

What to do **after a death** in Scotland

... practical advice for times of bereavement

9TH EDITION



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scotland
SCOTTISH GOVERNMENT

Most people at some point in their lives find themselves responsible for making the arrangements after the death of a relative or 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.**

Further Advice

The death of someone close to you can be overwhelming, and you may need practical advice to help you manage. You may also need to speak to someone about how you feel.

You can get practical advice from a funeral director, your family doctor, a solicitor, your local social work department or Citizens Advice Bureau. You will find numbers for these organisations in your local telephone directory. Part VI of this booklet gives contact details for a number of organisations that may be able to help you.

If a health visitor or district nurse attended the person who died, he or she may be able to help. If the person died in hospital, speak to the Charge Nurse who may refer you to the hospital chaplain or social worker.

There are several organisations that can offer you counselling or emotional support. You may wish to contact your minister of religion. Your local telephone directory may also have details of other organisations that offer such services in your area.

You could also contact your local Citizens Advice Bureau or Age Concern group. If you cannot find a local service, you will find the details of the national offices of these organisations at Part VI of this booklet.

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9TH EDITION

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About this booklet

The Scottish Government Civil Law Division publishes this booklet. You can get additional copies from them (details below) or from your local Citizens Advice Bureau.

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You can also view the most up to date version of this booklet online at www.scotland.gov.uk/familylaw

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Please tell us your experience of using this booklet. Did you find it useful or were there any difficulties?

Your suggestions will help us to improve the booklet in the future.

Please call 0131 244 3581 or write to the above postal address with your comments.

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Part 1

**From the time of death
to the funeral**

PART I. FROM THE TIME OF DEATH TO THE FUNERAL

1. FIRST THINGS TO BE DONE

If someone dies at home, you should:

- Contact the family doctor (see section 3).
- Contact the nearest relative(s).
- 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 the dead person wanted to donate their body, or body parts (such as organs), you will need to contact a doctor quickly.
- Contact a funeral director (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 someone dies in hospital:

The Charge Nurse or the police will contact the nearest relative or next of kin and arrange a convenient time for them to attend the hospital.

If you are the nearest relative or next of kin, you may be asked to:

- Identify the body, if the person was not a patient of the hospital.
- Consider authorising a post-mortem examination, although such authorisation is not needed when a post-mortem is legally required (see section 4).
- Provide the documents needed to allow you to take away any personal possessions.
- Tell the hospital staff if you know that the person wanted to donate parts of their body for transplantation. 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 a funeral director (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).
- Get a death certificate.

2. DONATION OF BODY PARTS FOR TRANSPLANTATION

If someone dies in hospital, the donation of body parts for transplantation becomes possible. All the major organs and many kinds of tissue can be used for transplantation. One donor can help several of the hundreds of people in Scotland on the waiting list. A new organ will very often save a life. In other cases, an organ or tissue can free the recipient from long and painful treatments such as kidney dialysis.

To make sure of the best possible outcome for recipients, body parts for transplantation have to be removed very soon after death. This means that hospital staff must approach you in the very early stages of your bereavement. This will be done by a dedicated member of staff called a “transplant co-ordinator” who is trained to approach the subject in as sensitive a manner as possible.

The Law is based on making sure that the wishes people expressed in life about donation are carried out after their death.

People can express their wishes in a variety of ways, including:

- carrying a donor card
- putting their name on the NHS Organ Donor Register
- adding a provision to their will
- writing their wishes down
- telling someone verbally.

These expressions are called “authorisations”. If authorisation has been given properly, the hospital staff are entitled to go ahead with the retrieval of body parts for transplantation. The transplant co-ordinator will still wish to speak to you about this to find out if there is anything in the donor’s medical or social history which would rule out the use of his or her body parts for transplantation.

If the person who died did not leave a clear indication of his or her wishes, the transplant co-ordinator will approach the nearest relative to ask whether or not he or she will authorise the removal and use of body parts for transplantation. The law makes it clear who the nearest relative is. If you are the nearest relative, you can give authorisation based on what you know your relative’s views were.

3. GETTING A MEDICAL CERTIFICATE

If someone dies at home

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

The doctor will:

either issue a medical certificate of cause of death (Form 11) 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 some cases, report the death to the Procurator Fiscal (see section 4).

If someone dies in hospital

The hospital will:

either issue a medical certificate of cause of death (Form 11) needed by the registrar, provided the cause of death is quite clear. The hospital staff may ask you to consider authorising a post-mortem examination if that would provide valuable information about the person's final illness or treatment which could help other people;

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

Should you wish more information about hospital post-mortem examination, leaflets are 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 that give rise to serious public concern. 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 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 or her notice.

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. In some cases the Procurator Fiscal will need to carry out further investigations into the death. The time necessary to investigate the death can vary considerably depending on the circumstances.

Victim Information and Advice

The Victim Information and Advice staff are part of the Crown Office and Procurator Fiscal Service. They help bereaved relatives where the Procurator Fiscal is involved in investigating a death and 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.

