

## **EXECUTIVE NOTE**

### **THE CONFIRMATION TO SMALL ESTATES (SCOTLAND) ORDER 2011**

#### **2011 No. 435**

1. The above statutory instrument was made in exercise of powers conferred by Section 1(3) of the Confirmation to Small Estates (Scotland) Act 1979. The instrument is subject to negative resolution procedure.

#### **Policy Objective**

2. In order to take account of the impact of inflation etc. and following consultation, the objective of the instrument is to increase to £36,000 the limit below which an estate is regarded for the purpose of confirmation as a ‘small estate’.

#### **Background**

3. Confirmation of executors for a deceased person’s estate may be obtained by simplified procedures, as prescribed by the Intestate Widows and Children (Scotland) Act 1875 and by the Small Testate Estates (Scotland) Act 1876, where the estate is regarded as a “small estate”. Under the simplified procedures, a sheriff clerk is required to prepare the inventory and declaration, and do all that is necessary for confirmation. There is normally no need for the applicant to obtain the services of a solicitor.

4. The limit below which an estate is regarded for this purpose as a ‘small estate’ is prescribed by statutory instrument; it is updated periodically (typically on a roughly 5- yearly basis). The limit was last increased in 2005 to £30,000.

#### **Consultation**

5. A report was commissioned from Scottish Government Justice Analytical Services to inform and provide the basis for the consultation. Taking account of that report, the Scottish Government then consulted on an increase to £36,000 from £30,000 for the small estates limit. The consultation paper was sent directly to 15 organisations; it was also made available on the Scottish Government website. A News Release was also issued on the day of the consultation launch. The consultation ran for 13 weeks from 22 February 2011.

6. Ten responses (including a late one) were received. Seven of the ten respondents agreed with the suggested level for confirmation to small estates. Two of the remaining three made no comment and one expressed reservations about the need for a change.

#### **Equality Impact Assessment**

7. No Equality Impact Assessment was carried out as this is a settled policy area and the uprating exercise simply takes account of the effect of inflation on the small estates limit.

## **Financial Effects**

8. It is considered that no BRIA is necessary as the instrument has a negligible impact on the Scottish Government, local government or on business. As above the uprating exercise simply takes account of the effect of inflation on prior rights.

9. It is not anticipated that raising the limit which defines a 'small estate' will give rise to extra expense for individuals. There should, in fact, be an increase in estates which can be administered without the need to engage and pay for the services of a solicitor.

10. Scottish Courts Service, for whom the uprating may create additional work, because more estates might fall within the category of small estates, is aware and has confirmed it is content with the proposals.