confirmation will be sent to you within a week or so and the Will is returned. Photocopies of all confirmations issued and the relevant Wills are bound up into a public register.

Intestate Estates and Caution

Where the deceased left no valid Will the nearest relative has to apply to the Sheriff court to be appointed executor-dative (see Section 2). The decree of appointment has to be sent along with the other documents when applying for confirmation. Executors-dative have to provide a guarantee that the administration will be carried out properly and that any losses will be made good. It is a type of insurance policy against any mistakes or misappropriation of funds needed. Widow/ers who inherit the entire estate are not required to provide such a guarantee. This guarantee is called a Bond of Caution (pronounced 'kayshun') and is normally issued by an insurance company.

Caution must be found for the full gross amount (ie the exact amount given in the inventory) without deduction for debts or funeral expenses. Insurance companies charge a single premium based on value of the deceased's estate, say £100 up to £10,000 and, thereafter, about £1.50 per £1,000. There are only two insurance companies that offer this service, Zurich GSG and Royal and Sun Alliance. Zurich GSG offers caution for executors-dative who act without professional help, but Royal and Sun Alliance requires a solicitor to be involved in the administration and distribution of the estate. Generally, the Bond is signed by the executor-dative and is submitted to the insurance company along with a separate Application (Proposal Form) signed by a

solicitor, but a Proposal Form can also be signed by the executor. The Court may accept a Bond of Caution from an individual (such as a friend or relative of the executor) as long as it is satisfied that the individual is rich enough to meet any claims that may arise.

Additional Estate Discovered after Confirmation

If executors discover items which have been left out of the estate or the inventory of the estate needs to be amended, then the executors need an "eik" to confirmation (pronounced "eek"). Form C4 is used to record the corrective inventory. The executors would need to sign this and lodge it with the Capital Taxes Office with the additional tax, if any, payable.

After the Capital Taxes Office have looked at it, they will stamp and return the form to you so you can send it to the Sheriff Court or Commissary Office for the eik to be issued.

5. When Confirmation is not needed

Sometimes it is not necessary to obtain confirmation. But if confirmation is required for some assets or even a single item of the estate then the executor has to apply for confirmation in respect of all the assets. It may sometimes be better to ignore an item of small value which the institution will not release without confirmation rather than spend considerable fees to obtain confirmation for the whole estate.

You do not need to obtain confirmation:

- A. Where assets were held by the deceased and others on a title in terms of which the deceased's share passes automatically to the surviving owners, ie there is a survivorship clause in the title.

Examples of a survivorship clause are 'to A and B equally between them and wholly to the survivor' or more simply 'to A and B and the survivor'. The vast majority of married couples own their homes with a survivorship clause in the title. If you are not sure whether the property contains a survivorship clause you will have to look at the title deeds or ask at the Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AX, tel: 0131 659 6111. The Registers hold records of every piece of land in Scotland.

The cost of inspection varies according to where you are searching, whether in the Land Register or Sasines Register and what type of search it is. In both Registers the search can cost roughly between £2 to £10 plus VAT. You can ask for a copy of a title deed to be sent by post but the cost varies depending on where the deed is registered. In the Land Register there is a charge of £6 per deed plus 50p for each A4 page plus VAT.

Copies from the Sasines Register cost £6 per deed plus the national Archives of Scotland charge of £5 plus VAT. They require 48 hours notice. Alternatively, copies of the deeds can be obtained from the National Archives of Scotland. Registers of Scotland offer a same day service of about £20 for each deed.

Confirmation may not be needed if the deceased had an 'either or survivor' bank account with another person.

The other person can continue to operate the account and very often inherits the deceased share of the money under the Will or rules of intestacy. If the other person does not inherit it then he or she must pay it to the Executor but may refuse to do so without confirmation.

B. Where the assets in the estate are made up entirely of cash (bank-notes and coins) and personal possessions such as a car, jewellery or furniture.

The executor simply hands them over to the beneficiaries.

C. Where the total amount of money held in National Savings accounts, pension funds and by insurance companies and building societies, is less than £5,000.

The holding institution (a bank, building society, insurance company, Department for National Savings etc. or wherever the deceased person had savings, shares, policy certificates, etc.) will on request release the asset. But this is discretionary and it may refuse to do so in your case.

D. Where a 'nomination' had been made by the deceased.

A nomination is an instruction to the holder of property by the owner to pass it to a particular person in the event of the owner's death. Money in the TSB and National Savings could be nominated but nominations have not been allowed since 1981, although earlier nominations are still honoured. There are a few special nominations that are still allowed, money in a friendly society, for example.

General

To find out whether the assets can be obtained without confirmation it is necessary to write to each institution informing them of the death of the deceased and enclosing a photocopy of the Death Certificate (if there is a Will a photocopy of this should also be enclosed), details of the assets they hold and your relationship to the deceased.

At a later stage you may be asked to complete an indemnity form. An indemnity means that you undertake to reimburse the institution if it is proved that someone has a stronger claim to the assets than yourself.

You may also be asked to send the original Will and other documents. They should be sent by registered or recorded delivery post with a request that they be returned as soon as possible. If the Will has been registered you can send an extract, but if you are sending the original it would be sensible to take a copy of it and keep the copy in a safe place.