Tracing relatives

If someone dies and there are apparently no blood relatives, local Procurators Fiscal will make preliminary enquiries on behalf of the Queen's and Lord Treasurer's Remembrancer (QLTR). The QLTR deals with the property of people who die when there are no traceable relatives.

The Procurator Fiscal – often in cooperation with the Local Authority’s Legal or Housing or Social Work Department – may therefore visit the house and speak to neighbours. The Procurator Fiscal will collect relevant papers and documents and forward them to the QLTR Department with a form giving as much background information about the dead person as possible.

Sometimes someone will report a death to the QLTR Department directly. In those cases the QLTR Department will decide whether to administer the estate or to ask the local Procurator Fiscal to investigate in more detail.

5. HOW TO REGISTER A DEATH

When?

The Registrar of Births, Deaths and Marriages must register the death within eight days. But it is desirable to have the death registered as soon as possible. A death that happens in Scotland must be registered in Scotland, even if the dead person's usual residence was outwith Scotland and the body is to be taken outwith Scotland for internment. Registration of a death must also take place before cremation.

By whom?

The death may be registered by:

- any relative (this includes the spouse or civil partner of the person who died or a relative by marriage or civil partnership);
 - 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 by any registrar in Scotland.

You can get the address of the Registrar of Births, Deaths and Marriages for the area from the funeral director, the telephone directory, the hospital or doctor or the Post Office. You should check when the registrar is available.

Take with you:

- Medical certificate of death (Form 11) (see section 3).
- Any certificate or document relating to any pension, benefits, or allowances which the person was receiving from public funds.
- NHS medical card, if available.
- The person's birth and marriage or civil partnership certificates, if available.

Things to tell the Registrar:

- The full name, occupation and postal address of the person and his or her date and country of birth.
- If the person was:
 - married or a civil partner;
 - widowed or a surviving civil partner;
 - divorced or his or her civil partnership was dissolved or annulled

tell the registrar the full name and occupation of the husband, wife or civil partner. If the person had been married or in a civil partnership more than once, you should also give the registrar details of previous spouses and civil partners.

- If the person was married or a civil partner at the date of death, tell the registrar the date of birth of the surviving widow, widower or civil partner.
- The full name and occupation of the dead person's father, and the full name and maiden surname of his or 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 funeral director so that the funeral can go ahead.
- A form 334/SI, "Registration or notification of death" for use in obtaining or adjusting Benefits or for National Insurance purposes.
- On payment of the appropriate fee, an extract of the entry recorded in the Register of Deaths. You may need this to get information about the person's assets. This could include things such as his or her pension, insurance policies, savings, and Premium Bonds.

If someone dies abroad:

- Register the death according to the rules in the country where the person died, and get a certificate of death.
- Although not required, you may also be able to register the death with the British Consul. This would mean that a record of the death will be kept in Scotland, and you would be able to get a copy of the record at a later date from the General Register Office for Scotland, New Register House, West Register Street, Edinburgh EH1 3YT, telephone: 0131 334 0380.

- If you need further assistance you should contact the Foreign and Commonwealth Birth, Marriage and Death (BMD) Certificate Helpline 0207 0080186 (mornings only).

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

- Register the stillbirth within 21 days.
- Give the Registrar a certificate of stillbirth (Form 6) signed by the midwife or doctor.
- If no midwife or doctor was present, the parents will have to sign a Declaration as to Stillbirth (Form 7) which they can get from the registrar. The registrar will then give you a Certificate of Registration of Stillbirth (Form 8) to give to the funeral director so that the funeral can go ahead. (For help with the funeral of a stillborn baby, see also section 8.)

6. PLANNING THE FUNERAL

You should start planning the funeral as soon as possible. But you should 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.

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 someone will pay in advance for a specific funeral director to carry out the funeral.

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 (or undertaker) 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 VI of this booklet.

Medical research

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 Andrews), 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 someone dies abroad or in England, Wales or Northern Ireland

You can 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 person's next of kin and family, and the costs involved. If a death has been reported to the Procurator Fiscal, he will usually allow the body to be released for cremation or burial after establishing the cause of death. 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 funeral director 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. Note there will be charges for this, even if the death happened in hospital.

- A third certificate signed by the medical referee at the crematorium. The medical referee has power to refuse cremation, require a post-mortem examination or refer the matter to the Procurator Fiscal.

Note 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 someone dies abroad

If someone dies abroad (including the Isle of Man and the Channel Islands) and you want to arrange a cremation in Scotland, you will need to get a cremation order from the Scottish Government Health Directorate. 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:

Scottish Government CMO and Public Health
Directorate
Public Health Division
Health Protection Team
St Andrew's House
Edinburgh EH1 3DG
Telephone: 0131 244 2501

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.

Charges

Most crematoria are run by a 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 are 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. The authority that arranges the funeral can make a claim on the estate of the person who died.

Ask at the hospital or the home.

