LAWPACK

Do-it-yourself Kit

Probate

Guidance Manual

Approved by Kings Court Trust Ltd, specialists in probate.

Important Facts about this Lawpack Kit

This Lawpack Kit contains the information, instructions and forms necessary to obtain a grant of probate or grant of letters of administration in England and Wales, or confirmation in Scotland. It is not suitable for use in Northern Ireland. It is important that you read and follow the instructions in 'How to use this Lawpack Kit' on page 3.

The information it contains has been carefully compiled from reliable sources but its accuracy is not guaranteed, as laws and regulations may change or be subject to differing interpretations. This is particularly true for any figures given, which are liable to change in the Budget. The law is stated as at 1 September 2011.

Neither this nor any other publication can take the place of professional advice on important legal matters. This Lawpack Kit is sold with the understanding that the publisher, author and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of professional services rather than relying solely on the information and forms in this Lawpack Kit.

We strongly urge you to take professional advice if:

- you do not understand the instructions or are uncertain how to complete and use a form correctly;
- what you want to do is not precisely covered by the information provided;
- the deceased owned or had an interest in property abroad or had written a Will abroad.

Notes:

- Since 2005, it has been possible for same-sex partners to register their relationships, so becoming 'registered civil partners'. For many purposes, and for most of the rules related to Wills and intestacy, registered civil partners are treated in the same way as spouses. Throughout this Manual, for 'spouse' read 'spouse or civil partner'.
- For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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Introduction

The task of administering an estate involves a considerable amount of work and the decision to act as executor or administrator (generically referred throughout this document as 'personal representatives') should not be taken lightly. The aim of this Kit is to guide the personal representatives through the process and provide a checklist of the steps, which must be carried out.

The personal representatives have to:

- ✔ check and understand the Will;
- ✔ obtain details of all the assets and liabilities;
- ✔ complete an application for the grant of probate or confirmation;
- ✔ fill in Inland Revenue forms;
- ✔ collect in the assets;
- ✔ pay Inheritance, Income and Capital Gains Tax; pay liabilities and expenses of the estate;
- ✔ pay or transfer legacies;
- ✔ distribute the residuary estate; and
- ✔ prepare estate accounts.

Some of the words used in this Manual are not words that most people come across on an everyday basis. Other words may have a very specific legal definition. To assist the reader with these words a Glossary of terms has been included at the back of this Manual.

Who can administer the estate?

Before administering an estate it is essential to establish who has the authority to do so. Many people assume that the 'next of kin' will handle the administration, but this is often not the case. Where someone has left a Will, it is the named executor or executors who will be responsible for carrying out the deceased's wishes. Where the deceased did not leave a Will, they are said to have died 'intestate' and their estate will be distributed in accordance with the laws of intestacy, which also determine who should be appointed as administrator, to administer the estate. Either way, it is an executor or administrator who is responsible for dealing with the administration of the estate.

Executors or administrators are accountable to HM Revenue & Customs and to the beneficiaries. The process of administering an estate can be quite time-consuming and sometimes daunting. Here are some preliminary tips to consider:

- Your choice is either to employ a professional legal firm to administer the estate or to decide to do it yourself.
- As an executor or administrator, you are legally obliged to act in the interests of the estate. If you feel unable to act as an executor or administrator, your best option is to employ a professional legal firm who will take on all the responsibilities on your behalf.
- Make an honest appraisal of your time limits and ability to take on a task that can be complex and very time-consuming.
- If you pursue the DIY route, you may be personally liable for any mistakes or oversights, or if things go wrong.

Summary of types of grant

England & Wales	**Names of personal representatives**	**Type of grant**
Will with a valid appointment of executors	Executors	Grant of probate
Will with no appointment of executors or no executors who can act	Administrators	Grant of letters of administration (with Will annexed)
No Will	Administrators	Grant of letters of administration
Scotland	**Names of personal representatives**	**Type of grant**
Will with a valid appointment of executors	Executors-nominate	Confirmation
Will with no appointment of executors or no executors who can act	Executors-dative	Confirmation
No Will	Executors-dative	Confirmation

- There are many things to organise when someone dies and it is easy to forget vital steps or become overwhelmed.
- You should always take legal and professional advice if a problem arises that you feel you cannot deal with.

Where does the authority to act derive from?

Executors have the power to deal with the deceased's assets from the date of death. However, it is not until they receive what is called a 'grant of representation' in England and Wales, or a 'confirmation' in Scotland, that they can prove their authority to those institutions and authorities that hold assets in the deceased's name. Administrators only have authority to act from the date of the grant of representation or confirmation.

In England and Wales, grants of representation are issued by the High Court through probate registries. There are three main types of grant of representation:

1. A 'grant of probate' is issued if executors appointed under a Will are administering the estate.
2. If the deceased left a valid Will but did not appoint executors or they are unable or unwilling to act then a 'grant of letters of administration with Will annexed' is issued.
3. Where there is no Will then the Probate Registry will issue a 'grant of letters of administration'.

In practice, the documents are all utilised in the same way and the phrases 'grant' and 'grant of probate' are often used collectively to refer to all three types of grant. We shall refer to 'grant' or 'grant of representation' throughout this Manual.

In Scotland, confirmation is issued by the Commissary Department of the Sheriff Court in the area where the deceased was domiciled at death.

Considerations when death occurs

When someone dies, a doctor should be called. He will issue a medical certificate stating the cause or causes of death, along with a notice setting out who is eligible to register the death with the local Registrar of Births and Deaths.

