



Guidance Notes to assist with completion of the Probate Application Form

These guidance notes are provided to help you complete the probate application form and should not be treated as a complete and authoritative statement of the law.

These notes should be read in conjunction with the booklet entitled "Information on obtaining Probate in the Isle of Man", issued by the Probate Office in Feb 2011. By taking the time to read both, and continually referring to both as you work your way through the application form, you reduce the chances of making mistakes or omitting information from the application form which will ultimately result in delays in processing your application.

Please note that General Registry staff members are prohibited from giving legal advice or offering opinions and therefore if you are in any doubt about your rights, or the procedures to follow in relation to obtaining probate, you should seek legal advice.

For ease of reference, the following are numbered in order to correspond with the probate application form.

1. Full name of the deceased

Please state the full, true name of the deceased. The true name usually consists of the forename(s) as shown on the deceased person's birth certificate, together with the surname shown on the death certificate.

If the Will of the deceased person does not show their full true name, the fact should also be stated on the application form. For example, if the deceased person was John George Smith and the Will states John G Smith, you should state on the application form 'John George Smith referred to in the Will as John G Smith'.

Furthermore, if the deceased person held assets in a name other than the true full name, the alternative name(s) (known as alias names) should also be stated. For example, if the true name of the deceased was Elizabeth Smith but she was also known as Betty Smith, enter 'also known as Betty Smith'. The alias name will be reflected on the grant to facilitate the administration of the estate.

2. Details of applicant(s) and type of grant required

Please state the full, true name and full address, including the postcode, of each applicant. The occupation (or, if none, the description) of each applicant must also be stated.

In addition, you must state in part 2 what type of grant it is you are applying for. The last two lines in part 2 of the application form provide you with all the options for the alternative types of grant available – you indicate which type you require by simply crossing out one or more of the options, set out on the form in brackets, that are not relevant. The booklet entitled "Information on obtaining Probate in the Isle of Man" provides further information in relation to the different types of grant.

When completing part 2, please bear in mind the following:

Name of applicant - if the name of an applicant is misspelt or imperfectly or incompletely stated in the Will of the deceased, the words "in the Will called (*add name as stated in the Will*)" should be added after the applicant's full, true name.

Address of applicant - it is not necessary to state the former address(es) of an applicant, unless the applicant's name is imperfectly described in the Will and the address is therefore relevant to aid identity. If it is necessary, after stating the details of your current address you should add the words "formerly of" and state your previous address.

Occupation - the occupation (or, if none, the description) of each applicant must be stated. If the applicant is retired, please state the former occupation prefixed by the word 'retired', for example 'a retired Doctor'. If the applicant has no occupation you may use the description 'of no occupation'. Descriptions such as 'gentleman', 'esquire' and other vague descriptions are not accepted by the Probate Office.

An example, covering all the above, of how an applicant may complete the form based on a given scenario whereby Tom Brian Smith a Civil Servant of 6 Park Lane, Ramsey, IM8 2ES is the applicant, but whose appointment as an executor in the deceased's Will is referred to as Tom B Smith of 21 Field Row, Ramsey, IM8 3AB is set out below:

**I Tom Brian Smith in the Will called Tom B Smith
of 6 Park Lane, Ramsey, IM8 2ES formerly of 21 Field Row, Ramsey, IM8
3AB a Civil Servant**

apply for probate of the Will of the above-named deceased

(the references to "We", "(and...of)", "(administration of the estate)" and "(with the Will annexed)" within part 2 of the form as set out would all be crossed out by the applicant, Mr Smith).

3. Details of the deceased

Part 3 of the application form requires you to state:

- the residential address of the deceased at the time of death. The full postal address, including the postcode, should be given. Should the address of the deceased differ from the place of residence stated in the Will or codicil, you should state 'formerly of' and state the former address appearing in the Will or codicil to account for the discrepancy

- the deceased's exact date of death. The date should be the same as the date shown on the death certificate
- the place of death. The place of death is normally shown on the death certificate
- the deceased's place of domicile. This will usually be the country which the deceased considered to be their permanent home, however it is possible to be domiciled in a country without having a permanent home there. If you are in any doubt about this you should seek legal advice.

4. Details of the Will or Intestacy

If the deceased left a Will, you must complete all of the details required by part 4(a) and cross out the statement set out in part 4(b).

The following guidance should assist you when completing part 4(a):

- on the first line, you must state the date of the Will
- on the second line, you must state the date(s) of any codicil(s) to the Will – if there are no codicils, please state "Not applicable" or "None"
- on the third and fourth lines, you must state the names of all the Executors appointed in the Will – the spelling of the names should be exactly as that stated in the Will (the details you provide at part 2 of the application form should account for any misspellings or imperfections in the names).

If any of the executors named in the Will (the names should be set out on the third and fourth lines of part 4(a) of the application form) are not a party to the application the reason why should be clearly stated in the blank space underneath part 4(a) on the application form.