In the event of a stillbirth

The NHS Board may arrange and meet the cost of funerals of stillbirths 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 or 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. 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 which may release the money to you on the evidence of the death certificate if the overall value of the dead person's estate is small and there are no complications. Ask the organisation about this.

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
- Income related Employment & Support Allowance
- Pension Credit
- Child Tax Credit which includes an amount higher than the family element
- Working Tax Credit where a disability or severe disability element is included in the award
- Housing Benefit
- Council Tax Benefit

It must also be reasonable for you to have taken responsibility for the funeral expenses. This will usually mean that you were the partner of the person who died, or if they had no partner, you were a close relative or friend of the person.

You may be asked about the financial circumstances of any parent, son or daughter of the person. You may also be asked about the financial circumstances of the person'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 elsewhere in the European Union (EU), but you should check with your local Jobcentre Plus, as this will depend on the circumstances.)

A funeral payment covers the costs of a simple respectful low cost funeral. The amount allowable includes the cost of certain specified items, including necessary burial or cremation fees, and up to £700 for all other funeral expenses.

The amount payable may be affected by any other means of paying for the funeral. Where items and services have been provided under a pre-paid funeral plan or similar arrangement, the amount is up to £120. 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 Jobcentre Plus. You must claim within three months of the date of the funeral. For more information, see leaflet SB16 “A Guide to the Social Fund” which you can find on the DWP website www.dwp.gov.uk.

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 HM Revenue and Customs to find out if a refund is due.

Part II
**Possessions, property
and children**

PART II. POSSESSIONS, PROPERTY AND CHILDREN

This part of the booklet gives a guide to the Scottish law of succession. Succession law says what happens to someone's property when they die. Part V contains more information about succession.

This information is only a guide. If in doubt, you should take independent legal advice before doing anything. If you have limited means, you may be able to get legal advice from a solicitor free or at a low cost. You could also ask your Citizens Advice Bureau for advice.

Where the total value of possessions is small (see section 12) your local sheriff clerk will be able to help. You can find the details of your local Sheriff Court in the telephone directory, or online at www.scotcourts.gov.uk. You should telephone to arrange an interview.

10. IS THERE A WILL?

A will normally says what someone wants to happen to his or her "estate" when he or she dies. An estate includes things like the person's property, money and possessions.

A will may also:

- Say what the person wished to happen to his or her body, for instance:
 - whether he or she wished to be cremated
 - whether he or she wished his or her body to be bequeathed to a hospital
 - whether any of his or her organs were to be donated
 - what sort of funeral he or she wanted.
- Appoint one or more people as “executors”. Executors are representatives of the dead person. An executor deals with someone’s estate when they die (for more information see section 11).
- Name a “guardian” to look after any children.

Finding the will

It is important to find any will(s) 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.

If there is no will, it is important to trace any relatives. A relative can be appointed as an executor to deal with the dead person’s estate (see section 11).

If there is no will and no traceable relative, the property of the dead person falls by law to the Crown. For this purpose, the person who acts for the Crown in Scotland is the Queen's and Lord Treasurer's Remembrancer (QLTR) who is based in the Crown Office in Edinburgh. You can find out more about the QLTR's role on the Crown Office website www.copfs.gov.uk. You can also find full contact details for the QLTR with other useful addresses at Part VI.

11. THE EXECUTORS

What is an executor?

An executor is a representative of the dead person. The executor must pay off any debts or taxes from the person's "estate", and then distribute it to the "beneficiaries" (the people who will benefit, or inherit). An estate is normally made up of someone's property, money and possessions.

Who becomes an executor?

An executor (or executors) may be named in someone'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 an "executor dative". An executor dative will normally be the surviving spouse or civil partner. If there is no such person, another person entitled to inherit from the estate may be able to apply.

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 died. This is known collectively as his or her “estate”;
- (ii) pay inheritance tax, if this is due. For deaths on or after 6 April 2004, inheritance tax is not in general payable unless the total value of the dead person’s estate together with any property life rented and any gifts made within 7 years of the death exceeds £325,000 for the year 2009-2010 and £350,000 for the year 2010-2011. You can get further information and advice about inheritance tax from HM Revenue & Customs Charities, Assets and Residence. You can find their details at Part VI;
- (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 below);
- (v) distribute the estate to those entitled to it (see section 13 and part V).

Does an executor need a lawyer?

It is possible for an executor to handle an estate without any legal help, but he or she may decide to employ a solicitor to help them. Even if someone decides to do it without legal help, he or she may want to seek advice on specific points from a Citizens Advice Bureau or a solicitor. The executor's out of pocket expenses, including any lawyer's charges, are met from the dead 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. If an 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 a small estate (see section 12), a special simplified rules apply. This simplified procedure makes it easier for an executor to deal with the estate without taking legal advice. However, the executor is still legally responsible for any mistakes. The executor's work is quite complicated and time consuming, even when dealing with a small estate.

In-gathering the estate

The confirmation is the executor's 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. The executor 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.

12. SMALL ESTATES

What is a small estate?