Registering the death

In England and Wales, if the death has occurred inside a house or public building, the following people may act as informant, in the following order:

1. A relative of the deceased who was present at the death.
2. A relative of the deceased who was present during the final stages of the illness.
3. A relative of the deceased who lives in the district where the death occurred.
4. Anyone who was present at the death.
5. Someone in authority in the building where the death occurred who was aware of the circumstances of the death; for example, the owner of a nursing home or the warden of sheltered accommodation.
6. Any resident of the building where the death occurred, if he was aware of the circumstances of the death.
7. The person who accepts responsibility for arranging the funeral.

If the death occurred outside a house or public building, the following people are eligible to register the death in the following order:

1. A relative of the deceased able to provide the Registrar with the necessary details.
2. Anyone who was present at the death.
3. The person who found the body.
4. The person in charge of the body (the police if the body is unidentified).
5. The person who accepts responsibility for arranging the funeral.

In Scotland, the death must be registered by:

1. Any relative of the deceased.
2. Any person present at the death.
3. The executor or other legal representative of the deceased.
4. The occupier at the time of death of the premises where the death occurred.
5. Any other person having knowledge of the particulars to be registered, if there is no person as above.

In England and Wales, within five days of the death (in Scotland within eight days), the informant must take the medical certificate to the Registrar of Deaths, or must send written notice. In England and Wales, the deceased's medical card should be given to the Registrar as well. The Registrar will ask for other details about the deceased:

1. The date and place of death (birth certificate should be produced if available).
2. The full name of the deceased, including any maiden name.
3. The date and place of birth of the deceased.
4. The occupation of the deceased.
5. The name, date of birth and occupation of the deceased's spouse (and in Scotland, former spouses), whether or not still living.
6. The deceased's usual address.
7. Whether the deceased received any state pension or allowance.
8. The date of birth of any surviving spouse.
9. In Scotland, the full names and occupations of the parents of the deceased should also be provided (if known).

The death certificate

Once the death has been registered, the informant will be given a death certificate, which is a copy of the register entry. (In Scotland, he will also be given a certificate for the funeral director dealing with the funeral, a free abbreviated death certificate, and a Social Security notification of death form to assist in obtaining or adjusting benefits.) There is a small charge for each copy of the full death certificate, and it's sensible to get three or four copies. The personal representatives may need to send copies to the deceased's bank, to the registrars of companies in which he held shares, to insurance companies holding policies written in trust and, in England and Wales, to the Probate Registry. Although you can have the certificate returned to you once it has been inspected, it may be more convenient to circulate several copies at once.

Note: A while after the death, the cost of a copy of the death certificate may increase. The period varies depending on the register office, so it's worth checking if it's probable further copies will be needed.

If there is a Will

If the personal representatives are prepared for their duties, they may have been in possession of a copy of the Will even before the death and know the location of the original. They may know of the deceased's instructions concerning organ donation, disposal of the body, and funeral wishes. All of this information is needed in the first hours following death.

Whilst arranging the funeral is not specifically the duty of personal representatives, and can be handled by whoever is most aware of the deceased's wishes, the personal representatives should satisfy themselves that any wishes are adhered to so far as is reasonable. But anyone who manages the funeral is entitled to have the account settled out of money from the estate.

If there is no opportunity for preparation before the death, the Will must be located to determine who has been named its executor(s). If no Will is found at the deceased's home, it may have been sent to his bank, solicitor or Will storage company for safekeeping or to Lawpack's Will Storage Service. In England and Wales, it may have been deposited at the Principal Registry (formerly Somerset House), in which case a deposit certificate will have been issued on receipt of the Will; the Will can be reclaimed by sending the certificate to:

Record Keeper's Department
Principal Registry of the Family Division
First Avenue House
42–49 High Holborn
London WC1V 6NP
Tel: 020 7947 7022

If a Will is found, ascertain that it is the deceased's last Will by making enquiries at, for example, the deceased's bank and solicitor. It must bear the signature of the deceased (in Scotland, it must be signed on every page) and of an appropriate witness or witnesses.

In England and Wales, probate may be granted on a copy, but you should notify the Probate Registry as soon as possible that the original cannot be found. The Registry will tell you what evidence is needed as proof that the original Will had not been revoked by being destroyed before death.

In Scotland, if only a copy of the signed Will can be found, it may be possible for the personal representatives to treat the estate as 'testate' and proceed to wind up the estate in accordance with the copy Will but it will be necessary in the first instance to raise an action in the Court of Session in Edinburgh to 'prove the tenor' of the original signed Will using the copy. If this fails, the estate must be treated as intestate and wound up accordingly.

The necessity of a formal reading of the Will before hopeful beneficiaries, or a solicitor, is a myth. There is no legal requirement for any reading but it is courteous to write to beneficiaries to inform them of their entitlement under the Will.

There may be some doubt as to who the beneficiaries are under the Will. Many Wills describe certain beneficiaries in terms of groups of people, for example 'my children,' rather than naming them. The expression 'my children' includes, by law, children conceived at the time of the deceased's death and subsequently born alive, adopted children and, in England and Wales, legitimated children

(children born to unmarried parents who later marry). In Scotland, illegitimate children (i.e. children born outside marriage) are also included in the expression 'my children'.

In England and Wales, if the Will was executed after 3 April 1988, children whose parents were married to each other at the time of their birth are treated in the same way as those whose parents were not, even if the personal representatives have no knowledge of the children's existence. If the Will was executed before then, the personal representatives will not be liable to a testator's child born outside marriage if they didn't know of his existence. These rules apply unless it is clear from the Will that the deceased intended otherwise.

In Scotland, if the Will was executed on or after 25 November 1968, in determining who should be the beneficiaries of an estate, no distinction is to be drawn between legitimate and illegitimate relationships. This applies to all relationships including the construction of such terms as grandchildren, brother, cousin, etc. These rules apply unless it is clear from the Will that the deceased intended otherwise.

