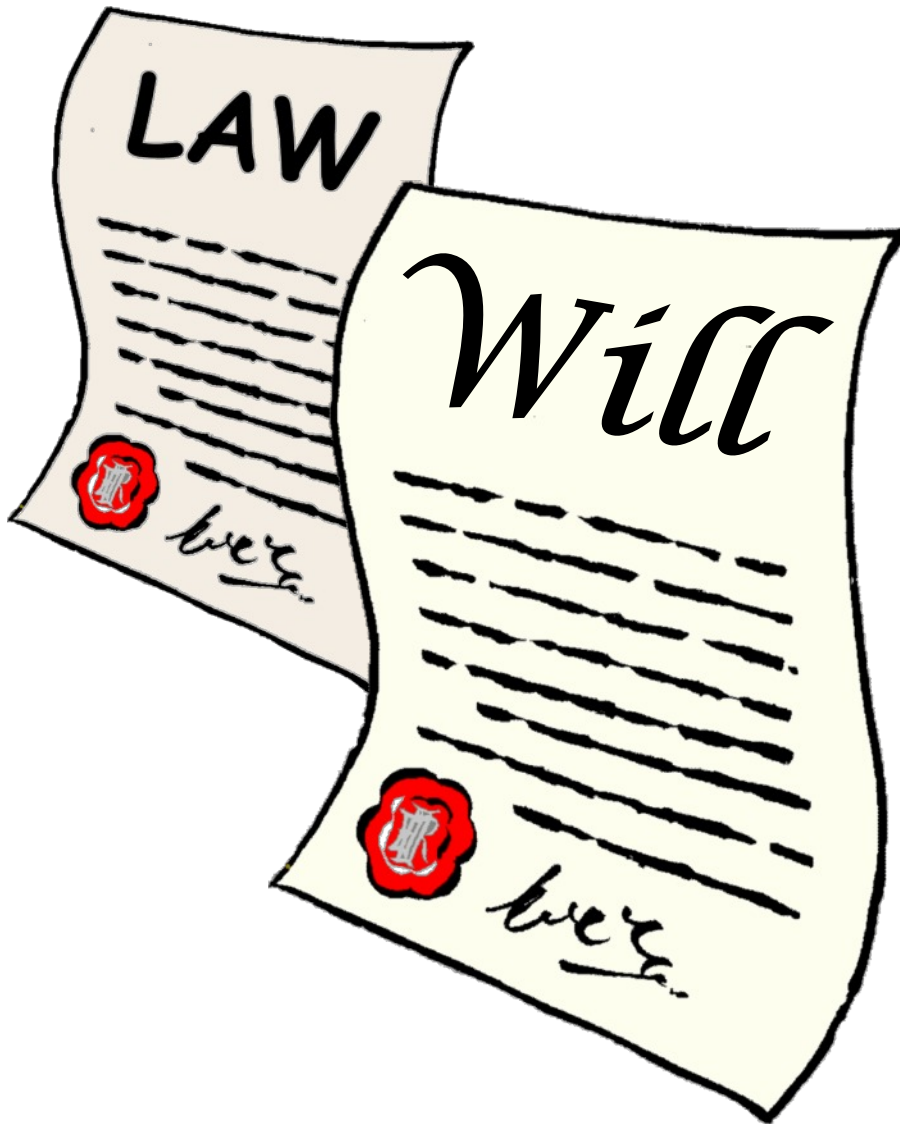




**Law
Commission**
Reforming the law



Updating the law about wills



Easy Read version



**Law
Commission**
Reforming the law

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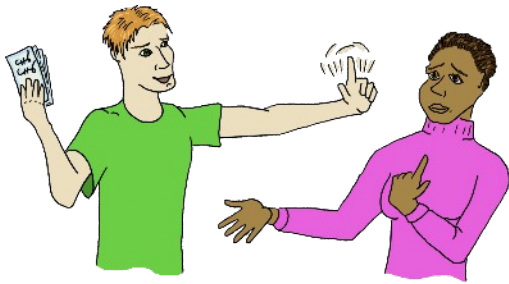
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Who we are



We are the Law Commission of England and Wales.



The Government set up the Law Commission to look at whether there should be changes in the laws.



We are **independent**.

Independent means we will not be influenced by Government. We think for ourselves.

What we are doing



We are looking at the law about **wills**.

A **will** is an important document. It tells people what you want to happen after you die.