All estates with a total (gross) value of less than £30,000 are classed as small. This figure will change from time to time. If you are the executor you should check with your local Citizens Advice Bureau or with the sheriff clerk what the current limit is. **You should note that confirmation need only be obtained if required by a fund holder, for example a bank.**

Confirmation without a solicitor

As the executor of a small estate you may choose to employ a solicitor to get confirmation from the court, or you may obtain confirmation without a solicitor. If you decide to obtain confirmation without a solicitor, there are special rules in place and the sheriff clerk will 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, the sheriff clerk will help you to prepare the documents. You should consult the sheriff clerk, where the deceased last resided 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

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;
- Proof of Identification – e.g. a valid passport or photocard driving licence and a current council tax statement or recent utility bill (not printed from the internet). Further information can be found on the Scottish Court Service website: <http://www.scotcourts.gov.uk/library/civil/estates/five.asp> or by contacting the local sheriff clerk's office.

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 process of confirmation is the same as when there is a will, except that you may need to get a "bond of caution" (pronounced kay-shun).

A bond of caution is a guarantor's agreement that the executor will carry out his or her duties correctly. You would normally get one from an insurance company. It 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 you about this.

After getting confirmation

After you have obtained confirmation to the small estate, you will need to "in-gather" the estate (see Section 11) then distribute it to those legally entitled (more about distributing the estate at section 13 and Part V).

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 or her wishes, by executors, after confirmation has been obtained, subject to payment of the "legal rights" due to his or her spouse, civil partner and children. You can read more about legal rights in Part V.

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 their claim known.

After that period, the executor may distribute the estate without having regard to any possible claims that he or she has not been told about. 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 legally incapable of making the will (for instance, he or she did not understand the effects of making the will)
- if the person was improperly influenced by another person when making the will.

If you wish to challenge a will, you should consult a solicitor.

Legal rights

Whatever the will says, the surviving husband, wife, civil partner or children can, if they wish, claim “legal rights” from the estate. Part V explains this in more detail. If you wish to claim legal rights, you should tell the executor.

B. If there is no will

If someone dies and does not leave a will, the law says how an estate should be divided. Part V explains the way that an executor must distribute such an estate.

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 (rent out) 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 dead person's estate. 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 for the person's debts 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 to invite 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

Financial help you may be able to access

PART III. FINANCIAL HELP YOU MAY BE ABLE TO ACCESS

16. BENEFIT HELP

You may qualify for benefit help if you are:

- a widow, widower or surviving civil partner
- 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 widows, widowers and surviving civil partners may get on their husband's, wife's or civil partner's National Insurance record.

You may also be able to get help if:

- you are responsible for arranging the funeral (get claim pack SF 200 from your local Jobcentre Plus)
- 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 person who died was a war pensioner.

For more details of benefits you should contact your local Jobcentre Plus or visit the Government, citizens and rights/registering life events section of the government website www.direct.gov.uk.

Part IV

**What else has to be
done?**

PART IV. WHAT ELSE HAS TO BE DONE?

17. OTHER THINGS TO DO

This part includes examples of the kinds of things that you may have to do. It is not a complete list and so may not cover everyone's individual circumstances.

You should return:

- All the person's **medicines** to a community pharmacist as soon as possible for destruction.
- **Payable orders** or **benefit cheques** to the local Jobcentre Plus. This applies also to a child benefit book which includes payment for a child who has died. Payments should not be cashed after the death of the person.
- The person's **passport** to the United Kingdom Passport Service, 3 Northgate, 96 Milton Street, Glasgow G4 0BT. Before posting it, please cut off the top right hand corner of the book to physically cancel it. For further advice please visit www.passport.gov.uk or telephone the Passport Adviceline on 0300 222 0000.
- The **driving licence** to DVLA, Swansea, SA99 1BA with a covering letter.
- The Registration Certificate, for the change of ownership to be recorded to DVLA, Swansea, SA99 1BA.

- 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 his or her 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.
- Any season ticket, and claim any refund due.*
- Membership cards of clubs and associations, and claim on unexpired memberships.*
- Library books and tickets.

You should 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 local Jobcentre Plus if the person who died was receiving benefits. You can do this quickly and easily by telephoning the Benefit Enquiry Line on 0800 882200. If you have speech or hearing problems you can telephone the textphone service 0800 243 355. You can also get general information from the government website www.direct.gov.uk.
- The social work department if the person had been getting meals on wheels, a home help, or had an appliance or aid issued by the department.
- Any hospital or nursing home 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
Rights of succession

PART V. RIGHTS OF SUCCESSION

Succession law says what happens to someone's property when he or she dies. This information is only a guide to certain parts of the law. If you want to know how the law applies to you, get independent legal advice from a solicitor or a Citizens Advice Bureau.

18. WHERE THE PERSON DID NOT LEAVE A WILL

If someone dies and does not leave a will, his or her estate (property) is known as an "intestate estate". The law sets out how intestate estates should be divided. Someone who represents the person who died and deals with his or her estate is called an "executor". You can find out more about the role of an executor in section 11.