For Wills executed in Scotland prior to that date, the common law continues to apply and expressions such as 'children' or 'issue' are presumed to refer to legitimate relationships only, unless the Will indicates otherwise. Providing the executor is acting in good faith having made all reasonable enquiries, statute gives the executor some protection, allowing him to distribute the estate without instigating an exhaustive search for potential illegitimate claimants or any person adopted by the deceased who would also have a claim on the estate.

Generally, if a beneficiary named in a Will has died before the testator, the gift to him will simply not take effect. However, if that beneficiary is a child, grandchild or great-grandchild or remoter issue of the testator (or in Scotland, a nephew or niece of the testator, but the extension of the principle is limited to those specific relatives only), and he has left children of his own, the children step into or may step into their parent's shoes and their entitlement under the Will, shared equally between them. This is on the proviso that there is no clause in the Will revoking this automatic entitlement.

In England and Wales (but not in Scotland), if the deceased married after making the Will and the Will was not expressed to be in expectation of the marriage, the Will is automatically revoked. Divorce, however, does not revoke a Will, but in England and Wales (but not in Scotland), the former spouse is treated as if he/ she died on the date of the divorce so that the gift under the Will is not effected and they cannot act as an executor.

It is important to note that in Scotland so called 'legal rights' of the spouse and issue of the deceased can affect the division of an estate, regardless of the terms of a valid Will – see page 32 for an explanation of legal rights. personal representatives must deal with this issue as part of the administration of a testate estate.

If the personal representatives are uncertain as to the interpretation of other parts of the Will, they should seek the professional advice to avoid the risk of distributing the money wrongly.

Once probate or confirmation is granted, the Will becomes a public document, but until then the beneficiaries may know nothing of their legacies, unless the deceased told them before he died. However, the personal representatives will usually tell the beneficiaries that they have been left a legacy, although it's impossible to be specific about the amount if it's a legacy of residue or part of residue. But no legacy can be guaranteed at this stage as the Will may be found invalid, may be challenged, or the assets of the estate may not be sufficient to pay all the legacies.

Should professional advice be sought in administering the estate?

Personal representatives can seek professional advice from either a bank, Trust Corporation (such as Kings Court Trust) or solicitor, or from a stockbroker or other adviser with a view to performing specific duties even if they do not use a professional to submit the probate or confirmation application. Whether an executor handles all the tasks involved in administering the estate or uses professional advisers is a matter of choice and convenience. Any fees properly incurred are paid out of the estate, subject to the terms of the Will.

This Manual is designed to help the layperson sort out a simple, straightforward Will or intestacy. If the Will or the estate is complex, professional advice should be taken. If you are in any doubt, seek professional advice. Some signs where advice should be sought include the following:

1. The estate is insolvent.
2. A beneficiary cannot be contacted.
3. Someone intends to challenge the Will.
4. There is some question of the Will's validity, or the Will cannot be found.
5. Someone stands to inherit a life interest in (or in Scotland a 'liferent' of) the estate.
6. Beneficiaries include children under the age of 18 (in Scotland, 16) and a trust is set up for them.
7. The deceased owned a business or was a partner in a business or owned agricultural property.
8. The deceased was a Name (i.e. an investor) in Lloyd's of London insurance market.
9. A trust is set up under the Will.

10. The estate is intestate and there is doubt as to the whereabouts of some of the entitled blood relatives.
11. Any house or land in the estate has an unregistered title.
12. The Inheritance Tax calculations are complex.
13. One or more beneficiaries wish to vary the terms of the Will in so far as it affects their entitlement.
14. There is no Will but a cohabitee neither married to, nor in a civil partnership with the deceased, may wish to make a claim on the intestate estate.
15. Some of the assets in the estate are overseas (e.g. shares, bank accounts, holiday homes etc).

Where there is a Will

What if there is more than one executor named in the Will?

If the Will appoints only one executor, or if only one person is able and willing to act, a grant of probate/confirmation can be issued to one person. If the Will appoints more than four executors, only four of them will be allowed to apply for the grant of probate/confirmation. In any estate, some of the executors may renounce their right to apply for probate/confirmation. Or they may decide not to apply for the time being but to reserve their right to apply in the future so that if, for example, one of the acting executors dies before the estate has been fully administered, the executor with 'power reserved' may take his place. The same applies in the scenario where the deceased did not leave a will.

In England and Wales, if only one executor is taking out the grant of probate, it is prudent to have 'power reserved' for the other executor or executors, even if it is not anticipated that they will want to apply at any stage. The Probate Registry provides a power reserved form to be completed and signed by the executors who intend to reserve the right to apply for probate.

In Scotland, confirmation is always issued in favour of all executors who have been nominated and who have not declined office. An executor appointed in accordance with the terms of a Will is called an 'executor-nominate'.

No matter how many executors are named, for practical purposes it is usually easier if one of the executors undertakes the administrative tasks on behalf of them all. The executors should meet to discuss the practical side of carrying out their duties. All official paperwork must be signed by all executors, even if they agree that one of them will deal with the day-to-day administration. This is not the same in Scotland where the application for confirmation (C1 Account) only needs to be signed by one executor.

Other personal representatives where there is a Will

If an executor renounces the right to take out the grant of probate in England and Wales or a nominated executor declines to accept office in Scotland, any substitute executor named in the Will steps in and proceeds to apply for the grant of representation/confirmation.

If no executor is named in the Will, or if the executor named cannot or does not wish to act and no substitute is named, beneficiaries can apply to act as the deceased's 'personal representatives'. A beneficiary acting as the testator's personal representative is, in England and Wales, known as the 'administrator' and the grant itself is called a 'grant of letters of administration with will annexed'. An administrator's duties are essentially the same as those of an executor. This Kit refers to executors or personal representatives, but the rights and responsibilities of both are the same in most respects.

