

# WHAT TO DO AFTER A DEATH IN SCOTLAND

...practical advice for times  
of bereavement

7th Edition



SCOTTISH EXECUTIVE

Making it work together

Most people at some time in their lives find themselves responsible for making the arrangements after the death of a relative or a friend. It is a difficult and worrying time and this booklet tells you some of the things that have to be done. *It applies to Scotland only.* Benefit Agency leaflet D49S “*What to Do After a Death In Scotland: Social Security Supplement*” gives extra information on help you can get from Social Security. It is available from a Registrar’s office or Social Security office. There is a similar leaflet, D49, which applies to England & Wales and is available from offices there.

There may be other information or advice that you need:

### **Personal Advice**

You can get practical advice from a funeral director, your family doctor, a solicitor, the Social Work Department of your Local Authority and Citizens Advice Bureaux. If a health visitor or district nurse attended the person who has died, he or she may be able to help; if the death was in hospital, ask the Charge Nurse who may refer you to the hospital chaplain or social worker. You may feel that you need to talk with someone sympathetic who is outside your immediate family or with other people who have been through a similar experience. In addition to ministers of religion there are several organisations which give this kind of support; the addresses of local organisations may be obtainable from the telephone directory or the Citizens Advice Bureau or Age Concern group in your area or, in cases of difficulty, by writing to: Citizens Advice Scotland, 1st Floor, Spectrum House, 2 Powderhall Road, Edinburgh EH7 4GB, or Age Concern Scotland, 113 Rose Street, Edinburgh EH2 3DT.

This leaflet has been prepared by the Scottish Executive Justice Department. Additional copies are available from the Scottish Executive Justice Department, Civil Law Division, Room 2W(R), St Andrews House, Regent Road, Edinburgh EH1 3DG, telephone 0131 244 3581, or from your local Citizens Advice Bureau.

The most up-to-date version of this booklet is also available on the Internet in the Scottish Executive site at :

[www.scotland.gov.uk](http://www.scotland.gov.uk)

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## **PART I. FROM THE TIME OF DEATH TO THE FUNERAL**

### **1. FIRST THINGS TO BE DONE**

#### **If death has occurred at home:**

- Contact the family doctor (see section 3).
- Contact the nearest relative.
- Contact the police if the death was violent, accidental, unexpected, if there are unusual circumstances or if the cause of death is not known. If the police are called, do not touch or move anything in the home (see section 4).
- Contact the relevant minister of religion.
- If it was the wish of the dead person or their nearest relative that the body or organs should be donated for transplant or medical research purposes, the doctor will have to be contacted *quickly* so that the corneas (the front part of the tough outer shell of the eyeball) can be removed. Other organs cannot normally be used when death occurs at home, but the body can still be donated to medical science (see section 6).
- Contact an undertaker who will arrange for the laying out of the body.
- Find out if there is a will, and if so, where it is and who is responsible for dealing with it (see sections 10 and 11).

#### **If death occurs in hospital:**

The Charge Nurse or the police will tell the nearest relative and will arrange a convenient time for them to attend the hospital, when they may be asked to:

- Identify the body, if the person was not a patient of the hospital.
- Authorise a post mortem examination when clinicians want to hold one, although authorisation is not required when a post mortem examination is legally required (see section 4).
- Provide either confirmation of the estate or receipt as beneficiary to allow them to take away any personal possessions.

- Tell the hospital staff if the person wished to donate their organs after death. It is more likely that hospital staff will approach the nearest relative if the circumstances are likely to favour organ donation. More details are given in section 2.
- Let the hospital staff know if the body is to be donated to medical science (see section 6 for more information).
- Contact an undertaker who will arrange for the laying out of the body.
- Find out if there is a will, and if so, where it is and who is responsible for dealing with it (see sections 10 and 11).
- Obtain a death certificate.

## 2. DONATIONS OF ORGANS FOR TRANSPLANTS

If the death happened in hospital, the staff may approach you about the possibility of organ donation for transplant purposes. All the major organs – kidneys, heart, lungs, liver and pancreas can be used in transplantation, so one donor can help several of the thousands of people on the waiting lists. A new organ will very often save a life. In other cases, it will free the recipient from long and painful treatments such as dialysis.

As organs for transplantation have to be removed very soon after death to improve the chances of successful outcomes, hospital staff have no option but to approach you in the very early stages of your bereavement. The approach will be made by a dedicated member of staff called a transplant co-ordinator, who is trained to discuss the subject in as sensitive a manner as possible. The transplant co-ordinator will want to establish first of all whether your relative had expressed a wish to donate their organs. This might have been in conversation during their last illness, or in writing, for example by carrying an organ donor card or by putting their name on the NHS Organ Donor Register. Where there is no such indication of your relative's views, the hospital staff will wish to check whether he or she expressed any objection to organ donation.