The law about wills is very old. It was written over 180 years ago.



Some parts of the law about wills still work well. But times have changed.



- People are living to an older age and may not be in good health or may have lost some **mental capacity**.

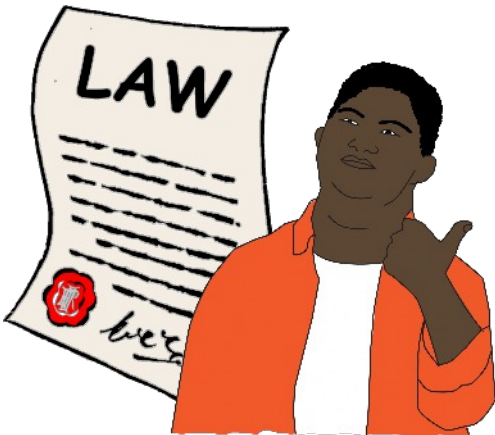
Mental capacity means you can make decisions for yourself.



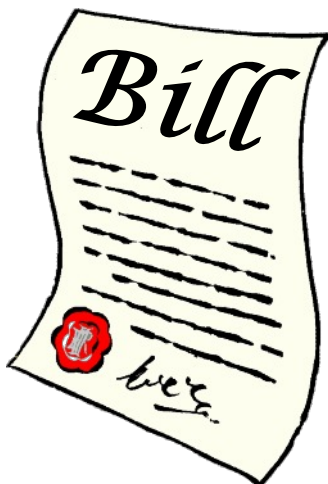
- They may own more property.



Many important documents are now made and signed on computers and not paper.



We want to make the law about wills work better for people. So we think the law needs to change.



We are also publishing a draft **Bill** to replace the old law made in 1837 with a new law.

A **bill** is the first step in making a new law.

The wills project

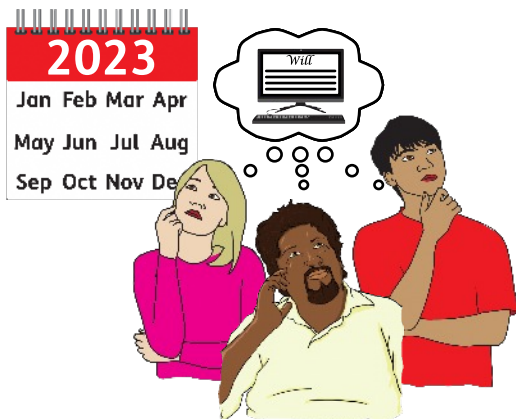


The wills project began in 2016.



In 2017 we wrote a paper called Making a Will and we held public **consultations**.

A **consultation** is when we asked people to tell us what they think.



In 2023 we had another consultation about electronic wills and what happens to your will when you get married.



We collected people's answers and have written a report.



In our report we make **recommendations** about changing the law of wills.

Recommendation is another word for a suggestion.



This is a short report called a summary. Our full Report and our draft Bill can be found at **lawcom.gov.uk/project/wills/**



The Government will look at our recommendations and draft Bill and decide whether to change the law.

The law of wills



A will is an important document. It tells people what you want to happen after you die.



If a person has a will when they die they are called the **testator**.



If a person dies and does not have a will, we say they die **intestate**. There are other rules that explain what happens to their property.

Key points about wills

- A will explains who you want the things you own to go to after you die. For example, your property and money. This is also called your **estate**.

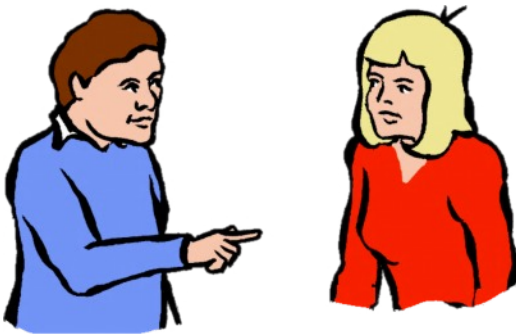




- You can say who will look after your young children after you die.



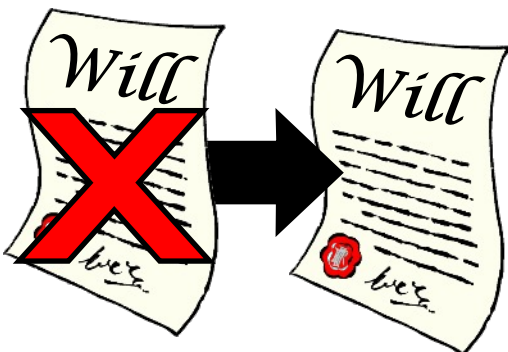
- You can say what you want to happen to your body after you die.



