



# Administration of Justice Act 1982

## 1982 CHAPTER 53

### PART IV

#### WILLS

##### *Amendments of Wills Act 1837*

#### 17 Relaxation of formal requirements for making wills.

The following section shall be substituted for section 9 of the Wills Act 1837—

##### **“9 Signing and attestation of wills.**

No will shall be valid unless—

- (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either—
  - (i) attests and signs the will; or
  - (ii) acknowledges his signature,

in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary.”

##### **Modifications etc. (not altering text)**

- C1** The text of s. 4, 6(1)(2), 14(1)(2)(4), 15(1)(3)(6), 16–19, 28(7), 34, 35, 49–54, 56–59, 61, 63–67, 69(1)(2), 70, 72(1), 75, Sch. 1 Pts. I, III, IV, Sch. 3 Pt. III para. 7, Sch. 4 Pt. I, Sch. 6 paras. 2–9, Sch. 7 Pts. I, II, Sch. 7 Pt. III paras 2, 3, Sch. 8, Sch. 9 is in the form in which it was originally enacted: it was not

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reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## **18 Effect of marriage or its termination on wills.**

(1) The following section shall be substituted for section 18 of the Wills Act 1837—

### **“18 Wills to be revoked by marriage, except in certain cases.**

- (1) Subject to subsections (2) to (4) below, a will shall be revoked by the testator’s marriage.
- (2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator’s subsequent marriage unless the property so appointed would in default of appointment pass to his personal representatives.
- (3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.
- (4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person,—
  - (a) that disposition shall take effect notwithstanding the marriage; and
  - (b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.”.

(2) The following section shall be inserted after that section—

### **“18A Effect of dissolution or annulment of marriage on wills.**

- (1) Where, after a testator has made a will, a decree of court dissolves or annuls his marriage or declares it void,—
  - (a) the will shall take effect as if any appointment of the former spouse as an executor or as the executor and trustee of the will were omitted; and
  - (b) any devise or bequest to the former spouse shall lapse, except in so far as a contrary intention appears by the will.
- (2) Subsection (1)(b) above is without prejudice to any right of the former spouse to apply for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975.
- (3) Where—
  - (a) by the terms of a will an interest in remainder is subject to a life interest; and
  - (b) the life interest lapses by virtue of subsection (1)(b) above,
 the interest in remainder shall be treated as if it had not been subject to the life interest and, if it was contingent upon the termination of the life interest, as if it had not been so contingent.”.

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**Modifications etc. (not altering text)**

- C2** The text of s. 4, 6(1)(2), 14(1)(2)(4), 15(1)(3)(6), 16–19, 28(7), 34, 35, 49–54, 56–59, 61, 63–67, 69(1)(2), 70, 72(1), 75, Sch. 1 Pts. I, III, IV, Sch. 3 Pt. III para. 7, Sch. 4 Pt. I, Sch. 6 paras. 2–9, Sch. 7 Pts. I, II, Sch. 7 Pt. III paras 2, 3, Sch. 8, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**19 Gifts to children etc. who predecease testator.**

The following section shall be substituted for section 33 of the Wills Act 1837—

**“33 Gifts to children or other issue who leave issue living at the testator’s death shall not lapse.**

- (1) Where—
- (a) a will contains a devise or bequest to a child or remoter descendant of the testator; and
  - (b) the intended beneficiary dies before the testator, leaving issue; and
  - (c) issue of the intended beneficiary are living at the testator’s death,
- then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator’s death.
- (2) Where—
- (a) a will contains a devise or bequest to a class of persons consisting of children or remoter descendants of the testator; and
  - (b) a member of the class dies before the testator, leaving issue; and
  - (c) issue of that member are living at the testator’s death,
- then, unless a contrary intention appears by the will, the devise or bequest shall take effect as if the class included the issue of its deceased member living at the testator’s death.
- (3) Issue shall take under this section through all degrees, according to their stock, in equal shares if more than one, any gift or share which their parent would have taken and so that no issue shall take whose parent is living at the testator’s death and so capable of taking.
- (4) For the purposes of this section—
- (a) the illegitimacy of any person is to be disregarded; and
  - (b) a person conceived before the testator’s death and born living thereafter is to be taken to have been living at the testator’s death.”

**Modifications etc. (not altering text)**

- C3** The text of s. 4, 6(1)(2), 14(1)(2)(4), 15(1)(3)(6), 16–19, 28(7), 34, 35, 49–54, 56–59, 61, 63–67, 69(1)(2), 70, 72(1), 75, Sch. 1 Pts. I, III, IV, Sch. 3 Pt. III para. 7, Sch. 4 Pt. I, Sch. 6 paras. 2–9, Sch. 7 Pts. I, II, Sch. 7 Pt. III paras 2, 3, Sch. 8, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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### *Rectification and interpretation of wills*

#### **20 Rectification.**

- (1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence—
  - (a) of a clerical error; or
  - (b) of a failure to understand his instructions,it may order that the will shall be rectified so as to carry out his intentions.
- (2) An application for an order under this section shall not, except with the permission of the court, be made after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out.
- (3) The provisions of this section shall not render the personal representatives of a deceased person liable for having distributed any part of the estate of the deceased, after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that they ought to have taken into account the possibility that the court might permit the making of an application for an order under this section after the end of that period; but this subsection shall not prejudice any power to recover, by reason of the making of an order under this section, any part of the estate so distributed.
- (4) In considering for the purposes of this section when representation with respect to the estate of a deceased person was first taken out, a grant limited to settled land or to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

#### **21 Interpretation of wills—general rules as to evidence.**

- (1) This section applies to a will—
  - (a) in so far as any part of it is meaningless;
  - (b) in so far as the language used in any part of it is ambiguous on the face of it;
  - (c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.
- (2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.