### 3. GETTING A MEDICAL CERTIFICATE

#### **If death occurs at home**

If death occurs during the night and is sudden and unexpected, the doctor should be notified at once, otherwise the doctor can be called in the morning.

The doctor will:

*either* issue a medical certificate of cause of death needed by the registrar, provided that there are no unusual circumstances. If the body is to be cremated, the doctor will arrange for the signature of the second doctor required to complete the cremation certificate. Doctors charge fees for providing cremation certificates;

*or* in a few cases, report the death to the Procurator Fiscal (see section 4).

#### **If death occurs in hospital**

The hospital will:

*either* issue a medical certificate of cause of death needed by the registrar, provided the cause of death is quite clear. The hospital staff may ask you to consider the possibility of authorising a hospital post mortem examination, if they feel that would provide valuable information about your relative's final illness;

*or* in a few cases, report the death to the Procurator Fiscal (see section 4).

Should you wish more information about hospital post-mortem examination, a leaflet is available from the hospital.

Note: If the actual time of death is not known, the doctor may estimate the time of death.

## 4. THE PROCURATOR FISCAL

### **The role of the Procurator Fiscal**

The Procurator Fiscal has a duty to investigate all sudden, suspicious, accidental, unexpected and unexplained deaths and any death occurring in circumstances such as to give rise to serious public concern. This duty is separate from the Procurator Fiscal's role in the investigation and prosecution of crime. Where a death is reported, the Procurator Fiscal will investigate the circumstances of the death, attempt to find out the cause of the death and consider whether criminal proceedings or a Fatal Accident Inquiry is appropriate. In the majority of cases reported to the Procurator Fiscal early enquiries rule out suspicious circumstances and establish that the death was due to natural causes.

Deaths are usually brought to the attention of the Procurator Fiscal through reports from the police, the Registrar, GPs or hospital doctors. However, anyone who has concerns about the circumstances of a death can report it to the Procurator Fiscal. There are certain categories of deaths that must be enquired into, but the Procurator Fiscal may enquire into any death brought to his notice if he thinks it necessary to do so.

The first task for the Procurator Fiscal is to find out the cause of death. The police will provide full information about the circumstances of the death. They will normally interview relatives and others who can provide information about the circumstances of the death.

### **Post Mortem Examination**

In some cases reported to the Procurator Fiscal it will be necessary to instruct a post mortem examination, for example, where no doctor is able to issue a death certificate or where criminal proceedings or a Fatal Accident Inquiry may be considered. The consent of the next of kin is not required where the post mortem examination is instructed by the Procurator Fiscal. The examination will be carried out as soon as possible, normally within a day or two of the death. If the sudden or unexplained death is that of an infant or child, the Procurator Fiscal

may be more likely to ask for a post mortem examination. If there are any cultural, religious or other objections to a post mortem examination it is important to tell the Procurator Fiscal as soon as possible. There may be legal reasons why a post mortem is unavoidable, but where possible the wishes of the next of kin will be respected.

### **Further investigation**

In most cases, the Procurator Fiscal's investigations are complete when the death certificate has been issued. However sometimes the Procurator Fiscal will require to carry out further investigations into the death, for example where there are suspicious circumstances or if it appears that the death may have been the result of suicide. The time necessary to investigate the death can vary considerably depending on the circumstances.

### **Victim Information and Advice**

The Victim Information and Advice Service is a division of the Crown Office and Procurator Fiscal Service. One of its aims is to help bereaved relatives where the Procurator Fiscal is involved in investigating a death. The Victim Liaison Officer may contact you if there is to be a meeting with the Procurator Fiscal, or if criminal proceedings or a Fatal Accident Inquiry are being considered. They will assist you in dealing with the Procurator Fiscal by passing on any questions you may have. If you wish, they can also come with you to support you at any meeting with the Procurator Fiscal.



## 5. HOW TO REGISTER A DEATH

### **When?**

The death must be registered within eight days by the Registrar of Births, Deaths and Marriages, but it is desirable to have the death registered as soon as possible. A death must be registered even if the body is to be taken outwith Scotland for interment. Registration of a death must also take place before cremation.

### **By whom?**

The death may be registered by any relative, any person present at the death, the executor or other legal representative, the occupier of the premises where the death took place or, if there is no such person, any other person possessing the information needed for registration.

### **Where?**

Deaths may be registered either by the registrar for the registration district in which the death took place or, if the person had lived elsewhere *in Scotland*, by the registrar for the registration district of the dead person's home address, whichever is more convenient.

Get the address of the Registrar of Births, Deaths and Marriages for the area from the undertaker, the telephone directory, the hospital or doctor or the Post Office; and then check when the registrar is available.

### **Take with you:**

- Medical certificate of death (see section 3).
- Any pension book, certificate or document relating to any pension or allowances which the person was receiving from public funds.
- NHS medical card, if available.
- The dead person's birth and marriage certificates, if available.