The executor first has to pay debts and meet certain liabilities from the dead person's estate. After that, the executor can distribute the estate to the beneficiaries (the people who will benefit from the estate).

Certain beneficiaries have rights to claim from a dead person's estate. These are called "prior rights" and "legal rights". After prior rights and legal rights have been satisfied, the executor must distribute the rest of the estate in accordance with the law.

19. PRIOR RIGHTS

A widow, widower or surviving civil partner has prior rights in his or her late spouse or civil partner's estate. In this section we call someone with prior rights "the survivor". The executor must deal with prior rights before legal rights.

If the person who died owned a house, and the survivor lived there, he or she is entitled to the house and the furnishings and furniture of that house, subject to certain limits.

The survivor can claim:

- the house, as long as its value is less than £300,000
- the furnishings and furniture up to the value of £24,000.

If the house is worth more than £300,000 the survivor's entitlement is to £300,000 in money. If the house forms part of another property – for instance, if it is part of a farm or a shop – the entitlement could, in certain cases, be to money and not to the house. If that happens, the £300,000 limit will apply.

The survivor is also entitled to money from the estate. The amount depends on whether the person who died left children or "descendants" of children such as grandchildren or great-grandchildren.

If the person who died left children or descendants, the survivor is entitled to the first £42,000 out of the estate. If the person left no children or descendants, the survivor is entitled to the first £75,000.

20. LEGAL RIGHTS

A surviving spouse or civil partner and children are entitled to certain “legal rights” from the “moveable estate” of the person who died. The moveable estate can include things like money, shares, cars, furniture and jewellery. The other part of the estate is called the “heritable estate” and covers land and buildings.

The surviving spouse or civil partner

A widow, widower or surviving civil partner is entitled to:

- one third of the moveable estate if the person who died left children or descendants of children (such as grandchildren)
- one half of the moveable estate if the person who died left no children or descendants of children.

The children

The children are entitled to:

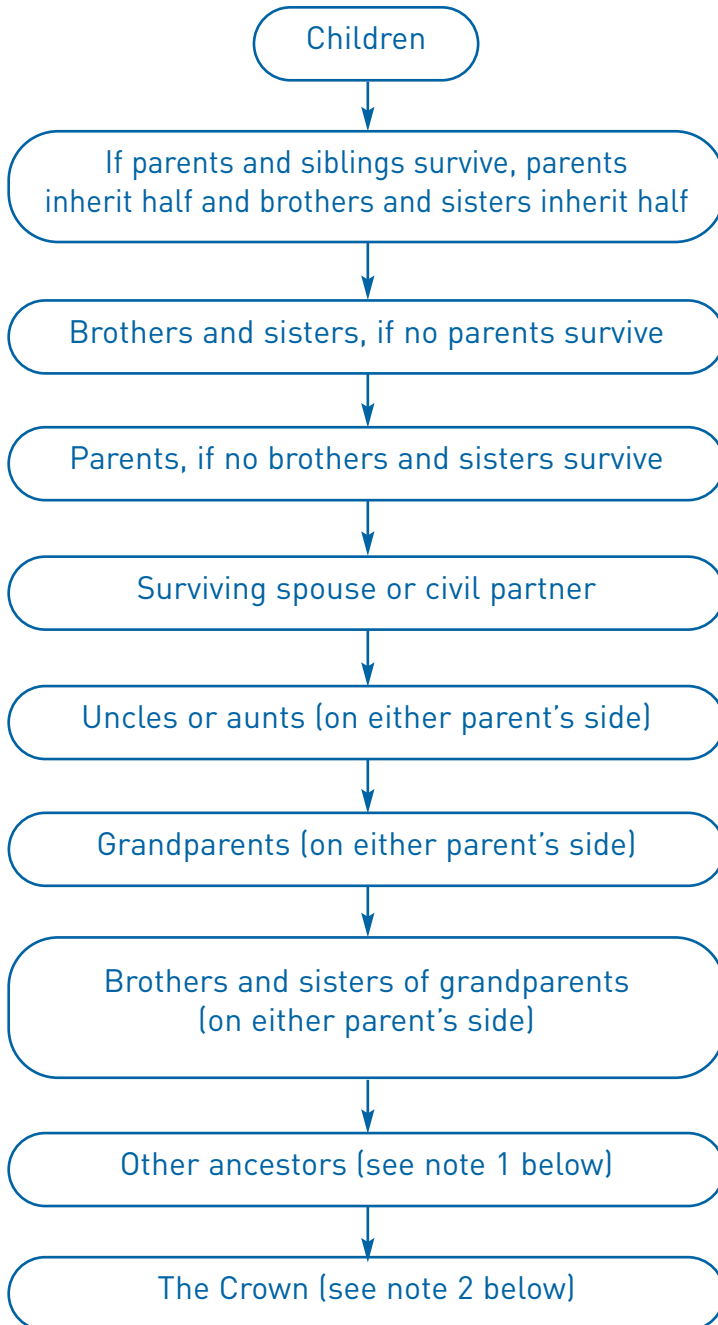
- one third of the moveable estate between them if the person who died left a spouse or civil partner
- one half of the moveable estate if the person who died did not leave a spouse or civil partner.