6. Ingathering and distributing the estate

After confirmation has been obtained, the executors ingather all the assets belonging to the deceased by sending the confirmation or a certificate of confirmation for that asset to each holder of the asset. The executors should always open a separate bank or building society account (called an executry or executors account) into which money from the estate is put and out of which debts and expenses are paid. This will help with the accounts and prevents the estate money becoming mixed up the executors' own money.

The assets may include rental income, life insurance policies, business income and assets, arrears of pension, balances in the deceased's bank and building society accounts, the proceeds from the sale of shares and property, tax refunds.

Funeral and death bed expenses have priority over other debts and can be paid as soon as money is available. Executors are not bound to pay any other debt until six months from the date of death. If they do pay debts within this period and then find they have insufficient assets left to pay other creditors they will have to pay out of their own pocket. However, common sense has to be used. Where the estate has plenty of assets and the deceased is unlikely to have large hidden debts, debts such as household accounts, or minor items can be paid as soon as money is available with the minimum of risk.

Secured debts, such as a mortgage on a house, have to be paid when the property they are secured over is sold. If the property is to be transferred it is best that the security should be paid off and the new owner left to make new financial arrangements.

You may be asked to complete an Income Tax Return for the deceased up to the date of death. If you are unsure about the deceased's sources of income you should ask the Tax Inspector for a copy of the deceased's last Tax Return.

The executors are entitled to claim from the estate 'out of pocket' expenses such as travel, stamps and the like, and also money which has had to be spent in administering the estate (such as confirmation fees, removal expenses, etc.).

The executors cannot charge for their time taken or for their work involved in administering the estate. Often people leave small legacies to their executors to recompense them for the considerable amount of work involved in administering the

estate. The bridging loan and interest, which may have been taken out to pay inheritance tax, must also be repaid.

When all the inheritance tax due has been paid the executors should apply for a Clearance Certificate using Form IHT30. This should be signed by all the executors and sent in duplicate to the Capital Taxes Office. This Certificate stops the Capital Taxes Office from charging any more tax and interest on the assets of the estate.

Once all the taxes and debts have been paid, the estate is distributed either according to the terms of the Will or the intestacy rules (See Section 9). A signed receipt should be obtained from each of the beneficiaries for their legacy or bequest (money, a painting or some furniture). The executors are also liable to pay tax on income and capital gains arising during their period of administration.

Once all the estate has been gathered and distributed the executors should prepare the executry account. This will show all the assets of the estate, the payments made to creditors and beneficiaries, the expenses of administration and taxes paid. The account is sent to the residuary beneficiaries (or all the beneficiaries if there is no Will) so that they can sign it as approved. In a complex estate it is a good idea to send a draft of the account so that any problems can be dealt with at an early stage.

7. Legal rights

The widow/er and children of the deceased have rights to a fixed share of the deceased's moveable estate (roughly everything except land and buildings) whatever the Will says.

These persons can never be excluded from having a right to the estate. These fixed shares are termed legal rights.

Where a widow/er and children survive the deceased the widow/er is entitled to one third of the moveable estate, and the children to another third (split between them). Where the deceased is survived by a widow/er or by children the fraction taken by the widow/er or children between them is increased to one half.

Before distributing the estate the executors should find out whether the widow/er or children are going to claim their legal rights. The widow/er and children must choose between legal rights and what (if anything) they have been left by the deceased's Will. The executors should write to each possible claimant setting out the value of the moveable estate and the provisions made for the claimant in the Will and suggesting that legal advice be taken before deciding whether or not to claim. It would be prudent to obtain from someone who does not intend to claim a signed statement to this effect. Executors should exercise due care where there are minor children as funds should be set aside until they reach the age of 16 and can then decide.

8. Transfer of the home or other property

Where the deceased owned the house or other property together with others and the title contains a survivorship clause, the deceased's share is automatically transferred to the surviving owners. Executors need take no steps to transfer it. In other cases legal documents will be necessary to effect the transfer to beneficiaries or purchasers. Although it is possible for executors to do this themselves it is not advisable. They should ask a solicitor to help because a mistake can be costly to put right later on.

9. Intestacy rules

When a person dies without leaving a valid Will he or she is said to have died intestate. The estate is distributed amongst the surviving relatives according to the rules of intestacy set out in the *Succession (Scotland) Act 1964*. The rules are complicated and the following is a very brief account. You may wish to also consult Factsheet 7s, *Making your will*, for more information on these rules.

The widow/er inherits the house (up to £130,000 in value) or £130,000 if over that value, furniture up to £22,000 in value, and a cash sum of £35,000 if the deceased also left children or other descendants, or £58,000 if not. These figures change from time to time.

The widow/er also gets a proportion of any remaining moveable estate. The children or descendants inherit any remainder after the widow/er's claims have been met. If there are no children or descendants the remainder is inherited by the deceased's parents, brothers, sisters or their descendants.

Where the deceased leaves a widow/er but no descendants, parents, brothers, sisters or descendants of brothers or sisters the widow/er simply inherits the whole estate.