## **Tell the Registrar:**

- Date, time and place of death.
- Full name, occupation and postal address of the dead person and his or her date and country of birth.
- If the person was married, widowed or divorced, the full name of the husband or wife and the occupation of the husband. If the person had been married more than once, details of previous spouses are also required.
- If the person was married at the date of death, the date of birth of the surviving widow or widower.
- The full name and occupation of the dead person's father, and the full name and maiden surname of his/her mother.
- Whether the person was in receipt of a pension or an allowance from public funds.
- The name and address of the person's NHS doctor.

## **The Registrar will give you:**

- A Certificate of Registration of Death (form 14), to be given to the undertaker, so that the funeral can go ahead.
- A form 334/SI, "Registration or notification of death" for use in obtaining or adjusting Social Security Benefits or for National Insurance purposes.
- On payment of the appropriate fee, an extract of the entry recorded in the Register of Deaths. This may be required for pension, insurance, savings bank, premium bonds or other purposes.

## **If death occurs abroad:**

Register the death according to the local regulations in the country and get a certificate of death.

Register the death with the British Consul, so that a record of the death will be kept in Scotland, and you will be able to get a copy later from the General Register Office for Scotland, New Register House, Edinburgh EH1 3YT, telephone: 0131 334 0380.

**If a baby is still-born** (born dead after the 24th week of pregnancy):

Register the still-birth within 21 days.

Give the registrar a certificate of still-birth signed by the midwife or doctor.

If no midwife or doctor was present, the parents will have to sign a form which can be obtained from the registrar. (For help with the funeral of a still-born baby, see also section 8.)

## 6. PLANNING THE FUNERAL

Do not make the final funeral arrangements until you are sure that the death does not have to be reported to the Procurator Fiscal, since this may affect the date when the funeral can be held. But you should start planning the funeral as soon as possible.

### **Pre-Paid funeral plans**

A number of people now pre-arrange and pre-pay for their funerals by taking out a pre-paid funeral plan or funeral bond. These are different from insurance policies in that they do not pay a monetary amount on death but provide an entitlement, usually for a specific funeral director to carry out the funeral which has been paid for in advance.

Before contacting a funeral director or making any arrangements, check whether the person had a pre-paid funeral plan or bond. Look among personal papers at home or with relatives. If such a document exists then it is advisable to contact the plan or bond provider, who will give details as to which funeral director should be contacted.

### **Funeral director or undertaker**

You can make arrangements for a funeral yourself, but most people go to a funeral director who can take over all the arrangements. Funeral directors are normally a most helpful support to the family.

### **You will need to decide:**

- Where the body is to rest while awaiting the funeral.
- The time and place of the funeral.
- How much you intend to spend on the funeral.
- Whether to have a funeral service.
- Whether to have flowers, or to make any donations to a named charity.
- Whether to put a notice in the newspapers.
- Whether the body should be buried or cremated.

You may wish to obtain estimates from at least two funeral directors.

A funeral director who is a member of the National Association of Funeral Directors (NAFD) must give a full estimate when you first make enquiries. This estimate will include what is called a “basic simple funeral” as well as any additional services. Check when the bill will have to be paid.

A “basic simple funeral” will include a coffin, a hearse and one car. It will not include things like church or crematorium fees, flowers or newspaper notices. If you are not satisfied with the service you get, or the price you have to pay, the NAFD have a complaints and arbitration service which you can use.

### **Funeral service**

If you wish to have a funeral service you should contact the minister of religion as soon as possible. Most ministers appreciate a personal approach by relatives and can be helpful in many ways. If you wish to have the services of a minister but do not know one in the area, most funeral directors will do their best to advise and in some cases arrange for one to officiate at the service.

If you would prefer to have a non-religious service at the funeral, you may be able to get help with this by contacting the Humanist Society of Scotland. The Society produces a leaflet describing its views and purposes and it can be contacted at the address given at Part V of this booklet.

**If the body is to be given for medical teaching purposes,** the dead person will usually have made arrangements in advance with a Medical School. A written statement of the intention to benefit medical science should therefore be among the dead person's papers. You should contact the Anatomy Department of the appropriate University Medical School (Aberdeen, Dundee, Edinburgh, Glasgow or St Andrew's), and they will advise on the procedures involved. Before a body can be accepted by a Medical School, there are several factors which have to be considered, such as:

- place of death;
- cause of death;
- condition of body at time of death; and
- extent of demand in the Medical School.

Bodies are normally refused if there has been a post mortem examination, or if any major organs have been removed. In normal circumstances, the costs of removing the body, and burying or cremating it are normally borne by the Medical School. A body used for teaching purposes will normally be cremated or buried within 3 years at a special memorial service.

### **If death occurs abroad or in England, Wales or Northern Ireland**

You can *either* arrange a local burial or cremation to avoid the expense of bringing the body back;

*or* bring the body back to Scotland once you have got the certificate of death and an authorisation for the removal of the body from the country of death from the appropriate authorities, and arrange a funeral in Scotland. For this you will need *either* an authenticated translation of a foreign death certificate *or* a death certificate issued in England, Wales or Northern Ireland, depending on the country of death.