#### **22 Presumption as to effect of gifts to spouses.**

Except where a contrary intention is shown it shall be presumed that if a testator devises or bequeaths property to his spouse in terms which in themselves would give an absolute interest to the spouse, but by the same instrument purports to give his issue an interest in the same property, the gift to the spouse is absolute notwithstanding the purported gift to the issue.

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## Registration of wills

PROSPECTIVE

### 23 Deposit and registration of wills of living persons.

- (1) The following, namely—
- (a) the Principal Registry of the Family Division of the High Court of Justice;
  - (b) the Keeper of the Registers of Scotland; and
  - (c) the Probate and Matrimonial Office of the [Court of Judicature] of Northern Ireland,
- shall be registering authorities for the purposes of this section.
- (2) Each registering authority shall provide and maintain safe and convenient depositories for the custody of the wills of living persons.
- (3) Any person may deposit his will in such a depository in accordance with regulations under section 25 below and on payment of the prescribed fee.
- (4) It shall be the duty of a registering authority to register in accordance with regulations under section 25 below—
- (a) any will deposited in a depository maintained by the authority; and
  - (b) any other will whose registration is requested under Article 6 of the Registration Convention.
- (5) A will deposited in a depository provided—
- (a) under section 172 of the <sup>M1</sup>Supreme Court of Judicature (Consolidation) Act 1925 or section 126 of the <sup>M2</sup>[Senior Courts Act 1981]; or
  - (b) under Article 27 of the <sup>M3</sup>Administration of Estates (Northern Ireland) Order 1979,
- shall be treated for the purposes of this section as if it had been deposited under this section.
- (6) In this section “prescribed” means—
- (a) in the application of this section to England and Wales, prescribed by an order under [<sup>F1</sup>section 92 of the Courts Act 2003];
  - (b) in its application to Scotland, prescribed by an order under section 26 below; and
  - (c) in its application to Northern Ireland, prescribed by an order under section 116 of the <sup>M4</sup>Judicature (Northern Ireland) Act 1978.

#### Textual Amendments

**F1** Words in s. 23(6)(a) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(3), 110(1), **Sch. 8 para. 270**; S.I. 2005/910, **art. 3(y)**

#### Marginal Citations

**M1** 1925 c. 49.

**M2** 1981 c. 54.

**M3** S.I. 1979 No. 1575 (N.I. 14)

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M4 1978 c. 23.

PROSPECTIVE

## 24 Designation of Principal Registry as national body under Registration Convention.

- (1) The Principal Registry of the Family Division of the High Court of Justice shall be the national body for the purposes of the Registration Convention, and shall accordingly have the functions assigned to the national body by the Registration Convention including, without prejudice to the general application of the Convention to the Principal Registry by virtue of this section, the functions—
  - (a) of arranging for the registration of wills in other Contracting States as provided for in Article 6 of the Convention;
  - (b) of receiving and answering requests for information arising from the national bodies of other Contracting States.
- (2) In this Part of this Act “the Registration Convention” means the Convention on the Establishment of a Scheme of Registration of Wills concluded at Basle on 16th May 1972.

PROSPECTIVE

## 25 Regulations as to deposit and registration of wills etc.

- (1) Regulations may make provision—
  - (a) as to the conditions for the deposit of a will;
  - (b) as to the manner of and procedure for—
    - (i) the deposit and registration of a will; and
    - (ii) the withdrawal of a will which has been deposited; and
    - (iii) the cancellation of the registration of a will; and
  - (c) as to the manner in which the Principal Registry of the Family Division is to perform its functions as the national body under the Registration Convention.
- (2) Regulations under this section may contain such incidental or supplementary provisions as the authority making the regulations considers appropriate.
- (3) Any such regulations are to be made—
  - (a) for England and Wales, by the President of the Family Division of the High Court of Justice, with the concurrence of the Lord Chancellor;
  - (b) for Scotland, by the Secretary of State after consultation with the Lord President of the Court of Session; and
  - (c) for Northern Ireland, by the Northern Ireland [F<sup>2</sup>Court of Judicature] Rules Committee, with the concurrence of the Lord Chancellor.
- (4) Regulations made by virtue of subsection (1)(c) above shall be made by the Lord Chancellor [F<sup>3</sup>after consulting the Lord Chief Justice of England and Wales].

