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Changes to probate in 2019

Controversial fee increase set to take place from April.

From April 2019, some estates in England and Wales could be required to pay almost £6,000 for a service that currently costs less than 4% of that amount.

This is because of a proposed change to the fees families must pay to administer the estate of someone who has died.

This process, more generally referred to as **probate**, involves gathering the assets of the deceased, valuing the estate, paying any tax and bills, and distributing the estate according to the will.

Subtle procedural differences exist in Scotland, where you need to obtain confirmation before inheritance tax can be deducted and what's left of the estate is distributed to beneficiaries.

The proposed changes to probate fees will not take effect in Scotland from April 2019.

At the time of writing, obtaining the document needed to carry out these tasks – called a grant of probate in England and Wales – costs £215, or £155 if you apply through a solicitor, but there's no fee if the estate is under £5,000.

However, the Government has announced plans to restructure the way the fees work, which would see some estates paying significantly more than they do now.

What's changing?

Instead of the current flat rate, the proposed system sets fees on a sliding scale based on the value of the estate, as shown in the following table (right).

Value of estate before inheritance tax	Proposed fee
Up to £50,000 or exempt from requiring a grant of probate	£0
£50,000 – £300,000	£250
£300,000 – £500,000	£750
£500,000 – £1m	£2,500
£1m – £1.6m	£4,000
£1.6m – £2m	£5,000
Above £2m	£6,000
Source: Secondary Legislation Scrutiny Committee	

This seems like a large increase to fees for larger estates but the costs are considerably lower than similar proposals put forward in 2017, which would have raised fees to as much as £20,000.

The earlier proposals did not pass through Parliament before the general election in June 2017, and were withdrawn as a result.

The current version of the proposals, with lower fees, was then announced in 2018.

It has been approved by the House of Lords, and is now set to go before the House of Commons before potentially becoming law in April 2019.

Stealth tax or necessary reform?

The Government has said the banded structure is fairer than the current system, arguing that those who can afford to pay more should pay more.

As the threshold at which no probate fees are due would be raised from £5,000 to £50,000, it also means an extra 25,000 households a year won't have to pay any fees at all.

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The Government said the money raised by this change would provide funding for other parts of the courts and tribunals system, and "ensure an efficient and effective service".

However, as fees at the top end of the scale are much higher than the cost of funding the probate service, some have questioned whether this is an acceptable use of the Government's powers to raise fees.

This point was raised by a House of Lords committee in November 2018, which said "to charge a fee so far above the actual cost of the service arguably amounts to a stealth tax and, therefore, a misuse of the fee-levying power".

The probate process explained

Fees aside, probate can be a lengthy and often complicated process if you're carrying it out alone.

If you've been named as the executor in someone's will, there are a number of stages to complete even before you apply for a grant of probate, and several more after you've obtained one.

Appointing a professional to act on your behalf can make this process easier and ensure it is completed accurately. If you're dealing with a particularly complex estate, specialist expertise can save you a lot of money.

Alternatively, if you choose to administer the estate yourself, you'll need to carry out the following steps.

Find out if probate is needed

Before you begin, make sure you're clear on what you're required to do. Not every estate has to go through the probate process, so this is the first thing to check.

You may not need probate if the person who died only had savings or premium bonds, or if their property and money was all jointly owned – this will automatically pass to the surviving owners.

Value the estate and report it to HMRC

One of the main duties of an executor is to work out and report the value of the estate. This can be a significant task, but it's important to complete it accurately to avoid facing a fine from HMRC.

First, you'll need to find out about the assets and debts the person had by contacting organisations such as banks, pension providers, utility companies, mortgage lenders and credit card providers.

You'll also need to know the value of the person's home and possessions, as well as any life insurance payments and certain gifts they made in their lifetime.

According to HMRC, valuing an estate usually takes between six and nine months for an individual to complete, but it can take even longer if the estate is large or complicated.

Apply for probate

Once you've estimated and reported the estate's value to the Revenue, you can apply for probate. You can do this online if you're the executor, and you have the original will and death certificate.

In Scotland, the process is slightly different. You'll need to apply for confirmation, and complete different forms depending on whether you're dealing with a small estate (worth £36,000 or less) or a large estate (worth more than this).

Pay inheritance tax

If inheritance tax is due on the estate, the forms relating to it need to be sent within a year of the person's death, and you'll need to pay all tax within six months of the death.

You can request paying inheritance tax on certain assets in instalments, but you must settle the bill in full once the asset in question is sold.

You can start paying this before you finish valuing the estate. It's best to do this as soon as possible, as HMRC will start charging you interest if you don't pay by the deadline.

Collect the estate's assets

To access financial assets of the person who has died, send a copy of the grant of probate to the organisations that hold them.

You can ask for them to be transferred to an agreed executorship account.

Pay off any debts

As well as any tax due, you'll need to ensure any remaining debts are paid.

To protect yourself from unclaimed debts arising later on, you can place a notice informing creditors of the death in The Gazette.

Keep estate accounts

Throughout the process, keep a thorough record of the property, money and possessions owned by the person who has died, and how they will be split.

This must then be approved and signed by you and the main beneficiaries.

Distribute the assets

Once all the debts and taxes have been paid, you can distribute the estate according to the person's will. It's a good idea to obtain a signed receipt from each beneficiary of the estate when they receive their inheritance, to include in the estate accounts.

Be aware that beneficiaries might have to pay income tax if they inherit assets that generate income for them, while the estate may also have to complete a trust and estate tax return to report any income it receives while it is being administered.

Talk to us about administering an estate.