## 7. CREMATION OR BURIAL

The decision on whether to have a cremation or a burial will depend on a number of factors such as the person's own wishes, the views of the executor, the wishes of the next of kin and the costs involved. It should be noted that any stated wish by the person who has died is not binding on the executors or the next of kin in deciding on the type of funeral. If a death has been reported to the Procurator Fiscal, he will usually allow the body of the deceased to be released for cremation or burial once the cause of death has been established. The Procurator Fiscal has to authorise the release of the body and written permission must be obtained before a cremation can be carried out. A form called an E1 is used and can be collected from the Procurator Fiscal's office. The undertaker will be in contact with the Procurator Fiscal and will be able to advise about when to make the funeral arrangements.

### **Cremation**

No one can be cremated until the cause of death is definitely known. Four forms, from the funeral director or crematorium, have to be completed. They are:

- An application form signed by the next-of-kin or executor.
- Two cremation certificates signed by the family doctor and another doctor who will charge for this (there will also be charges for this even if death has occurred in a hospital).
- A third certificate signed by the medical referee at the crematorium who has power to refuse cremation, require a post-mortem examination or refer the matter to the Procurator Fiscal.

It should be noted that cremation cannot normally take place until the death has been registered and a certificate of registration of death issued by the registrar has been produced to the crematorium authorities.

If the death has been referred to the Procurator Fiscal, the two doctors' cremation certificates are not needed. The Procurator Fiscal will give a certificate for cremation.

If death occurred abroad (including the Isle of Man and the Channel Islands) and you want to arrange a cremation in Scotland, you will need to obtain an order from the Scottish Executive Health Department. To apply for this, take or send the documents which accompany the body – amongst which must be a death certificate or equivalent, in English, showing clearly the cause of death – together with the application form for cremation to the Scottish Executive Health Department, Public Health Division 1, St Andrew’s House, Edinburgh EH1 3DG. Normally this procedure will be undertaken on your behalf by the funeral directors who are making the funeral arrangements. If death occurred in England, Wales or Northern Ireland the procedure to arrange a cremation is the same as that to be followed when the death occurred in Scotland.

### The charges

Most crematoria are run by the Local Authority. The charges usually include the medical referee’s fee and use of the chapel, and may include the chaplain’s fee for a short service.

### The ashes

Ashes can be scattered in a garden of remembrance, or a favourite spot chosen by the dead person, buried in a churchyard or cemetery or kept in an urn. It is important to make quite clear your wishes about the ashes. If no wishes have been expressed, it is the responsibility of the crematorium staff to contact the relatives before disposal. Arrangements can be made for the placing of a memorial plaque at the crematorium.

### **Burial**

Find out if the person had already paid for a lair in a churchyard or cemetery, by checking the will (see section 10) and looking through their papers for the necessary documents. You should give these to the funeral director. If not, you will have to buy one. Ask the funeral director how to arrange it.



## 8. HELP WITH THE FUNERAL

Normally the funeral is arranged by a member of the family or a close friend. This section explains what happens when there is no surviving family or friends available or they are not able to arrange the funeral. There are also other circumstances in which public authorities will help with or arrange a funeral. These are explained below.

### **When someone dies in hospital, a local authority home or in temporary accommodation**

The funeral may be arranged by the NHS Board, NHS Trust or the Social Work Department of the Local Authority. Whichever authority arranges the funeral may claim on the deceased person's estate.

Ask at the hospital or the home.

### **In the event of a still-birth**

The NHS Board may arrange and meet the cost of funerals of still-births occurring in hospitals or in the community under the NHS.

### **If no other arrangements can be made**

The Local Authority has a duty to bury or cremate a dead person. It may also claim on the estate. Ask at your local Council office.

Funerals conducted by public authorities are conducted with dignity and respect and bear no resemblance to the "paupers' burials" of the past. Some local authorities prefer to carry out cremations rather than burials, but the wishes of the person or his/her relatives are normally respected.

## 9. PAYING FOR THE FUNERAL

Funerals can be expensive. Check where the money for the funeral will come from before finalising arrangements, otherwise, if there is not enough money available, you may have to bear the cost yourself. The cost can be met from the following:

### **The money and possessions left by the dead person**

Reasonable funeral expenses take priority over other debts on the person's estate. The bank account may be frozen unless it is a joint account. You should ask the branch manager of the bank in which the account was held. The manager will be able to explain this further to you.

There are organisations who may release the money to you on the evidence of the death certificate if the overall value of the deceased's estate is small and there are no complications. Amongst these are the Department for National Savings and Building Societies.

In cases where a person with a building society account dies leaving a sum of money in the account not exceeding £5,000, the building society will pay such money to a person who can provide evidence of death and that the person claiming the amount is entitled to do so. This enables the release of money to a needy beneficiary without having to await a formal legal decision.

