



**MACNABS**  
YOUR PARTNERS IN LAW

# EXECUTRY PROCEDURE

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What to do if  
you are the  
executor of  
an estate



**CALL US: 01738 623432**



[alanrouthead@macnabs-law.co.uk](mailto:alanrouthead@macnabs-law.co.uk)



[sarahmitchell@macnabs-law.co.uk](mailto:sarahmitchell@macnabs-law.co.uk)

PERTH | PITLOCHRY | BLAIRGOWRIE | BRIDGE OF ALLAN

[macnabs-law.co.uk](http://macnabs-law.co.uk)

In Scotland, Probate is referred to as the Grant of Confirmation. This is the Court process that gives the Executors legal title (i.e. ownership) to the estate assets, thereby allowing the assets to be sold/transferred/encashed.

## THE PROCESS

### What is an executor?

An executor is a person who is charged with dealing with the finances and possessions of a person who has died (the deceased), as stated in their Will and in accordance with the law.

### What is Grant of Confirmation?

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The first stage is to prepare an inventory of all the deceased's assets and debts (if any) as at the date of death. Assets could include:

- bank accounts,
- life policies,
- shares,
- pensions, etc.

Take a note of the relevant account numbers / policy references so that we can contact the organisations to obtain the information required to complete the inventory and application for Confirmation (also known as Form C1).

If Inheritance Tax (IHT) is payable, HMRC will require hard copies of all date of death valuations.

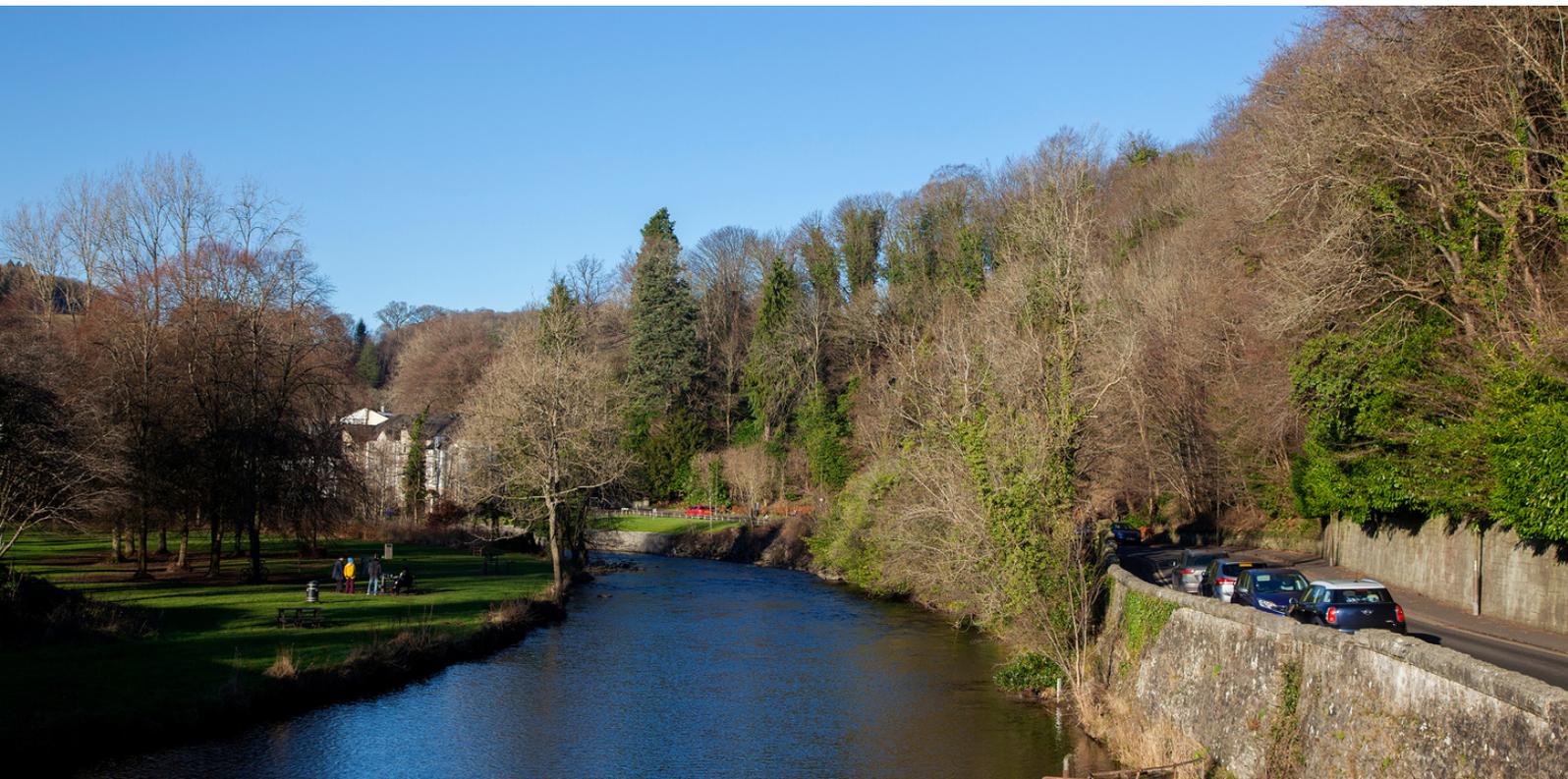
## **Inheritance Tax**

If IHT is payable (or if the Residence Nil Rate Band requires to be claimed, and in some other non-standard circumstances) a full Inheritance Tax Return requires to be completed and returned to HMRC, setting out the tax payable, or showing why no tax is payable (e.g. claiming exemptions). The full Inheritance Tax Return is also known as Form IHT400.

Before the estate inventory and application for Confirmation (and principal Will) can be lodged with the Court, HMRC require to provide formal written acknowledgement of the IHT400 by way of a Certificate.

## **Gifts**

Gifts made within 7 years prior to the death must be disclosed to HMRC, and Executors have a legal obligation to report any such gifts. The Executors should make reasonable enquiry with family members, friends, and other contacts to ascertain whether any such gifts were made. HMRC has extensive powers to look into these matters.



As soon as HMRC provides its acknowledgement Certificate, the estate inventory, application for Confirmation and principal Will are sent to the local Sheriff Court. At that time, the Court should then grant the Confirmation to the estate. It is this Confirmation document which then allows the Executors to ingather / transfer / encash the assets.



If no tax is payable, a full Inheritance Tax Return (Form IHT400) can usually be avoided. Instead, an abbreviated Inheritance Tax Return (Form C5) can be lodged with the Court at the same time as the application for Confirmation, without waiting on HMRC's Certificate.

At the end of the Executry administration, Macnabs file will be sent to an independent Auditor of Court and Law Accountant to assess a fair and accurate fee in accordance with the firm's Terms of Engagement, and an Executry Account will be prepared. Macnabs fees will be deducted from the estate funds and final cheques issued to the beneficiaries in accordance with the Will.

## Timing

The timescale to complete an Executry administration can vary greatly. The firm is dependent on many other organisations dealing with matters, such as HMRC, the Court, and the various asset holders. The law provides that creditors should be afforded a minimum period of 6 months from the date of death to make a claim against an Executry Estate, and therefore 6 months is generally the earliest timescale within which a straightforward Executry can be finalised and distributed to the beneficiaries.