There could be various reasons why this may be the case, some examples being where one or more of the executors wishes to have power reserved or where an executor died before the deceased. Whatever the reason, it is important that you, as the applicant, clearly set out the name of any executor not applying and the reason why.

Failure to correctly reflect the appointments made in the Will on the third and, if necessary, fourth lines of part 4(a) and/or account for any executor not applying will result in the application form being returned to you for amendment.

If the deceased did not leave a Will, in what is known as "died intestate", you should cross out part 4(a) as it will not be relevant – this will leave the statement, set out in part 4(b) of the application form, that states "(b). The deceased died intestate, or as the case may be."

5. Relationship of applicant(s) to the deceased (if any) and nature of claim to a Grant

Please complete statement (a), (b) or (c), depending on whichever is applicable, by stating the full name of the applicant and their respective relationship (if any) to the

deceased. If the applicant has no relationship to the deceased, he or she should state "stranger in blood".

Whichever two of the three statements are not relevant should be crossed out by the applicant(s). In cases where there are more than one applicant, "I am" should be crossed out and replaced with "We are".

If part (b) is applicable, the applicant will need to make further deletions to confirm if he or she is one of the persons or indeed the only person now entitled to the estate of the deceased. Furthermore, the applicant should clearly state on the form how his or her entitlement arises under the law – for example, where an applicant states he is "the person now entitled to the estate of the deceased" (based on the fact that he is the only brother of the deceased) the application form should clearly state, at the end of the sentence at 5(b), that "the deceased was a bachelor who had no children, both parents having pre-deceased the deceased, and the deceased leaving one brother (the applicant) and no sisters".

Where parts (a) and (b) are not applicable, the applicant must complete part (c) by clearly stating his or her name followed by details of relationship (if any) to the deceased and the nature of the claim to a Grant. An example of how part (c) may be completed, where for example an Executor appoints a Lawful Attorney, is shown below:

"(c). or as the case may be. I am James Smith stranger in blood and the Lawful Attorney of John Jones the sole Executor named in the Will."

6. Details of any minority interest

Please make the necessary deletions to confirm whether or not any person under the age of 18 years has an interest in the estate of the deceased. Part 6 does not have to be completed if the application is for a Grant of Probate (a grant issued to the executor(s) named in the Will).

Part 6 must be completed in all cases where the application is for a Grant of Letters of Administration (when the deceased did not leave a Will), or for a Grant of Letters of Administration with the Will annexed (a grant issued to someone other than an executor when the deceased left a Will). If there is a minority interest in such cases, please note the application will generally need to be made by at least two individuals or a trust corporation.

You should seek legal advice if you are in any doubt as to whether a minority interest arises under a Will or intestacy.

7. Notice of application

Notice of the application must be given to all persons who are required to be given notice before the application is lodged.

The full name(s) and address(es) of all persons who have been given notice must be stated in part 7 of the form.

By way of guidance, although please note it does not cover all instances, notice will need to be given in the following circumstances unless the Court otherwise directs:

- where the deceased died intestate, an application for a Grant of Letters of Administration shall be made with notice to all persons within the Isle of Man who take beneficially under section 52 of the Administration of Estates Act 1990, a copy of which you may obtain from the Tynwald Library (telephone 01624 685500 or e-mail enquiries@tyrwald.org.im). If, after considering the relevant section of the Act, you are in any doubt regarding which persons notice must be issued to you should seek legal advice;
- where a lawfully constituted attorney makes an application for a grant of letters of administration with the Will annexed for the use and benefit of the donor, and the donor is named in the Will of the deceased as an executor, notice must be given to any other executor named in the Will;
- where an application is made by an executor with the request that power be reserved to another executor or executors, notice of the application must be given to the executor or executors to whom power is to be reserved.

If you are in any doubt about the requirement to give notice, or indeed to whom notice should be given, you should seek legal advice.

8. Gross value of the estate of the deceased in the Isle of Man

The application fee is calculated on the gross value of the estate, at the date of death, of the deceased in the Isle of Man. The fees payable can be viewed on the back page of this information pack.

Part 8 enables the applicant(s) to state the appropriate ceiling figure for calculation of fees. Please note that it is not compulsory to complete part 8, however if no ceiling figure is stated the maximum application fee will be charged.

9. Oath / Affirmation

Please make the necessary deletions in part 9, in order to reflect whether the application is being sworn or affirmed by an individual applicant or by multiple applicants, and enter the full true name and address of the applicant(s).

The application form should be taken, by the applicant(s) in person, to be sworn or affirmed before a Commissioner for Oaths. Persons that may be qualified to do this are solicitors, advocates, barristers or a Justice of the Peace. Alternatively, if you are able to attend, this can be done at the public counter of the Isle of Man Courts of Justice Building in Deemsters Walk, Bucks Road, Douglas, Isle of Man (telephone 01624 687570). There is a fee payable for the service (a breakdown of fees is shown on page 10).