If the person had been living in hospital or a residential home, the body and possessions—up to a certain figure fixed by the relevant local authority—will be handed over to the nearest relative in exchange for a receipt or to a person with written authority from whoever is dealing with the will. Any belongings worth more than the figure cannot be released until confirmation has been obtained.

### **Funeral payments from the Social Fund**

You may be able to get help if you or your partner are receiving one of the following benefits: Income Support, income-based Jobseeker's Allowance, Working Families Tax Credit, Housing Benefit, Council

Tax Benefit, Disabled Persons Tax Credit; and it must be reasonable for you to have taken responsibility for the funeral expenses. This will usually mean that you were the partner of the deceased, or if they had no partner, you were a close relative or friend of the deceased. You may be asked about the financial circumstances of any parent, son or daughter of the deceased. You may also be asked about the financial circumstances of the deceased's other close relatives. The person who died must have been ordinarily resident in the United Kingdom at the date of death, and the funeral must normally take place in the United Kingdom. (You may be able to get a Funeral Payment if the funeral takes place outside the United Kingdom, but you should check with your local Social Security office, as this will depend on the circumstances.)

A Funeral Payment covers the costs of a simple respectful low cost funeral and will pay the necessary burial or cremation costs and up to £600 for other funeral expenses. (You may not be entitled to a payment if expenses have been met by a pre-paid funeral plan.) If you get a Funeral Payment, it will have to be paid back from any estate of the person who died.

To claim, complete form SF200 "Funeral payment from the Social Fund", available from your local Social Security office. You must claim within three months of the date of the funeral. For more information, get leaflets SB16 "A Guide to the Social Fund" and SFL2 "How the Social Fund can help you" from your local Social Security office.

### **War pensioners' funeral expenses**

If the person was a war pensioner the Veterans Agency will pay for a basic funeral if the war pensioner died from a disablement for which he or she was entitled to a pension, or was receiving in-patient treatment for this disablement, or if the war pensioner was entitled to Constant Attendance Allowance.

### **A cash sum or pension**

These may be paid by the dead person's employer or trade union, professional body or other association.

### **Insurance policies of the dead person**

Tell the insurance company as soon as possible. They will tell you exactly what documents they need before they can meet a claim for insurance. You should make certain that a receipt is obtained when rendering insurance policies. You should also check carefully the amount due to be paid before signing for any money. It is also advisable to make sure that all policies are still in force and what their true values are before committing yourself to funeral costs.

### **A tax refund**

A refund may be payable if the person was paying tax. Contact the Inland Revenue to find out if a refund is due.

## **PART II. POSSESSIONS, PROPERTY AND CHILDREN**

The law on succession (i.e. what happens to a dead person's money and property) is very complicated. You should note that this booklet *is a guide only*. If in doubt, you should consult a solicitor before doing anything. Legal advice is available free or at a low cost for anyone with limited means, or you can ask your Citizens Advice Bureau to advise you. Where the total value of possessions is small (see section 12) your local sheriff clerk — whose address can be obtained from the telephone directory or your local Citizens Advice Bureau — will be able to help. You should telephone to arrange the interview.

### **10. IS THERE A WILL?**

#### **A Will**

States what the person wants to happen to his or her money, property, possessions.

May state what the person wished to happen to his or her body; whether he or she wished to be cremated or buried or wished his or her body to be bequeathed to a hospital; or whether any organs were to be donated; what sort of funeral was wanted.

May appoint one or more people as executors, to be responsible for paying debts and dealing with money, property, and possessions.

May nominate a person to act as a guardian to any children.

#### **Finding the Will**

It is important to find the will as soon as possible. Look amongst personal papers at home, in the bank, with the lawyer or with relatives. Whether or not the will is found, the next stage is the appointment of executors.

## 11. THE EXECUTORS

### **What are executors?**

Executors are representatives of the dead person who pay off any debts or taxes and distribute the property and possessions to those entitled to them.

### **Who becomes an executor?**

An executor may be named in the person's will. If no executor is named or if there is no will, your solicitor or the sheriff clerk will arrange for the court to appoint an executor (called executor dative) who will normally be the surviving spouse or, if there is no surviving spouse, the next-of-kin.

### **What does an executor do?**

An executor must:

- (i) *make an inventory (a list)* of all the money, furniture, savings and any house or other property belonging to the person who has died — collectively known as his/her estate;
- (ii) *pay inheritance tax*, if this is due. For deaths on or after 6 April 2002 Inheritance Tax is not in general payable unless the total value of the deceased's own estate together with any property life rented and any gifts made within 7 years of the death exceeds £250,000. This threshold changes over time.

Further information and advice can be obtained from the Inland Revenue Capital & Savings, Meldrum House, Drumsheugh Gardens, Edinburgh EH3 7UG, telephone 0131 777 4000.