In England and Wales, beneficiaries may apply for a grant as the deceased's administrators in the following order of priority:

1. any 'residuary legatee' (someone who receives a share of what is left of an estate after the legacies have been paid);
2. any personal representative of a residuary legatee;
3. any other legatee;
4. any personal representative of any other legatee;
5. any creditor.

In Scotland, an executor appointed by the court is called an 'executor-dative'. Where there is a Will but no surviving executor who agrees to accept office or where there is no other person entitled to be appointed executor-nominate the order of priority to be appointed executor-dative is:

1. a 'general disponee', 'universal legatory' or 'residuary legatee', terms all meaning the person or persons entitled to the residue of the estate;
2. any one of the next of kin or heirs on intestacy (if there is a surviving spouse he would normally be preferred and would be exclusively entitled where the value of the deceased's estate is less than the spouse's prior rights);
3. creditors;
4. specific legatees.

An executor-dative is appointed by applying to the Sheriff Court in the area where the deceased had been domiciled at the date of his death using a form called a Petition. The Sheriff Clerk's Office may assist in

preparing the required Petition. The fee to accompany such a Petition is presently £11.

A minor (someone under the age of 18 in England and Wales, or 16 in Scotland) may not act as an executor. In England and Wales, if a minor is the only executor appointed in a Will, his parents or guardian are entitled to take out a grant of letters of administration with Will annexed on his behalf. The minor has the right to apply for the grant of probate on attaining his 18th birthday, if the administration of the estate has not been completed. Likewise, if no executors are appointed under a Will, and a minor is the only person entitled to deal with the administration, two administrators will have to be appointed and his parents or guardians will be entitled to take out a grant on his behalf. Alternatively, a Trust Corporation (such as Kings Court Trust) can act instead of two administrators.

Where there is no Will

If the deceased has not left a Will, he is said to have died 'intestate' and the estate is distributed in accordance with the rules of intestacy. The personal representatives are, again, known as 'administrators' and the grant is called a 'grant of letters of administration'. In Scotland, the personal representatives are, when appointed, known as 'executors-dative' but the grant is still known as a 'confirmation'.

In England and Wales, when there is no Will, administrators are appointed in the following order of priority:

1. the deceased's spouse;
2. any child of the deceased and any issue of a child who died before the deceased;
3. the parents of the deceased;
4. brothers and sisters of the whole blood of the deceased and the issue of any who died before the deceased;
5. brothers and sisters of the half blood of the deceased and the issue of any who died before the deceased;
6. grandparents of the deceased;
7. uncles and aunts of the whole blood and the issue of any who died before the deceased;
8. uncles and aunts of the half blood and the issue of any who died before the deceased.

In England and Wales, the maximum number of administrators is four, (whether there is a Will or the person died intestate.) A sole administrator may take out the grant only where none of the beneficiaries is under 18 or where no 'life interest' arises. If either of these is the case, the grant must issue to a minimum of two administrators.

A life interest is an entitlement to income from all or part of an estate for the duration of the beneficiary's lifetime, rather than an entitlement to the whole capital sum. In England and Wales, a life interest most commonly arises where the deceased's estate is worth more than £250,000 and he died intestate leaving a spouse and a child or children. In that case, the spouse will take the first £250,000 as a legacy, all the personal chattels, and will have a life interest in half of the residue of the estate. The remaining half of the estate is held in trust for the child or children until reaching 18; they also benefit from the capital of the spouse's life interest on his death.

In Scotland, no life interest (or 'liferent') arises in an intestate estate. Where there is no Will, the order of priority to be appointed executor-dative is:

1. a 'general disponee', 'universal legatory' or 'residuary legatee', terms all meaning the person or persons entitled to the residue of the estate;
2. any one of the next of kin or heirs on intestacy (if there is a surviving spouse he would normally be preferred and would be exclusively entitled where the value of the deceased's estate is less than the spouse's 'prior rights' ;
3. creditors; or
4. specific legatees.

See page 30 for a more detailed explanation of who inherits under intestacy in Scotland.

What are the duties of a personal representative?

In preparation for dealing with the assets and liabilities of the estate, some administrative tasks should be attended to as soon as possible.

Have the deceased's postal address changed to that of the first applicant, the personal representative who is to handle day-to-day business and personal affairs. If the home is to be left unoccupied, it should be ensured that it's securely locked; that water, electricity and gas supplies have been turned off (if appropriate) and mail redirected.

The personal representatives should also ensure that there are both current buildings and contents insurance policies on the home. The personal representatives may be held liable by any beneficiary who receives less from the estate than he should have because of a burglary, fire or other loss. The insurers should be notified of the death and given the names and addresses of the personal representatives. If there are particularly valuable items at

the deceased's home and it's to be left unoccupied, it may be better to remove them for safekeeping.

Finally, they should open an personal representatives' bank account into which they will eventually deposit the proceeds of assets and from which they will pay the liabilities and expenses of the estate and distribute the monies under the Will or intestacy.

Make a thorough search of the deceased's papers and online records for the documents that will be needed to finalise the deceased's affairs. These will include:

- Cheque books
- Bank statements
- Savings certificates and other National Savings assets
- Outstanding bills
- Share certificates and stockbroker's details
- Car registration documents
- Mortgage papers
- Insurance and pension documentation
- Information on jewellery and collectables; for example, insurance valuations
- Tax assessments, returns and other Tax papers

The personal representatives' aims are to:

1. Identify the assets of the estate and assess their value at date of death, (i.e. the market value had they been sold that day).
2. Identify the deceased's debts and pay them.
3. Distribute the estate to the beneficiaries.

Is a grant of representation or confirmation necessary?