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- (5) Subject to subsection (6) below, regulations under this section shall be made by statutory instrument and shall be laid before Parliament after being made.
- (6) Regulations for Northern Ireland shall be statutory rules for the purposes of the <sup>M5</sup>Statutory Rules (Northern Ireland) Order 1979; and any such statutory rule shall be laid before [<sup>F4</sup>the Northern Ireland Assembly after being made].
- [<sup>F5</sup>(6A) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6) in relation to the laying of a statutory rule as it applies in relation to the laying of a statutory document under an enactment.]
- (7) The <sup>M6</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations made in accordance with subsection (3)(a) <sup>F6</sup>. . . above as if the regulations had been made by a Minister of the Crown.
- (8) Any regulations made under section 172 of the <sup>M7</sup>Supreme Court of Judicature (Consolidation) Act 1925 or section 126 of the <sup>M8</sup>[<sup>F7</sup>Senior Courts Act 1981] shall have effect for the purposes of this Part of this Act as they have effect for the purposes of the enactment under which they were made.
- [<sup>F8</sup>(9) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (4).]

#### Textual Amendments

- F2** Words in s. 25(3)(c) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59(5), 148(1), **Sch. 11 para. 27(2)**; S.I. 2009/1604, **art. 2(d)**
- F3** Words in s. 25(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148(1), **Sch. 4 para. 148(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 11(q)
- F4** Words in s. 25(6) substituted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 32(a)** (with arts. 28-31)
- F5** S. 25(6A) inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 32(b)** (with arts. 28-31)
- F6** Words in s. 25(7) omitted (12.4.2010) by virtue of The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 32(c)** (with arts. 28-31)
- F7** S. 25(8) for the words "Supreme Court Act 1981" wherever they occur there is substituted (1.10.2009) the words "Senior Courts Act 1981" by virtue of Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, **art. 2**
- F8** S. 25(9) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148(1), **Sch. 4 para. 148(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 11(q)

#### Modifications etc. (not altering text)

- C4** S. 25(3)(c): functions transferred (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 9** (with arts. 28-31)

#### Marginal Citations

- M5** S.I. 1979 No. 1573 (N.I. 12)
- M6** 1946 c. 36.
- M7** 1925 c. 49.

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M8 1981 c. 54.

## 26 Fees as to registration in Scotland.

The Secretary of State may, with the consent of the Treasury, from time to time by order made by statutory instrument fix fees payable in respect of—

- (a) the deposit, registration or withdrawal of wills under this Act;
- (b) the obtaining of information from the register; and
- (c) any other thing which the Keeper of the Registers of Scotland is required or authorised to do under this Act or any regulations made thereunder in connection with the depositing or registration of wills.

PROSPECTIVE

### *International wills*

## 27 The form of an international will.

- (1) The Annex to the Convention on International Wills shall have the force of law in the United Kingdom.
- (2) The Annex is set out in Schedule 2 to this Act.
- (3) In this Part of this Act—
  - “international will” means a will made in accordance with the requirements of the Annex, as set out in Schedule 2 to this Act; and
  - “the Convention on International Wills” means the Convention providing a Uniform Law on the Form of an International Will concluded at Washington on 26th October 1973.

## 28 International wills—procedure.

- (1) The persons authorised to act in the United Kingdom in connection with international wills are—
  - (a) solicitors; and
  - (b) notaries public.
- (2) A person who is authorised under section 6(1) of the <sup>M9</sup>Commissioners for Oaths Act 1889 to do notarial acts in any foreign country or place is authorised to act there in connection with international wills.
- (3) An international will certified by virtue of subsection (1) or (2) above may be deposited in a depository provided under section 23 above.
- (4) Section 23 above shall accordingly have effect in relation to such international wills.
- (5) Subject to subsection (6) below, regulations under section 25 above shall have effect in relation to such international wills as they have effect in relation to wills deposited under section 23 above.



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- (6) Without prejudice to the generality of section 25 above, regulations under that section may make special provision with regard to such international wills.
- (7) In section 10 of the <sup>M10</sup>Consular Relations Act 1968 (by virtue of which diplomatic agents and consular officials may administer oaths and do notarial acts in certain cases)
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- (a) at the end of subsection (1)(b) there shall be added the words “or
- (c) in connection with an international will.”; and
- (b) at the end of subsection (4) there shall be added the words “ and “international will” has the meaning assigned to it by section 27 of the Administration of Justice Act 1982 ”.

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**Modifications etc. (not altering text)**

- C5** The text of s. 4, 6(1)(2), 14(1)(2)(4), 15(1)(3)(6), 16–19, 28(7), 34, 35, 49–54, 56–59, 61, 63–67, 69(1)(2), 70, 72(1), 75, Sch. 1 Pts. I, III, IV, Sch. 3 Pt. III para. 7, Sch. 4 Pt. I, Sch. 6 paras. 2–9, Sch. 7 Pts. I, II, Sch. 7 Pt. III paras 2, 3, Sch. 8, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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**Marginal Citations**

- M9** 1889 c. 10.  
**M10** 1968 c. 18.

**Status:**

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**Changes to legislation:**

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