- (iii) *obtain confirmation to the estate*. Confirmation is the legal document which gives the executor authority to receive payments due to the estate and to make payments due on the estate. Confirmation may not be required in some small estates (see "Small Estates" below);
- (iv) *in-gather the estate* (see section 12);
- (v) *distribute the estate* to those entitled to it (see section 13).

## **Does an executor need a lawyer?**

It is possible for executors to handle estates themselves, but they may decide to employ lawyers to do this. Even if doing the executory on their own, the executor may consider it to be advisable to seek advice on specific points from a Citizens Advice Bureau or a lawyer. The executor's expenses, including the lawyer's charges, are met from the deceased person's estate.

Dealing with a large estate or one where a house or other property is involved can often be very complicated and time consuming; in the event of any mistakes being made, the executor is legally responsible. In these cases if the executor is in any doubt about his or her ability to carry out the correct procedures, or if there is any dispute, the executor is strongly advised to consult a solicitor. In the case of small estates, special simplified procedures apply which make it easier for an executor to deal with the estate without consulting a solicitor (see section 12). The executor is still legally responsible for any mistakes, however, and even with small estates procedure, the executor's work is quite complicated and time consuming.

## **12. SMALL ESTATES**

### **What is a small estate?**

All estates with a total (gross) value of less than £25,000 are classed as small. This figure may be changed from time to time. You should check with your local Citizens Advice Bureau or with the sheriff clerk what the the current limit is. It should be noted that confirmation need only be obtained if required by a fund holder e.g. a bank.

### **Confirmation without a solicitor**

If you are the executor of a small estate you may choose to employ a solicitor to obtain confirmation from the court, as with a larger estate, or you may obtain confirmation without a solicitor, in which case there are special procedures which provide for the sheriff clerk to help you. The advantage of doing it without a solicitor is that you avoid paying

solicitor's charges. You will only need to pay the statutory confirmation fee which must be paid before confirmation is issued. On the other hand, even if you obtain confirmation without a solicitor, you may still require a solicitor to assist in interpreting any will and dividing up the estate.

You should note that after confirmation to a small estate has been obtained, the sheriff clerk cannot assist the executor any further.

If you wish to obtain confirmation without a solicitor, you are assisted by the sheriff clerk, who prepares the documents. It is advisable to consult the sheriff clerk early on to ensure that you are collecting the correct information. You should telephone or call at your local sheriff clerk's office to arrange an appointment.

The procedure then varies according to whether or not there is a will:

### **If there is a will**

You should go to the sheriff clerk's office and take with you:

- The will.
- Personal details of the dead person and his or her family.
- A full list of the estate and its value as it stood at the date of the death including any interest, dividends or bonuses to be added to any bank accounts, stocks and shares or insurance policies.
- The certificate of death.

The sheriff clerk will complete the necessary forms and if no further enquiries are necessary will issue confirmation within a few days.

### **If there is no will**

If you are applying to be appointed executor (see section 11) you should provide the sheriff clerk's office with the same information as that required where there is a will. The proceedings in the issue of confirmation are the same except that there may be a need to obtain a "bond of caution" (pronounced kay-shun), which is a guarantor's agreement from an individual or from an insurance company that the executor will carry out his or her duties correctly and insures against



losses in the handling of the estate. A company will charge a fee for this. You will be asked to provide proof of your identity and of your relationship with the person.

The sheriff clerk will advise on any need or procedure required.

**After confirmation to the small estate has been obtained**, you will need to:

In-gather the person's property. The confirmation is your authority to receive payments from the banks, insurance companies and other organisations, institutions or persons who have property or money belonging to the dead person. You will need to produce the confirmation to obtain payments. Where there are many items in an estate situated in different places this can slow up the process and the sheriff clerk will, if asked, provide for any individual item a certificate of confirmation which will serve the purpose of the full confirmation for that item. A small fee is payable for any certificate.

Distribute the property to those legally entitled to receive it (see section 13). You may wish to consult a solicitor before doing so; if there is any doubt, a solicitor should be consulted.

## 13. DISTRIBUTION OF PROPERTY AND POSSESSIONS

### **A. If there is a Will**

The dead person's property and possessions will be distributed in accordance with his/her wishes, by executors, after confirmation has been obtained, subject to payment of the legal rights due to his/her spouse and children.

The executor should not distribute any of the estate to those entitled to it until a period of six months has passed since the date of the death. This is to allow persons or companies with a claim on the estate to make the claim known. After that period the executor may distribute the estate without having regard to any possible claims which have not been intimated. If any creditor or beneficiary presses for payment during the six month period a solicitor should be consulted.

## Challenging the will

A will can be challenged on a number of grounds – for example if the person was insane when it was made, if the children were born after the will was made, if the person had been improperly influenced by another person when making the will. If you wish to challenge the will, you should consult a solicitor.

## Legal rights

Whatever the will says, the surviving husband or wife or children can, if they wish, claim “legal rights” to a proportion of any property excluding house and land (see B(ii) below). If you wish to claim legal rights, you should inform the executor.