Each child has an equal claim. If a child would have been able to claim, but dies before his or her parent, the child's descendants (such as the grandchildren) can claim by the principle known as representation (see also section 5 below).

21. THE REMAINDER OF THE ESTATE

After the prior and legal rights have been satisfied, the rest of the intestate estate “devolves” according to legal rules. The chart on the next page describes the groups of people who inherit from an estate in this way.

If anyone is left alive in one group, no group further down the chart will inherit from the estate. For instance, if someone dies leaving children and one sister, the children only will inherit the remainder of the intestate estate. The order of succession in the chart is subject to the three general principles at section 22 below.



Note 1

Ancestors of the intestate person more remote than grandparents (for example, great-grandparents) successively take the whole. This applies to both maternal and paternal ancestors. However, if no ancestors survive in any generation, their brothers and sisters will inherit before ancestors of the next more remote generation.

This means, for example, that the brothers and sisters of a great-grandparent will inherit before the great-great-grandparents. If there are no surviving brothers and sisters of the intestate person's great-grandparents who are also dead, the great-great-grandparents will inherit.

Note 2

If the executor cannot trace any of the dead person's relatives in the categories above, the estate may pass to the Crown as "ultimus haeres". The person who acts for the Crown in this capacity in Scotland is the Queen's and Lord Treasurer's Remembrancer (QLTR). You can find more about the QLTR's role on the Crown Office website www.copfs.gov.uk. You will also find the QLTR's details in Part VI.

22. THE THREE PRINCIPLES

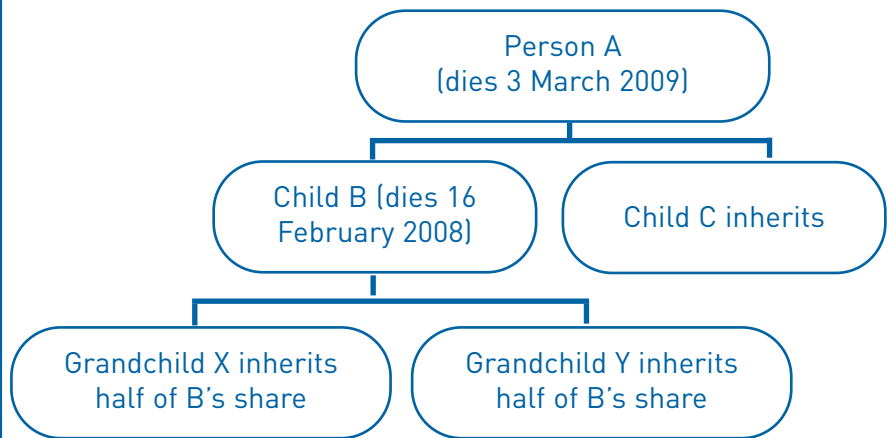
The application of the order of succession above is subject to three general principles:

1. There is no preference in relation to gender or age.

For instance, brothers do not rank before sisters, or elder brothers before younger. In the case of things such as titles or coats of arms, there may be some preference for male people or older people to succeed first.

2. There is representation in all branches of succession.

This principle covers cases where someone with children dies before being able to inherit. For instance, person A has two children B and C, and B has two children X and Y. B dies, and a year later A dies. A's grandchildren, X and Y, will inherit the share of A's intestate estate that B would have inherited.



3. Siblings have preference over half siblings.

A sibling (brother or sister) and a half sibling of the person who died can both inherit. However, if there are any full siblings, the full siblings will inherit and the half siblings will not.

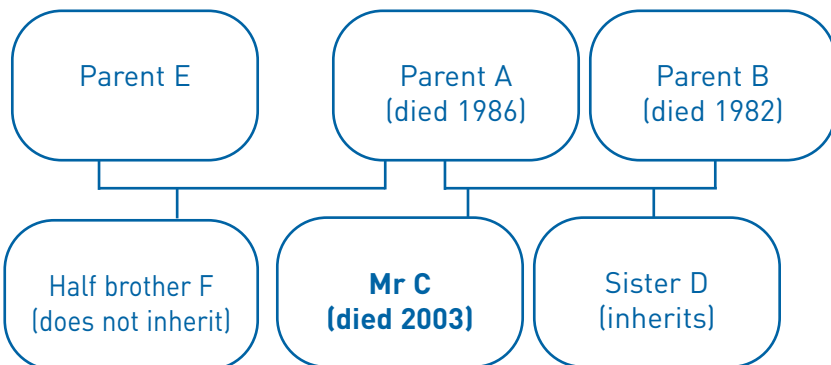
A half sibling is someone who shared only one parent with the person who died. A full sibling is someone who shared both parents with the dead person. If there are no full siblings, half siblings can inherit from the intestate estate.