The Commissioner for Oaths will complete the details of where and when the application form is to be sworn or affirmed and, having done so, will ask the applicant(s) to sign the form in front of them.

Please note you will need to take the Will and codicil(s) (if any) with you when you attend the Commissioner for Oaths' Office to swear or affirm the application. The Will / codicil will need to be freshly marked (signed, by way of full signature, in a clear space on the front page only – please note to simply mark the document with initials is not sufficient) by both the applicant(s) and the Commissioner for Oaths before whom the application is sworn or affirmed.

Important – please note that it is an offence to make a statement knowing it to be false or not believing it to be true. Any person found guilty of such an offence may be liable to a fine and/or imprisonment.

10. Details of person lodging application and Address for Service

Please state the name of the person lodging the application on the first line. If the application is lodged by an advocates' office on behalf of the applicant, the details of the advocates' firm should be stated. Please note that an application must be lodged either by the Applicant in person or through an advocate – applications can not be lodged on behalf of an applicant(s) by an unqualified person by virtue of the Advocates Act 1976, a copy of which can be obtained from the Tynwald Library (telephone 01624 685500 or e-mail enquiries@tynwald.org.im).

Please state the full postal address of the address for service in the Isle of Man on the second line. If permission has been gained from an organisation in the Isle of Man to use its address as the address for service, it would assist if you could establish and also indicate the person's name to whom the grant should be sent to in the organisation.

The necessary deletion should be made to the third line to indicate whether the application is being lodged by an "Advocate for the applicant" or "In person".

What next?

Please take the time to read through the booklet entitled 'Information on obtaining Probate in the Isle of Man', dated Feb 2011 and issued by the Probate Office, as the information contained therein will not only help you understand some of the terms used in the application form but also tell you what you should do once you have filled the form in.

Using the information booklet referred to above to aid your understanding, please carefully check through the application form to make sure you have completed all parts of the form that are relevant to your application.

Once you are satisfied the application form is complete, you will need to swear or affirm it in front of a Commissioner for Oaths – remember, if the deceased left a Will you will need to take it and any codicils with you when you swear or affirm the application before the Commissioner for Oaths as the Will and codicils (if any) have to be marked by the applicant(s) and the Commissioner for Oaths at the same time as the application form.

Once the application form has been completed and sworn / affirmed, together with any Wills and codicils if relevant, you will be ready to submit the application and all supporting documents.

Where do I submit the application to?

If attending the public counter in the Isle of Man Courts of Justice Building to swear or affirm your application, you can leave your sworn / affirmed application form and all supporting documents with the staff on the counter after paying the appropriate fee. The staff will forward the application to the Probate Office.

Alternatively, you may post your application (after it has been sworn / affirmed) to:-

**The Probate Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR.**

Where will the Grant be issued to?

Once finalised, a certified copy of the grant will be issued to the address for service indicated on the application form. Additional copies of any documents requested, and paid for, will also be sent to the address for service.

Please note that failure to provide the correct fee to cover the cost of any additional documents requested will result in the request not being actioned, however further copies of documents may be obtained, on payment of a prescribed fee, at any stage in the future from the Deeds and Probate Registry. For further information regarding this service, including details of the fees payable, please contact the Deeds and Probate Registry on 01624 685250.

Reminder - Documents required

When submitting the completed application form, please remember to include:

- the original Will and codicil(s) (if any), freshly marked (signed, by way of full signature, in a clear space on the front page only – please note to simply mark the document with initials is not sufficient) by both the applicant(s) and the Commissioner for Oaths before whom the application was sworn or affirmed
- an original death certificate or, if the original is not available, a certified copy from the issuing Registry
- the appropriate fee (remember to include the cost of any additional copies etc. that may be required)

- if any of the executors has renounced probate, the original form of renunciation
- if the person applying is making the application on behalf of another, the original Power of Attorney authorising the representative to make the application.

Please note that all documents supplied in support of the application will be permanently retained by the Court.

Deceased died domiciled outside the Isle of Man – general information

Certain Civil Law jurisdictions have no requirement for an executor or executors to be appointed when a Will / codicil is executed. Where this is the case, and the application contains no clear documentation to evidence that the Will has been recognised as valid by the court of the place of domicile of the deceased, an affidavit of law (or a certificate of law by a notary practising in the country or territory concerned) must be filed in support of the application confirming the validity of the Will.

A Will which has been accepted by the court of the place of domicile of the deceased as a valid testamentary instrument is admissible to proof in the Isle of Man.

