

## **New reforms to the law of wills**

Synopsis: The Law Commission's recommendations to reform the law of wills in its Report: Modernising Wills Law.

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The reforms are intended to modernise the law governing wills to ensure it is fit for purpose in the modern age. The Law Commission says that its recommendations are aimed at supporting testamentary freedom, protecting testators (including from undue influence and fraud), and increasing clarity and certainty in the law.

The [final Report](#) is accompanied by a [draft Bill for a modern Wills Act](#), to replace the Wills Act 1837.

### **Testamentary freedom**

An individual's ability to determine how their estate will be distributed after their death – is a guiding principle throughout the Report. The Law Commission makes several key recommendations which are particularly focused on this aim...

- Giving the court the power to dispense with the formality requirements to make a valid will, to be used on a case-by-case basis. This power will allow the court to deem a document or record to be a valid will where the court is satisfied that the document reflects the person's settled testamentary intentions. This will address the strictness of the current law, under which non-compliance with the formality rules makes a will invalid no matter how clear the person's intentions were. The Law Commission says that creating a power to be used in exceptional circumstances, while maintaining the current formality requirements, ensures that the important protective functions the formalities serve are not lost.
- Reducing the minimum age at which a person can make a will from 18 to 16. Currently, a person must be 18 years old to make a valid will. A child who is terminally ill and who does not wish one of their parents to inherit from them or decide what happens to their body when they die, for example because the parent has not played a role in their life, has no ability to set out their binding wishes. Other countries allow children under 18 to make wills, and the law presumes that children from age 16 have capacity to make other types of decisions.

### **Protecting testators**

Bearing in mind the serious problem of financial abuse, particularly of the elderly, the Law Commission suggests...

- Abolishing the existing rule that a person's will is automatically revoked when they marry or enter a civil partnership. This rule can be exploited by those who enter a predatory marriage with a vulnerable person – marrying them in order to inherit from them. Predatory marriage is a form of financial

abuse which has devastating consequences for the victims and their families.

- Increasing protections for those who are coerced into making a will. It is currently too difficult to challenge the validity of a will based on undue influence (meaning that someone made a will that they did not want to because of another person's influence). Evidence of undue influence can be hidden because it often happens behind closed doors and by someone close to the person making a will, and the law places a high evidential burden on anyone alleging undue influence. As a result, the law is not adequately protecting vulnerable people from financial abuse. For that reason, the Law Commission recommends that it should be possible for the courts to infer that a will was brought about by undue influence where there is evidence which provides the court with reasonable grounds to suspect it.

### **Clarity and certainty**

The Law Commission says that it has sought to clarify the law where possible. It has created a draft Bill for a new Wills Act, which is intended to replace the existing legislation – the Wills Act 1837. As well as enacting the Law Commission's recommendations, the Law Commission believes the draft Bill comprises a modern, comprehensive and accessible piece of legislation to govern wills law. It has also made recommendations, which are intended to clarify the law and make it more certain...

- Making specific provision to enable electronic wills to be formally valid – an important update to the law of wills to make it fit for the 21<sup>st</sup> Century. However, the Law Commission has also recommended that electronic wills should have to meet specific requirements to ensure that they are safe and reliable.
- Clarifying the law on testamentary capacity. There are currently two tests which apply to the question of testamentary capacity, depending on the issue being decided. The common law test applies if the question is whether the person has capacity to make their own will, and the test in the Mental Capacity Act 2005 applies if the question is whether the court has the power to make a will on the person's behalf. This confusing anomaly is the product of the law's historical development. The Law Commission has recommended that only one test should apply: the modern test in the Mental Capacity Act 2005.

For more information, please also see: [Summary of the Report](#) and [Easy read summary of the Report](#).

## **Next steps**

The Government gave its [initial response here](#). The Law Commission says that it is now for Government to review and consider its recommendation for reform, and its accompanying draft Bill for a new Wills Act. The Government has said that it welcomed the report as an important and timely review of the existing law, and will be giving the report detailed consideration.

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