

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE

PETITION PE1412: BOND OF CAUTION

**Comments on Scottish Government's fifth response to Petition PE1412**

The Public Petitions Committee wrote to the Scottish Government on 18 November 2013 asking what scope there is for restricting the categories of executor for which a Bond of Caution is required. The Scottish Government responded on 12 December 2013. In the absence of any promise by the Scottish Government to end the requirement for Bonds of Caution, the option of restricting the categories of executor who are required by law to obtain a Bond of Caution is reasonable and sensible given the excessive delays in bringing about a change in the law requested by the petition, namely the abolition of Bonds of Caution in estate administration.

It is sensible that a Bond of Caution should not be required by law if the executor-dative is a sole beneficiary entitled to the whole intestate estate. For example, s2(1)(a) of the Succession (Scotland) Act 1964, states: 'where an intestate is survived by children, they shall have the right to the whole of the intestate estate'. If the executor is the sole beneficiary and entitled to the whole intestate estate then there would be no need for a Bond of Caution because the executor would clearly not require the financial protection offered by such a bond. Similarly, if there were no debts on an estate then there would also clearly be no need for such a bond because there would be no creditors.

Zurich insurance is one of the two major insurance companies that issue Bonds of Caution. Zurich obviously has an interest in opposing abolition of Bonds of Caution because it benefits financially from the premiums charged for issuing such bonds. However, it is worth noting that in its submission to the Scottish Law Commission on the subject of Bonds of Caution, Zurich GSG accepted that caution should **not** be required where executors are the sole beneficiaries. Zurich's submission states: 'we can understand the proposal that bonds should not be required where executors are sole beneficiaries. In those limited circumstances we would concur with the view that the requirement for a bond could be dispensed with'.

It is in this context that the Scottish Government's response regarding the restriction of the categories of executor required to obtain a Bond of Caution is so disappointing. The Scottish Government has no immediate plans to amend the law. The original petition seeking abolition of Bonds of Caution was submitted 6 years ago but no change in the law is forthcoming. Even the modest proposal to exclude executors who are sole beneficiaries from the requirement to obtain a Bond of Caution appears unlikely to be implemented, at least not in the foreseeable future.

Scotland is still the only part of the UK where a surety is required. The Bond of Caution places unfair burdens on executors, notably in terms of the time, effort, expense and administrative delays involved in obtaining these bonds. There is no justification for retaining these bonds, especially for executors who are sole beneficiaries of an estate. In its response to the Public Petitions Committee the Scottish Government advises only that any change may require primary rather than secondary legislation. Perhaps a definitive legal ruling should be sought as to whether this minor change (i.e. excluding any sole beneficiaries from the need to obtain a Bond of Caution) can be achieved by the use of a Scottish Statutory Instrument.

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