- In your will you can say who you want to carry out your wishes. This person is called the **executor** of your will.



- What you say in your will only happens after you die.



- You can cancel your will and make a new one.

The aims of our project



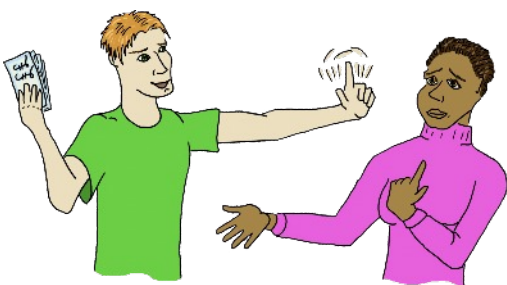
We are only looking at the law about wills.

We are not looking at the rules about when a person dies with no will.



In this project we have suggested changes so the law is better at:

- Supporting the wishes of the person who dies.

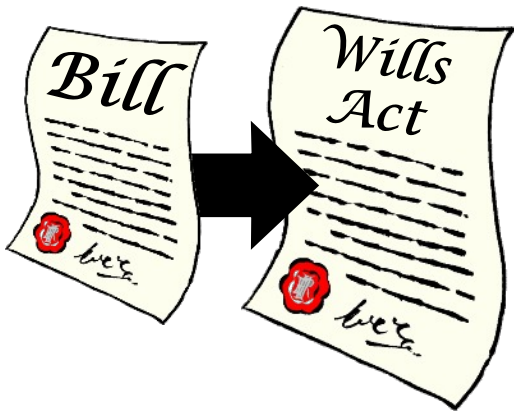


- Protecting people from being controlled and **fraud**.

Fraud is when someone tricks another person for financial or personal gain.



- Making the law as clear and easy to understand as possible.



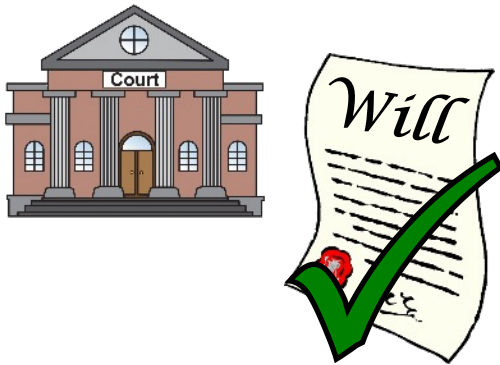
We have also made a Bill for a new Wills Act which could replace the current Wills Act 1837, which is now very old.

1. Supporting the wishes of the person who dies



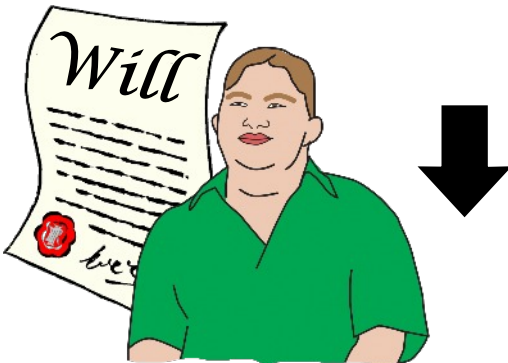
The will of a person who has died says what should happen to their estate.

Here are 3 things we think should happen:

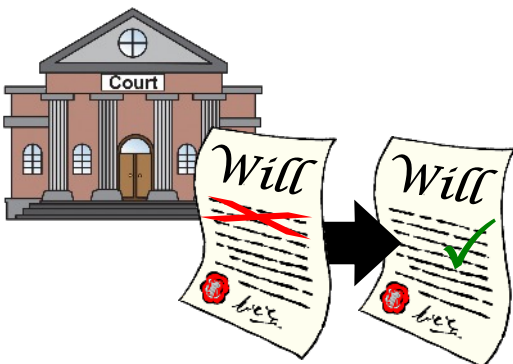


- allow the courts to decide if a will is **valid** even where the person made a mistake in following the rules needed to make a will.

Valid means true and correct.



- lower the age a person can make a will.