It is not unusual for the court where the deceased died domiciled to retain the original Will. Where the original Will is not available because it is in the custody of a foreign court or official, a copy under the seal of the court (where there is a seal) or duly authenticated by the court or official having custody of the original is accepted by the Probate Office – please note that copies certified by a solicitor are not sufficient for the purposes of proof.

If the Will has been proved in the foreign court the fact that the original is not available is accepted, but if an affidavit of law (or certificate of law by a notary / lawyer practising in the country or territory concerned) is necessary to establish the validity of the Will this should confirm the fact that the original Will is not available because it is in the custody of the foreign court or official, and that the copy lodged for proof is admissible in evidence in the courts of the foreign country or territory concerned.

If the Will is not in the English language an official, certified translation of it and of any endorsements or certificates on or annexed to it must be supplied. The translation must be identifiable with the document translated.

The original Will, or the properly certified copy (that is, certified by the court which proved it or retains it, or a notarially certified copy) thereof (not the translation) must be marked (signed, by way of full signature, in a clear space on the front page only – please note to simply mark the document with initials is not sufficient) by the applicant and the person before whom the oath is sworn or affirmed. The authenticated translation should not be marked.

Matters can be complicated when applying for Probate in situations where the deceased died domiciled outside the Isle of Man. If you are unsure of the procedure to follow, or indeed of the requirements, we would strongly suggest that you seek

legal advice from a law firm on the Isle of Man – details of firms can be found on the Isle of Man Law Society website (www.iomlawsociety.co.im) or by telephoning 01624 662910.

Applications where the deceased died domiciled outside the Isle of Man

In summary, when making an application where the deceased died domiciled outside the Isle of Man the following will need to be filed in support of the completed application (please note that all documents supplied in support of the application will be permanently retained by the Court):

- a court sealed or certified copy, from the issuing Registry or Court, of the probate grant or equivalent – failing this, an affidavit of law from a person suitably qualified to give expert evidence of the law in question setting out clearly the names of the person(s), and their respective relationship to the deceased, who are beneficially entitled to the estate of the deceased by the law of the place where the deceased died domiciled or a certificate by, or an act before, a Notary practising in the country or territory concerned
- a Registry issued death certificate
- a court sealed or certified copy, from the issuing Registry or Court, of the Will (if there is one) *
- a court sealed or certified copy, from the issuing Registry or Court, of all codicils (if any) *
- if the Will / codicil or any other relevant document is not in the English language, an official certified translation.

* **Please note:** The court sealed or certified copy of the Will and codicil(s) (if any) will need to be freshly marked (signed, by way of full signature, in a clear space on the front page only – please note to simply mark the document with initials is not sufficient) by both the applicant(s) and the Commissioner for Oaths / Notary.

If the deceased left a Will which does not cover his or her Isle of Man estate, a plain copy of that Will needs to be submitted as part of the application. Although included in the 'British Isles', the Isle of Man is not part of the United Kingdom or Great Britain.

As stated earlier, and as can be seen from reading the above, matters can be very complicated when applying for Probate in situations where the deceased died domiciled outside the Isle of Man. If you are unsure of the requirements, or indeed how to make such an application, we would strongly suggest that you seek legal advice from a law firm on the Isle of Man. Please respect the fact that staff in the Probate Office are not legally qualified and are prohibited from giving advice or offering opinions.

Issued by the Probate Office
Isle of Man Courts of Justice, Deemsters Walk,
Bucks Road, Douglas, Isle of Man, IM1 3AR
Telephone: +44 (0) 1624 685243
E-mail: probate@courts.im
Web: <http://www.courts.im/courtprocedures/willsandprobate/>

Probate Fees

Gross Estate Value:

Under £2,800	£ 1.40*
Exceeds £2,800 but not £21,000	£ 47.50
Exceeds £21,000 but not £70,000	£ 151.50
Exceeds £70,000 but not £140,000	£ 300.00
Exceeds £140,000 but not £200,000	£ 501.00
Exceeds £200,000	£ 649.00

*The above fee includes the cost of one certified copy of the Grant at £1.40.

Please note that the Original Grant remains on the Court File, although further certified copies of the Grant are available at £1.40 each.

In addition (where applicable):

Swearing of Oath (per applicant)	£ 3.50
Certified Copy of Grant	£ 1.40
To witness each exhibit (for example a Will)	£ 2.00
Copy of Will (<i>per page</i>)	£ 0.25
Certification of any copies	£ 1.15
Exemplification	£ 23.00
Draft Application	£ 34.00
Filing a Caveat	£ 34.00
Photocopy (<i>per page</i>)	£ 0.25

**Please make cheques payable to:
"Isle of Man Government"**

The above fees, effective from 6 April 2010, are extracted from the following Fees Orders:
General Registry (Miscellaneous) Fees Order 2009 (SD No. 92/09)
Fees and Duties (Government Fees) Order 2010 (SD No. 60/10)
High Court Fees Order 2010 (SD No. 72/10)