### **B. If there is no Will**

The estate will be divided according to specific legal rules.

#### (i) *Prior rights*

These are the surviving husband’s or wife’s rights to — (a) the house (up to a value of £130,000); (b) furniture in the house (up to £22,000); (c) a payment of £35,000 if there are children, £58,000 if there are not. These figures may be changed from time to time.

#### (ii) *Legal rights*

After prior rights have been dealt with, a surviving husband or wife and children have certain “legal rights” to a proportion of the “moveable estate” — that is, all things such as money, shares, cars, furniture and jewellery.

#### (iii) *Rules for the remainder*

After prior and legal rights have been dealt with, the remainder is given to surviving relatives according to a strictly laid-down sequence — for example any children have first claim; if there are no children half goes to the parents or parent and half to the brothers and sisters; if there are no children or parents all goes to the brothers and sisters; and so on.

The Scottish Executive Justice Department have published a leaflet

*Rights of Succession* which explains this in more detail. It can be obtained free of charge from your local Citizens Advice Bureau, or from the Scottish Executive Justice Department, Civil Law Division, Room 2W(R), St Andrews House, Regent Road, Edinburgh EH1 3DG telephone: 0131 244 3581. You can also seek advice from a solicitor.

#### 14. THE HOME

If you are living in a home which the dead person owned or rented:

- Do not move out of the home without getting legal advice about your rights.
- Do not let the whole or part of the home or take in a lodger without getting legal advice on whether the agreement with the building society, Council or landlord allows this.
- Contact the building society, the landlord or Council to arrange how the mortgage or rent should be paid in future.
- Find out if there is any insurance policy covering the mortgage and if so inform the insurance company of the death.

#### 15. DEBTS

Debts are paid out of the person's own estate. Relatives do not have to pay them out of their own income or savings.

They must be settled before an executor can distribute any of the estate to beneficiaries. The executor must give six months for creditors to make claims before distributing the estate, otherwise the executor may be legally liable for unpaid debts. The executor should check gas, electricity and telephone accounts, any firm where the person had an account or a credit, hire purchase or rental agreement and should normally advertise inviting creditors to make claims.

If the debts are greater than the assets of an estate, the executor should seek legal advice. There are complicated rules for paying out what assets there are to the various creditors.

Do not be rushed into parting with goods before taking legal advice. Hire purchase goods cannot be repossessed after a third of the purchase price has been paid unless the creditor gets a court order.

### **PART III. SOCIAL SECURITY HELP FOR THOSE WHO ARE LEFT**

#### **16. YOU MAY QUALIFY FOR HELP FROM SOCIAL SECURITY:**

- as a widow or widower

or if you have established or can establish under Scots law a marriage by cohabitation with habit and repute.

This includes bereavement benefits, and extra benefit or pension that both widows and widowers may get on their husband's or wife's National Insurance record

Social Security may also be able to help if:

- you are responsible for arranging the funeral (get claim pack SF 200 from a Social Security office)
- you have a low income (you may also get help with NHS health costs)
- you are bringing up a child on your own
- your baby was stillborn
- the deceased was a war pensioner.

For more details of benefits get leaflet D49 S *What to do after a death in Scotland: Social Security Supplement* from a Social Security office or Registrar's office.

## **PART IV. WHAT ELSE HAS TO BE DONE?**

This part includes examples of the kinds of things which may have to be done. It is not a comprehensive list covering everyone's individual circumstances.

### **You should return**

- Order books, payable orders, or Giro cheques to the social security office. This applies also to a child benefit book which includes payment for a child who has died. Orders should not be cashed after the death of the person.
- The person's passport to the United Kingdom Passport Agency, 3 Northgate, 96 Milton Street, Glasgow G4 0BT. You should indicate in a covering note whether you wish the passport to be cancelled and returned to you or whether you are content for it to be cancelled and disposed of by Passport Agency staff.
- The driving licence to DVLA, Swansea, SA99 1AB with a covering letter

The log book of a car, for the change of ownership to be recorded.  
Blue Badge – the Blue Badge is a parking badge given to some disabled people who find it difficult to get around without using a car. If the deceased person was a Blue Badge holder then their Blue Badge should be returned as soon as possible, either to the Chief Executive or Social Work Department of the Council that issued the Badge.

- A season ticket, and claim any refund due.\*
- Membership cards of clubs and associations, and claim on unexpired memberships.\*
- Library books and tickets.

Enclose a note of explanation with the date of death with each of these documents.

\*Any sums recovered must be included in the inventory (see section 11).

## **You should tell**

- The social work department of the death if the person had been getting meals on wheels, home help, or had an appliance or aid issued by the department.
- Any hospital the person had been attending.
- The family doctor to cancel any home nursing.
- The employer and trade union.
- The children's teacher if a parent, brother or sister has died.
- The person's bank.