Whilst itemising the assets of the estate, the personal representatives must bear in mind that it may not be necessary to apply for a grant of representation (England and Wales) or for confirmation (Scotland). Whether or not a grant or confirmation is required depends not only on the size of the deceased's estate, but also on the kinds of assets in it. Normally, a grant or confirmation is required where the value of the deceased's estate (after paying the funeral account) exceeds £5,000.These days, banks and building societies impose their own discretionary limit upon when they require sight of a grant or confirmation. The grant or confirmation vests authority in the personal representatives to deal with the estate.

For example, if the deceased only left a nominal sum of cash, say £1,000, personal items having a high market value and a very expensive car, there is no need to apply for a grant of probate or confirmation because personal representatives need no formal proof of their authority to gather in and distribute such assets. However, even if no grant is needed, it may be better to obtain one in any event where the assets are high in value, to protect the personal representatives and ensure that they are distributing the estate correctly. On the other hand, if the deceased had a bank account and shares with a net value of over £15,000, or if the deceased's home needs to be sold or transferred to a beneficiary, a grant will be necessary so the personal representatives can obtain formal authority to gather in and deal with these assets.

Certain authorities can pay sums due on death to the person entitled under a Will or intestacy without requiring sight of a grant as long as the amount payable is (normally) less than £5,000. These assets include:

- **National Savings, including prizes won on Premium Bonds.** In order to claim, the personal representatives need to complete Form NSA 904, which is available from post offices, and send it to the address given on that form for the type of account held, together with a registrar's copy of the death certificate.
- **Building society accounts, deposits with friendly societies, trade union deposits of members, arrears of salary or pension due to government or local government employees and police and firemen's pensions.** The personal representatives should write to the relevant authority, asking for a claim form and sending a registrar's copy of the death certificate.

  Other assets that may be realised without the personal representatives needing to produce the grant or confirmation are:

- **Nominated property.** Until 1981, the holder of certain National Savings investments and government stock could nominate someone to receive them on his death. After 1981, no new nominations could be made, but those made before that year are valid. Such a nomination takes effect independently of the deceased's Will or intestacy and independently of any grant of probate. The person nominated can have such stocks transferred into his name or redeemed on producing the death certificate. There is no upper limit on the value of the nominated property which can be dealt with in this way, but if the institution is concerned that the estate may be large enough for Inheritance Tax (IHT) to be paid on it, it may require the personal representatives to obtain a certificate from HM Revenue & Customs (HMRC) to show that any such Tax has been paid.

- **Jointly held assets.** When two people hold property jointly (as 'joint tenants' in England and Wales, or in Scotland where there is a specific or implied 'survivorship destination'), on the death of one of them, his share of the asset passes directly to the other by right of survivorship, regardless of the provisions of the Will or the intestacy rules. Such assets might include a house or flat, or bank or building society accounts. No grant of probate or confirmation is required to transfer the deceased's share of these assets to the surviving joint holder. However, if a beneficiary suggests that a jointly owned asset should not have passed to the survivor (a third party) for some reason, the personal representatives should investigate or seek advice.

  If the property is a house or flat in England or Wales with registered title, a registrar's copy of the death certificate should be sent to the Land Registry (www.landregistry.gov.uk) to enable the survivor to be registered as the sole surviving owner of the property. If the property is unregistered, a registrar's copy of the death certificate should be kept with the title deeds which would need to be produced if the property is sold.

  In Scotland, with property where there is a survivorship destination, no action is required (whether or not the property is registered in the Land Registry of Scotland, www.ros.gov.uk) except that a copy of the death certificate should be held as part of the surviving owner's title. If the joint asset is a bank or building society account, a registrar's copy of the death certificate should be sent to the relevant bank or building society so the deceased's name may be removed from the account. Therefore, if the deceased's estate consists solely of jointly held assets, there would normally be no need for the personal representatives to apply for a grant of representation or confirmation.

  However, in Scotland, where one person opens a bank or building society account in joint names, unless it is specified at the outset that they are actually making a gift to the joint account holder, the fact that there is a joint account holder is significant only for the bank's administrative purposes. The bank may well automatically transfer the account after death to the joint account holder, but this does not mean that the joint holder is necessarily entitled to the whole account. The entitlement to the account (and therefore the proportion attributable to the deceased) will depend upon the proportions in which each account holder contributed to and made withdrawals from the account. It may ultimately be necessary to recover some funds from the joint account holder to meet claims on the deceased's estate and satisfy bequests in the Will.

Probate Registries

Once ascertained that a grant or confirmation is required, the personal representatives will need to make at least one visit to the Probate Registry or a local office (not so in Scotland). In dealing with an estate in England and Wales, apart from the Principal Registry in London, there are district Registries and local offices under their control throughout the country. It's sensible to choose a Registry or local office conveniently located for the personal representatives; bear in mind that some local offices do have minimal and sporadic office hours which may not necessarily result in a quick or convenient service, and that not all probate Registries have identical procedures.

Financial records

During the administration of the estate, the personal representatives must keep track of every financial transaction, no matter how small. The money and assets belonging to the estate must be kept entirely separate from the personal representatives' personal money and assets. Out-of-pocket expenses incurred by personal representatives should be recorded as carefully as the payment of bank charges, grant or confirmation fees, or Inheritance Tax.

Although usually personal representatives who are professionals are paid for their efforts if the Will so specifies, expenses they incur, such as postage, travel costs, telephone bills, etc., can be paid from the estate.

More importantly, the personal representatives must be able to account for every penny of the testator's estate. They have a fiduciary responsibility (i.e. one of trust) to the creditors and beneficiaries of the estate. When the estate has been fully administered, the personal representatives will need to draw up a set of estate accounts to demonstrate to the beneficiaries how the assets of the estate were spent or distributed.

Identifying beneficiaries

Once the liabilities and expenses of the estate have been paid, the personal representatives identify the beneficiaries of the estate: either those named in the Will or those entitled under the intestacy rules. If the personal representatives distribute the estate incorrectly, they are personally liable to the rightful beneficiaries and to creditors about whom they know or should have known.