For instance, if Mr C dies, leaving his sister and half brother, only his sister would inherit from his intestate estate (see diagram below).

The same principle applies to ancestors of the person who died. This means that, for instance, full siblings of grandparents of the person who died will inherit instead of half siblings of grandparents.

This principle is also subject to the principle of representation outlined above.

A descendant of a full sibling will inherit before a half sibling or a descendant of a half sibling. For example, a niece whose late mother was the full sibling of the person who died would inherit instead of the dead person's half brother.



23. WHERE THE PERSON LEFT A WILL

If someone dies leaving a valid will, the prior rights described in section 19 do not apply.

A surviving spouse or civil partner and children can still claim the legal rights described in section 20. However, if someone has rights under a will and legal rights, he or she cannot have both. Such a person must choose between them.

For example, if a man dies and in his will he leaves his widow £2,000, she can choose to accept it, or can instead claim the one third or one half of his moveable estate that is her legal right.

24. ADOPTED CHILDREN

For the purposes of succession law, the position of adopted children is the same as that of natural children. An adopted child has the same rights of succession in relation to his or her adoptive parent or parent's estate as a natural child. Similarly, adoptive parents have rights of succession in relation to their adopted child as if they are they the child's natural parents.

25. COHABITANTS

The Family Law (Scotland) Act 2006 introduced new rights for cohabitants. A cohabitant is either one of a couple who live together (or lived together) as if they were husband and wife or civil partners.

The Act came into force as part of Scottish law on 4 May 2006. The Act allows a cohabitant to ask the court for a share from his or her cohabitant's estate. This only applies where the person who died did not make a will. If you want to apply for a share from your cohabitant's estate, you need to do so within six months of his or her death.

When the court considers giving a share of someone's estate to a former cohabitant, it will look at the couple's relationship. It will consider things such as:

- how long the couple lived together
- what sort of relationship they had (was it similar in nature to a marriage or a civil partnership?)
- what sort of arrangements they made about money. For example:
 - did they have a joint bank account?
 - did they support one another financially?

This will help the court to decide whether a cohabitant is entitled to an award under these rules.

If you think this might apply to you, you should seek independent legal advice from a solicitor or a Citizens Advice Bureau. You can read more about family law on the Scottish Government's website at www.scotland.gov.uk/familylaw. You can contact the Scottish Government's family law team on 0131 244 3581.

26. IF YOU ARE MAKING A WILL OR NEED MORE GUIDANCE

The information in this part is a guide to help you understand rights of succession. Succession law is very complicated. If you are making a will or need further guidance, you should get independent legal advice. The Law Society of Scotland can give you the details of suitably qualified solicitors. You will find their details in Part V. You could also ask your local Citizens Advice Bureau (CAB) for advice. You will find their details in your local telephone directory.

Part VI
Useful addresses

PART VI. USEFUL ADDRESSES

Age Concern Scotland

Causewayside House

160 Causewayside

EDINBURGH

EH9 1PR

Telephone: 0845 833 0200

E-mail: Enquiries@acscot.org.uk

Website: www.ageconcernscotland.org.uk/

Brake

The Road Safety Charity

PO Box 548

HUDDERSFIELD

HD1 2XZ

BrakeCare helpline for road crash victims: 0845 603 8570

E-mail: brakecare@brake.org.uk

Website: www.brake.org.uk

British Association of Cancer United Patients

(Cancer BACUP Scotland)

3rd Floor

Cranston House

104-114 Argyll Street

GLASGOW

G2 8BH

Telephone helpline: 0808 800 1234

Website: www.cancerbacup.org.uk

Cancerlink
89 Albert Embankment
LONDON
SE1 7UQ
Email: Cancerlink@cancerlink.org
Freephone: 0808 808 0000
Fax: 020 7840 7841
Website: www.cancerlink.org

Information for those bereaved by suicide is available from:

Choose Life
NHS Health Scotland
Elphinston House
65 West Regent Street
GLASGOW
G2 2AF
Telephone: 0141 354 2900
E-mail: info@chooselife.net
Website: www.chooselife.net

Cruse - Bereavement Care Scotland
Riverview House
Friarton Road
PERTH
PH2 8DF
Telephone: 01738 444 178
Fax: 01738 444 807
E-mail: info@crusescotland.org.uk
Website: www.crusescotland.org.uk

General Register Office for Scotland
New Register House
3 West Register Street
EDINBURGH
EH1 3YT
Telephone: 0131 334 0380
Website: www.gro-scotland.gov.uk

Humanist Society of Scotland
272 Bath Street
GLASGOW
G2 4JR
Telephone: 0870 874 9002
Website: www.humanism-scotland.org.uk

HM Revenue & Customs Charities, Assets and
Residence
Meldrum House
15 Drumsheugh Gardens
EDINBURGH
EH3 7UG
Telephone: 0131 777 4000
Website: www.hmrc.gov.uk/inheritancetax
(For information on inheritance tax and forms)