Where there is no widow/er the relatives inherit the estate in the following order:

1. Children, with issue of a predeceasing child taking that child's share.
2. Parents, brothers and sisters with issue of a predeceasing brother or sister taking that person's share.
3. Uncles and aunts, with issue of a predeceasing uncle or aunt taking that person's share.
4. Grandparents.
5. Remoter relatives (or their living descendants) step by step until hopefully someone is found to inherit.

Executors would be wise to check with a solicitor as to how the rules operate in the estate they are administering before distributing. Where no relatives however remote can be traced, the Crown inherits the estate.

Sums inherited by children under 16

Children may be left legacies, may be due legal rights or succeed on intestacy. Where the sum is below £5,000 the executors may pay it to the child's parents or guardian to invest on behalf of the child. For sums over £20,000 the executors must contact the Accountant of Court, 11 Parliament Square, Edinburgh EH1 1RF, tel 0131 240 6758/60. The Accountant will decide how best the money is to be managed. For amounts between £5,000 and £20,000 the executors may seek directions from the Accountant, but they are not required to do so.

10. Summary of steps where there is a Will

1. Make a photocopy of the Will or send it by recorded delivery for registration in Books of Council and Session/Sheriff Court Register of Deeds and obtain an official copy called an Extract.
2. Write to all beneficiaries. Consider legal rights. Inform beneficiaries of choice of claiming legal rights or claiming under the will.
3. Obtain information for inventory form. List assets and liabilities with their value, having obtained this information from the respective authorities.
4. Complete inventory and have it sworn as accurate by one of the executors.
5. Calculate approximate residue and inheritance tax and cash flow. Arrange bridging loan to pay tax if necessary.
6. Pay inheritance tax to Capital Taxes Office if due. Note the six-month time limit. Note instalment payments on heritage and non-instalment payments now due.
7. Once the inventory is back from the Capital Taxes Office, send the receipted form and Will by recorded delivery to Sheriff Clerk, or in Edinburgh to the HM Commissary Office, requesting confirmation and certificates of confirmation. Send cheque to pay for confirmation dues.
8. Exhibit confirmation or Certificates to appropriate authorities. Gather in funds. Realise assets.
9. Clear bridging loan borrowed to pay inheritance tax if applicable. Settle all debts. Make over legacies to beneficiaries. Get receipts signed. Refund any expenses paid by the executors. Make payments to account of residue.

Finalise Income Tax due by deceased to date of death with Inland Revenue. Write to Tax Inspector about Income and Capital Gains Taxes due by estate and complete Executory Tax Return.

10. If any inheritance tax payable write to Capital Taxes Office, agree values, pay outstanding inheritance tax. Obtain a clearance certificate.
11. Prepare draft executory account showing how the estate has been administered.
12. Complete administration of estate. Retain some funds for tax payments etc. Make over final portion of residue of estate. Give beneficiaries appropriate tax deduction certificates, a copy of the executory account and other relevant documents.
13. Put all documents away safely.

11. Summary of steps if there is no Will

1. Obtain details of relatives;
2. Obtain details of estate assets and liabilities;
3. Appointment of executors-dative by petition in Sheriff Court;
4. Apply for Bond of Caution from an insurance company;
5. Follow same procedure as that for a Testate Executory, as detailed in Section 10 above.

12. Further reading

Besides the publications referred to in the text of this factsheet it might be useful to consult the following:

Wills and Probate (includes Scottish sections). Available from Which Ltd, Freeport, Hertford G14 1LH, 0800 252 100 (free call).

Currie on Confirmation. Available from library.

IR45: What to do about tax when someone dies.

IHT3: Inheritance Tax. An Introduction.

IHT13: Inheritance Tax and Penalties.

IHT14: Inheritance Tax. The personal representatives' responsibilities.

IHT15: Inheritance Tax. How to calculate the liability.

IHT19: Delivery of a reduced Inland Revenue Account.

These leaflets, amongst others dealing with specific aspects of inheritance tax, produced by Inland Revenue are available free from local Tax Offices or from the website: www.inlandrevenue.gov.uk/leaflets/iht.htm.

13. Further information from Age Concern

The following factsheet may be of use:

Factsheet 7s *Making your will*

If you would like

- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- further information or if you have questions arising from this factsheet
- to receive this information in a different format

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.

For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern's series of over 40 factsheets is available as a subscription service to those whose work involves older people; for details of this service please call us on 08705 00 99 66 (national call rate) and ask for our factsheet subscription leaflet.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation towards the work of Age Concern Scotland, you can send a cheque or postal order (made payable to Age Concern Scotland) to Age Concern Scotland, 113 Rose Street, Edinburgh EH2 3DT. Find out more about Age Concern Scotland online at www.ageconcernscotland.org.uk, or Age Concern England at www.ageconcern.org.uk.

If you have questions arising from this factsheet, or it does not cover the information you require, please contact the Scottish Helpline for Older People, a confidential and impartial service managed by Age Concern Scotland, tel: 0845 125 9732 (local call rate), Monday to Friday 10am - 4pm. The address is Age Concern Scotland, 113 Rose Street, Edinburgh EH2 3DT.

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No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt.

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