In England and Wales, to protect themselves from unknown creditors and beneficiaries, the personal representatives can follow a statutory procedure which involves the placing of advertisements for creditors and unknown beneficiaries in the London Gazette at:

London Gazette
PO Box 7923
London SE1 5ZH
www.london-gazette.co.uk
Tel: 0870 600 33 22

Personal representatives must also advertise in a newspaper circulating in the area where the deceased lived and, particularly if he owned a business, the area where he worked at the time of death. If land is to be distributed, an advertisement should also be placed in a newspaper circulating in the district where the land is situated.

The advertisements should state that anyone with a claim against or an interest in the estate must make their claim known within a stated time (not less than two months) from the date of the notice, after which the personal representatives may distribute the estate, having regard only to those claims of which they have notice. After the stated time, in England and Wales, anyone who has not come forward cannot make a claim against the personal representatives, although they may claim against the beneficiaries of the estate into whose hands assets have passed.

Advertising does not protect against creditors whose existence is already known by the personal representatives, even if they do not formally respond to an advert.

Advertising for unknown creditors may not be necessary if there is no reason to suspect that the deceased has incurred debts other than those known to the personal representatives. However, it does protect the personal representatives from personal liability so can be done as a precaution.

In Scotland, there is no statutory requirement to advertise for creditors, but the personal representatives may consider this prudent, depending upon the level of information in relation to the deceased and his personal circumstances.

Note: Unlike an executor, an administrator where the deceased has died intestate in England and Wales can place statutory advertisements only after the grant of letters of administration has been issued.

Taking stock of the assets and liabilities of the deceased

As a first step, the personal representatives should list those assets which they know, based on personal observation or findings, the deceased owned. This guide includes a checklist below which sets out the most commonly owned assets.

Following this inventory by observation, the personal representative sends notification of the death to the deceased's bank, building society, accountant, insurance company and other institutions. The letters to the bank and building society should request information about each account and instruct them to stop all unpaid cheques and standing orders. Also ask for a list of deeds and other documents held on behalf of the deceased; for example, life policies, as at the date of death.

Personal representatives don't have to wait to receive the grant of probate or confirmation to begin this notification and inventory, but a copy must be sent to each institution when it's received from the Probate Registry in England and Wales or the Commissary Department of the Sheriff Court concerned in Scotland. For the initial correspondence, it's sufficient to enclose a copy of the death certificate.

The goal is to get in writing the value of all the assets and debts as at the time of death. This information must be provided on the probate or confirmation forms. Even if an asset is left as a legacy to a beneficiary, it must be listed and accounted for in the requisite Inheritance Tax form. Similarly, you must obtain the value of the deceased's share of any jointly held assets including those passing by survivorship.

Inheritance Tax Forms - what form do I complete?

Before the assets and liabilities are outlined in more detail, it will be necessary to work out which form should be completed from an Inheritance Tax perspective. It is essential on every grant application to complete an Inheritance Tax form irrespective of whether Inheritance Tax is payable.

Excepted/exempt estates

To assist with the proper completion of the applications for a grant of representation or confirmation and the appropriate returns to HMRC (to calculate whether Inheritance Tax is due on an estate), it is first necessary for the personal representatives to determine if the estate qualifies as an 'exempt' estate, or as an 'exempt and excepted' estate, or if neither category applies. This will dictate how to complete certain parts of the applications for a grant and which form is to be used to return the relevant IHT information to HMRC.

For Inheritance Tax, the value of the estate for the grant of representation or confirmation is only one component of the gross estate and if the deceased made substantial gifts during his lifetime, or received income from a substantial trust, or where certain other circumstances apply, this can result in a Tax liability even if the estate assets do not exceed the IHT Tax threshold.

Where the deceased was domiciled in the UK at death, the estate is an 'excepted' estate or an 'exempt and excepted' estate where either:

1. **Excepted estate** – the gross estate for Inheritance Tax does not exceed the excepted estates limit (currently £325,000 and linked to the level of the IHT threshold).

   OR

2. **Exempt and excepted estate** – (a) the gross value of the estate is less than £1,000,000 and (b) because all or part of the estate passes to the deceased's spouse who must also be domiciled in the UK, or to a charity or other body qualifying as exempt from IHT, after deducting liabilities and those exemptions only, the estate is less than the excepted estates limit.

In addition, for both categories all of the following conditions apply:

a. If there are any 'specified transfers' (see below), their total chargeable value does not exceed £150,000.

b. If the deceased had made a gift of land or buildings, it was made to an individual and not to trustees of a trust or to a company and it did not exceed £150,000 in chargeable value.

c. If the estate for Inheritance Tax purposes includes assets held in a trust that are treated as part of the deceased's estate, there is only one such trust and the total value of those assets does not exceed £150,000.

d. If the estate includes any foreign assets, the total gross value of these does not exceed £100,000.

e. The deceased did not give away any property whilst retaining the benefit of it.

f. The deceased had elected that the Income Tax charge should not apply to: (a) assets he previously owned in which he retained a benefit or (b) the deceased's contribution to the purchase price of the assets acquired by another person but in which the deceased retained a benefit.

g. The deceased did not benefit from an alternatively secured pension fund.

h. The deceased did not benefit under a registered pension scheme where (a) the benefit was unsecured and (b) they became entitled to the benefit as a relevant dependant of a person who died aged 75 or over.

To qualify as 'specified transfers', the assets given away can only be:

- Cash
- Quoted stocks and shares
- Household and personal goods
- Land and buildings

  Any gift of land and buildings only qualifies as a specified transfer if it was an outright gift between individuals. If the gift of land and buildings was to a trust or a company, or the deceased kept back any kind of benefit from the property or was entitled to use it, it cannot qualify as a specified transfer.