The Law Society of Scotland
26 Drumsheugh Gardens
EDINBURGH
EH3 7YR
Telephone: 0131 226 7411
Website: www.lawscot.org.uk

The Miscarriage Association
c/o Clayton Hospital
Northgate
WAKEFIELD
WF1 3JS

Scottish Telephone Helpline (answerphone with
names of local contacts) 0131 334 8883

E-mail: info@miscarriageassociation.org.uk

Website: www.miscarriageassociation.org.uk

National Association of Funeral Directors
618 Warwick Road
SOLIHULL
B91 1AA

Telephone: 0845 2301343

E-mail: info@nafd.org.uk

Website: www.nafd.org.uk

Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
LONDON
EC4Y 8JX

Telephone: 08457 22 44 99

E-mail: enquiries@oft.gov.uk

Website: www.oft.gov.uk

Queen's and Lord Treasurer's Remembrancer
Crown Office
25 Chambers Street
EDINBURGH
EH1 1LA
Telephone: 0131 247 2694
Fax: 0131 247 2695
E-mail: COPFS@scotland.gsi.gov.uk
Website: www.copfs.gov.uk

The Stillbirth and Neonatal Death Society (SANDS)
54A Fountainbridge
EDINBURGH
EH3 9PT
Telephone: 0131 622 6263
Fax: 0131 622 6265
E-mail: edinburghsands@supanet.com
Website: www.uk-sands.org

Scottish Cot Death Trust
Royal Hospital for Sick Children
Yorkhill
GLASGOW
G3 8SJ
Telephone: 0141 357 3946
E-mail: contact@sidscotland.org.uk
Website: www.sidscotland.org.uk

The Scottish Government
Civil Law Division
Area 2W, St Andrew's House
Regent Road
EDINBURGH
EH1 3DG
Telephone: 0131 244 3581

You can also view the most up-to-date version of this booklet online at www.scotland.gov.uk/familylaw

Waverley Care HIV Information Centre
Waverley Care Solas
2/4 Abbey Mount
EDINBURGH
EH8 8EJ
Telephone: 0131 661 0982
Fax: 0131 652 1780
E-mail: solas@waverleycare.org
Website: www.waverleycare.org

Voluntary Health Scotland
35 Melville Street
EDINBURGH
EH3 7JF
Telephone: 0131 225 7290
Fax: 0131 220 9940
E-mail: mail@vhscotland.org.uk
Website: www.vhscotland.org.uk

Winston's Wish (support for bereaved children)

Winston's Wish

Westmoreland House

80-86 Bath Road

CHELTENHAM

GL53 7JT

Telephone: 01242 515 157

Fax: 01242 546 187

E-mail: info@winstonswish.org.uk

Website: www.winstonswish.org.uk



Further copies of this document are available, on request, in audio and large print formats and in community languages, please contact:

اس دستاویز کی مزید کاپیاں آڈیو کیسٹ پر اور بڑے حرفت کی چھاپی میں اور کمیونٹی کی زبانوں میں طلب کیے جانے پر دستیاب ہیں، برائے مہربانی اس پتے پر رابطہ کریں:

এই ডকুমেন্ট এর (দলিল) অনতিরিক্ত কপি, অডিও এবং বড়ো ছাপার অনুর আকারে এবং সম্প্রদায়ের ভাষায় অনুরোধের মাধ্যমে পাওয়া যাবে, অনুগ্রহ করে যোগাযোগ করুন:

Gheibhear lethbhreacan a bharrachd ann an cruth ris an èistear, ann an clò mòr agus ann an cànanain coimhearsnachd. Cuir fios gu:

इस दस्तावेज़/कागज़ात की और प्रतियाँ, माँगे जाने पर, ऑडियो टैप पर और बड़े अक्षरों में तथा कम्प्यूनिटी भाषाओं में मिल सकती हैं, कृपया संपर्क करें:

ਇਸ ਦਸਤਾਵੇਜ਼/ਕਾਗਜ਼ਾਤ ਦੀਆਂ ਹੋਰ ਕਾਪੀਆਂ, ਮੰਗੇ ਜਾਣ 'ਤੇ, ਅੱਡਿਓ ਟੇਪ ਉੱਪਰ ਅਤੇ ਵੱਡੇ ਅੱਖਰਾਂ ਵਿਚ ਅਤੇ ਕੰਮਿਊਨਿਟੀ ਭਾਸ਼ਾਵਾਂ ਦੇ ਵਿਚ ਮਿਲ ਸਕਦੀਆਂ ਹਨ, ਕ੍ਰਿਪਾ ਕਰਕੇ ਸੰਪਰਕ ਕਰੋ:

此文件有更多備份，如果需要，語音版本和大大字體版本及少數種族語言版本也可提供，請聯絡：

يمكن أن تطلب النسخ الأخرى من هذا المستند كالتسجيل الصوتي والخط الكبير ونسخ بلغات أخرى، يرجى الإتصال على:

Telephone 0131 244 3581

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www.scotland.gov.uk

RR Donnelley B60711 06/09