## PART V. USEFUL ADDRESSES

Age Concern Scotland  
Leonard Small House  
113 Rose Street  
EDINBURGH  
EH2 3DT  
0131 220 3345  
E-mail: [Enquiries@acscot.org.uk](mailto:Enquiries@acscot.org.uk)

British Association of Cancer United  
Patients(Cancer BACUP Scotland)  
3rd Floor  
Cranston House  
104-114 Argyll Street  
Glasgow  
G2 8BH  
Helpline : 0808 800 1234  
[Jwhelan@cancerbacup.org](mailto:Jwhelan@cancerbacup.org)  
Website: [www.cancerbacup.org.uk](http://www.cancerbacup.org.uk)

Cancerlink  
89 Albert Embankment  
London SE1 7UQ  
Email: [Cancerlink@cancerlink.org](mailto:Cancerlink@cancerlink.org)  
Freephone: 0808 808 0000  
Fax: 020 7840 7841  
Website: [www.cancerlink.org](http://www.cancerlink.org)

Cruse - Bereavement Care Scotland  
Riverview House  
Friarton Road  
Perth PH2 8DF  
Tel: 01738 444 178  
Fax: 01738 444 807  
E-mail: [info@crusescotland.org.uk](mailto:info@crusescotland.org.uk)

General Register Office for Scotland  
Ladywell House  
Ladywell Road  
EDINBURGH EH12 7TF  
Tel: 0131 334 0380  
Website: [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk)

Humanist Society of Scotland  
Website: [www.humanism-scotland.org.uk](http://www.humanism-scotland.org.uk)

North of Scotland:  
George D Rodger  
17 Howburn Place  
ABERDEEN AB11 6XT  
Tel: 07010 714775

East of Scotland:  
Ivan Middleton  
26 Inverleith Row  
Edinburgh EH3 5QH  
Tel: 07010 714778

South of Scotland:  
Mr Robin Wood  
37 Inchmurrin Drive  
Kilmarnock KA3 2JD  
Tel: 07010 714776

The Miscarriage Association  
c/o Clayton Hospital  
Northgate  
WAKEFIELD  
West Yorkshire  
WF1 3JS  
HELPLINE 0131 334 8883  
E-mail: [Info@miscarriageassociation.org.uk](mailto:Info@miscarriageassociation.org.uk)  
Website: [www.miscarriageassociation.org.uk](http://www.miscarriageassociation.org.uk)



National Association of Funeral Directors  
618 Warwick Road  
Solihull  
West Midlands  
B91 1AA  
Tel: 0121 711 1343  
E-mail: [info@nafd.org.uk](mailto:info@nafd.org.uk)  
Website: [www.nafd.org.uk](http://www.nafd.org.uk)

Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
Tel: 08457 22 44 99  
E-mail: [enquiries@oft.gov.uk](mailto:enquiries@oft.gov.uk)  
Website: [www.oft.gov.uk](http://www.oft.gov.uk)

The Stillbirth and Neonatal Death Society(SANDS)  
Craiglockhart Centre  
177 Colinton Road  
Edinburgh EH14 1BZ  
Tel: 0131 622 6263/4  
Fax: 0131 622 6265  
E-mail: [edinburghsands@supanet.com](mailto:edinburghsands@supanet.com)

Scottish Cot Death Trust  
Royal Hospital for Sick Children  
Yorkhill  
GLASGOW  
G3 8SJ  
Tel: 0141 357 3946  
Fax: 0141 334 1376  
E-mail: [hb1w@clinmed.gla.ac.uk](mailto:hb1w@clinmed.gla.ac.uk)

Scottish Executive Justice Department  
Civil Law Division  
2WR  
St Andrews House  
Regent Road  
Edinburgh EH1 3DG  
Tel: 0131 244 3581  
E-mail : [civil.law.policy@scotland.gov.uk](mailto:civil.law.policy@scotland.gov.uk)  
Website: [www.scotland.gov.uk](http://www.scotland.gov.uk)

Solas National HIV & Aids Information  
Centre (Scotland)  
2/4 Abbey Mount  
EDINBURGH EH8 8EJ  
Tel: 0131 661 0982  
E-mail: [solas@waverleycare.org](mailto:solas@waverleycare.org)  
Website: [www.waverleycare.org](http://www.waverleycare.org)

Voluntary Health Scotland  
11 Waterloo Place  
Edinburgh EH1 3BG  
Tel: 0131 557 6845  
Fax: 0131 557 5207  
E-mail: [mail@vhscotland.org.uk](mailto:mail@vhscotland.org.uk)  
Website: [www.vhscotland.org.uk](http://www.vhscotland.org.uk)

Winston's Wish  
The Clara Burgess Centre  
Gloucestershire Royal Hospital  
Great Western Road  
Gloucester GL1 3NN  
Tel: 01452 394377  
E-mail: [info@winstonswish.org.uk](mailto:info@winstonswish.org.uk)  
Website: [www.winstonswish.org.uk](http://www.winstonswish.org.uk)

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Astron B30119 3/03