If you are not sure whether any transfers made by the deceased fall within these exceptions, you should contact the HMRC Helpline or seek professional advice.

Having determined if the estate qualifies as exempt or exempt and excepted, the personal representatives are now in a position to complete the forms appropriately.

Is Inheritance Tax payable?

Once a thorough valuation of the deceased's assets and liabilities is completed, any Inheritance Tax due must be paid before applying for the grant of representation or confirmation. However, few financial institutions will hand over the funds of the deceased until there is a grant or confirmation to prove the personal representatives' authority.

If the deceased had funds in a National Savings account or held National Savings Certificates and Premium Bonds, National Savings may issue a cheque in favour of HMRC to cover all or part of the Inheritance Tax, thereby permitting the grant or confirmation to be obtained. Similar arrangements may be made between a building society account and HMRC. Other banks may be willing to arrange a loan to the personal representatives in order to pay the Inheritance Tax.

As an alternative to the above, it may be possible to arrange for the Inheritance Tax to be paid direct from the account in the deceased's sole name in a bank or building society, using HMRC form IHT423. You will need to obtain a Tax reference from HMRC for the estate. When you are ready to apply for probate, send the IHT423 to the bank or building society and they will pay HMRC direct from the account.

Applying for a grant

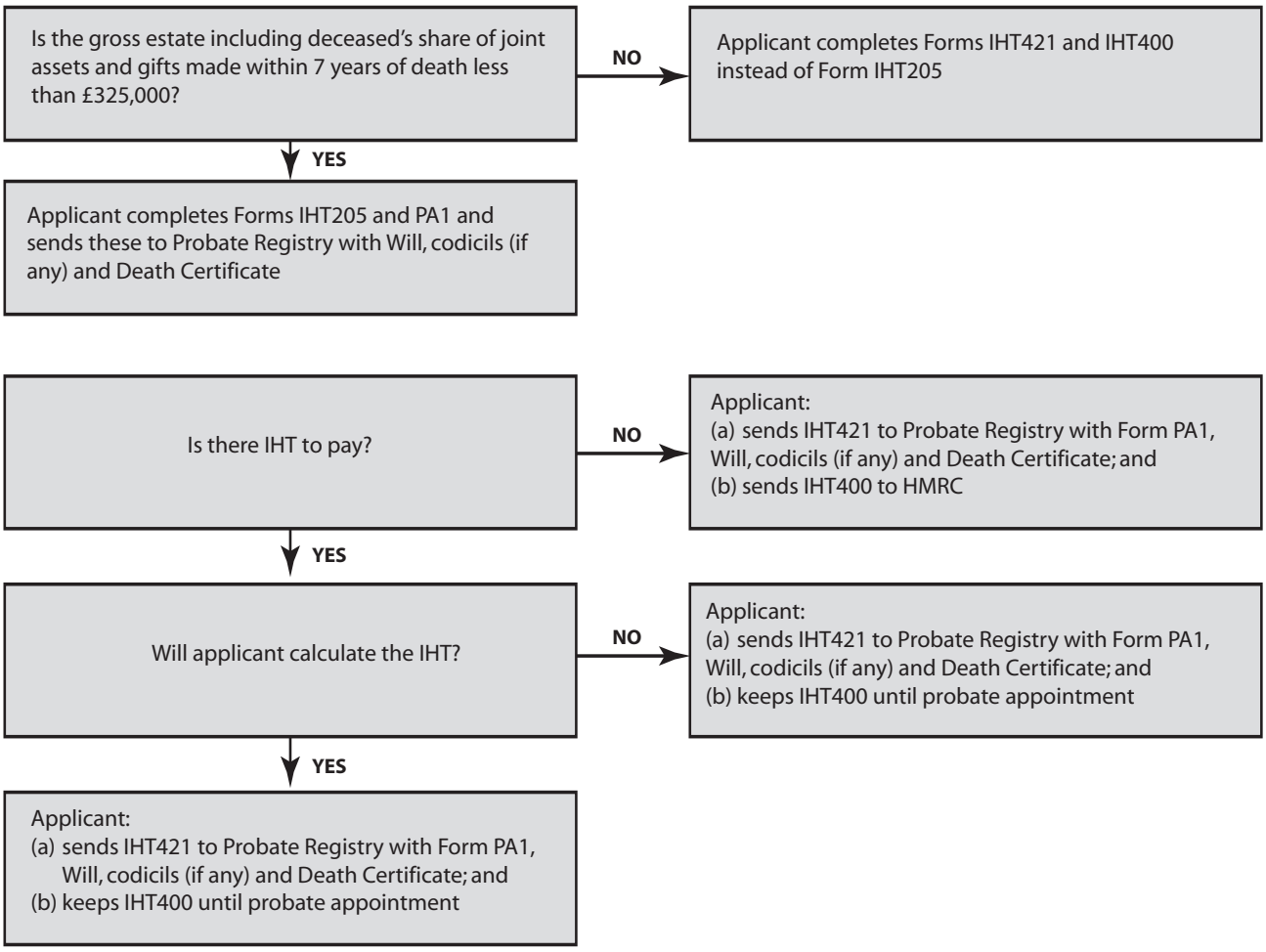
The Forms – England and Wales

Form PA1 probate Application Form

Section A asks whether there is a Will and whether a gift is made under it to a person under 18. If so, the personal representatives (or trustees if the Will appoints trustees)

