

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE

PETITION PE1412: BOND OF CAUTION

Comments on the Scottish Government's response of 11 February 2016

The Public Petitions Committee wrote to the Scottish Government on 28 January 2016 for information about the outcome of the consultation on the Law of Succession and whether the Scottish Government was now in a position to set out how it would intend to take forward its intention to remove the requirement to obtain a Bond of Caution. The Scottish Government responded on 11 February 2016.

It is very welcome that the Scottish Government intends to abolish the requirement for any Executor-dative to obtain a Bond of Caution when seeking confirmation of any intestate estate. This was one aspect of the intended changes to the Law of Succession.

There is one matter which perhaps needs clarification. The appointment and confirmation of Executors-dative are two separate procedures which take place at different times. A person who is appointed Executor-dative will, at a later stage, seek confirmation of that appointment by submitting documentation to the Court for confirmation. It is at this later stage that the requirement to obtain a Bond of Caution currently applies: it does not apply at the stage when an individual seeks appointment as an Executor-dative.

Should legislation be passed abolishing the requirement for a Bond of Caution perhaps the Scottish Government will clarify whether the proposed change in the law will apply to individuals who have been appointed as an Executor-dative but have not yet proceeded to confirmation. Presumably it would only be fair that it does so because it is at the confirmation stage that the safeguards imposed by Bonds of Caution were intended to apply.

BILL McDOWELL

27 February 2016