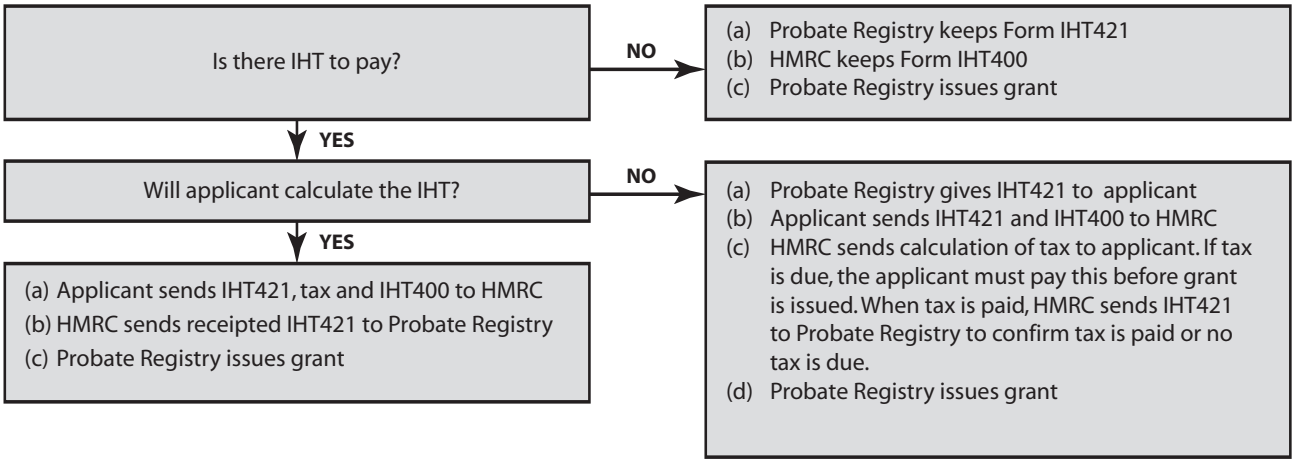
England and Wales

Before probate appointment



After probate appointment

The probate fee is paid at the probate appointment. If the applicant has completed a Form IHT205, the Probate Registry will issue the grant by post after the appointment and without any further formalities. However, where the application requires a Form IHT 400, there are further formalities as set out below before the Probate Registry can issue the grant.



will hold the minor beneficiary's gift until the beneficiary is 18. Question 5 asks for the names of any personal representatives and, if any of the named personal representatives are not applying for probate, why that is the case. If a named executor gives reason C ('does not wish to apply now but may later'), the Probate Registry will provide a power reserved letter for him to sign. Where only one executor is taking out the grant it may be prudent for a non-acting executor to sign a power reserved letter, even if it's not anticipated that he will want to apply at any stage, in case the acting executor dies or becomes incapacitated before the administration of the estate is complete.

Section B asks for details of the deceased's relatives. This will be relevant if there is no Will, as the list of relatives follows the order of entitlement to take out a grant of letters of administration on an intestacy. The list also helps in determining who should inherit where there is an intestacy or a partial intestacy (i.e. where the Will fails to dispose of all the deceased's estate).

Section C asks for details of those applying to take out the grant. The executor whose name and address are given at questions 1 to 4 will be the first applicant to whom all correspondence will be addressed. There is space underneath for the name and address of the other personal representatives. Question 7 asks about the first applicant's relationship to the deceased. This information is needed for the oath which will be sworn at the Probate Registry on application for the grant. More importantly, in the case of an intestacy, this information verifies that the applicant is the person entitled to take out the grant of letters of administration.

Form IHT205 Short Form of Return of estate information

This form is used where:

- the deceased died on or after 1 September 2006; and
- the gross value of the estate for IHT is less than the excepted estates limit, or is less than £1,000,000 and there is no IHT to pay having regard to the spouse or charity exemptions only.

If you can answer 'No' to all the Preliminary Questions on pages 1 and 2 of this form, there is no need to complete Form IHT400; continue to answer the questions on pages 3 and 4. If any of the answers to the preliminary questions is 'Yes', IHT400 must be completed, in which case you should answer only the questions on page 2 of Form IHT205 and send it to the Probate Registry with Form IHT400. Form IHT206 contains notes to help you with Form IHT205.

The Forms – Scotland

Form C1 Confirmation

In every estate where confirmation is needed to 'uplift' or otherwise deal with the deceased's assets, the relevant application form known as Form C1 must be completed by the executor. This form is available online from www.hmrc.gov.uk.

Form C1 requires the details of the deceased and the executor(s); the declaration of the executor(s) as to the accuracy of the information contained in the form; an inventory of each item of estate and its value; a summary of the debts and expenses; details of surviving relatives; and a summary of the taxable value of the estate with reference, where appropriate, to the figures contained in Form IHT400 relating to the estate. If the estate is taxable, Form C1 must be stamped by HMRC to show that all tax assessed has been paid, before the Sheriff Court will accept the form and progress the application for confirmation. Guidance Notes (Form C3) are available from HMRC to assist with completion of Form C1. The estate is not taxable if it qualifies as either an excepted estate, or an exempt and excepted estate, but whether taxable or not, a further form must be completed and submitted to HMRC to allow it to satisfy itself as to the position (see below Form C5 or Form IHT400).

Form C5 (SE) Information about Small Estates

If the gross value of the deceased's own assets, including his share of jointly held property (but not property passing under a survivorship destination), and including assets that have been nominated to another person during the deceased's lifetime but which are part of the estate (e.g. friendly society funds or a death benefit) is less than £30,000, the estate is called a 'small estate' and the Sheriff Clerk will help you complete Form C1. The executor is not excluded from the benefits of this procedure even if the value of the estate for Inheritance Tax purposes exceeds the small estates limit as a result of lifetime gifts, gifts with reservation, etc. However, even with a small estate, in these circumstances it will still be necessary for the executor to submit the necessary form to HMRC to allow the tax liability to be agreed and Form C5 (SE) is used for this purpose.

Form C5 Short Form of Return of estate information

This form (the Scottish equivalent to the Form IHT205 for England and Wales) is for use where:

- the deceased died on or after 1 September 2006; and