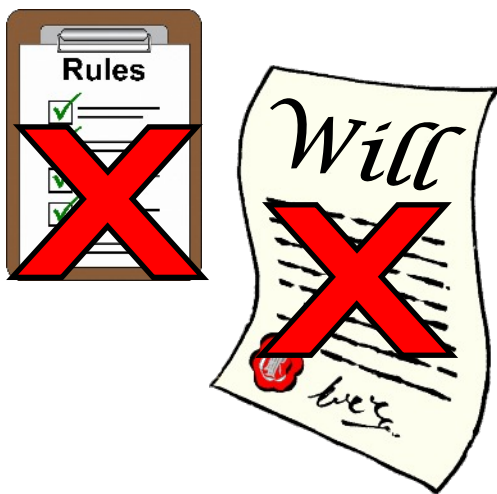
- allow the court to correct more types of mistakes in what the will says, when the rules needed to make a will have been followed.



Allow the courts to decide if a will is valid

What happens now

Sometimes a person's will does not follow the rules of the Wills Act of 1837 about making a will.



If a person's will is very clear about what they want to happen to their estate when they die, but it does not follow the rules, then the will is not valid.



What we think should happen

We think if it is very clear what a person wanted to happen with their estate after they died, it should be possible to follow their wishes even where they made a mistake in following the rules.



We recommend giving the court a new power called a **dispensing power**.

This means the court will look at any record made by the person who died to be sure it understands that person's wishes.



Records could be electronic documents, videos and sound recordings made by the person.



The court must feel sure that it understands the persons wishes about their estate at the time of their death.



We know this may worry some people, but we also know this is working in other countries like Canada, Australia and New Zealand.

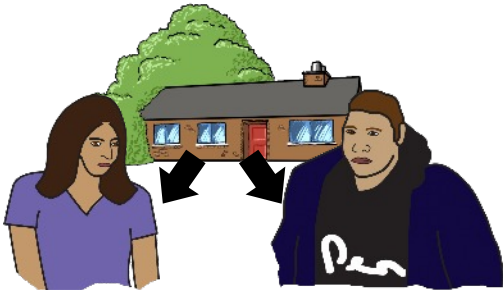
Lower the age a person can make a will

What happens now



You must be 18 or over to make a will.

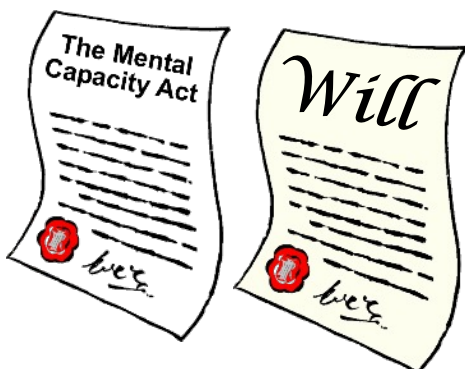
This is different in other countries. In Scotland you can make a will from 12 years old.



If a child dies in England and Wales their property goes to both parents.



This can be unfair if the child wants only 1 of their parents to inherit their property or to decide what happens to their body after they die, or if their parents will argue about it.



What we think should happen

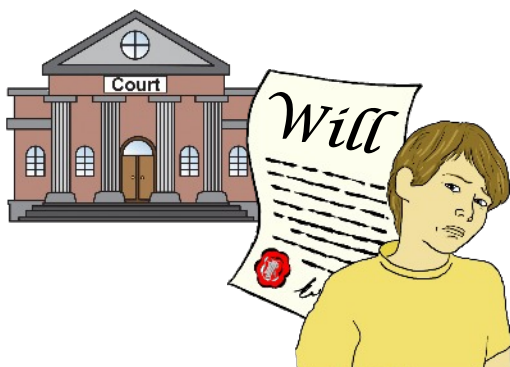
We think the age a person can make a valid will should be decided using the law on mental capacity.



The Mental Capacity Act 2005 deals with questions of mental capacity for people aged 16 or over. It assumes that people of this age have capacity, unless it is proved that they do not.



We recommend lowering the age a person can make a valid will to 16.



We also recommend the court should have the power to allow a child under 16 to make a will if the Family Court says they have capacity.



This power will support the wishes of a child under 16, where the child has a lot of property but might not live to be 16.

Allow the court to correct a mistake in a will



There may be a mistake in what the will says because:

- it has **typos**

A **typo** is a word accidentally added or missed.



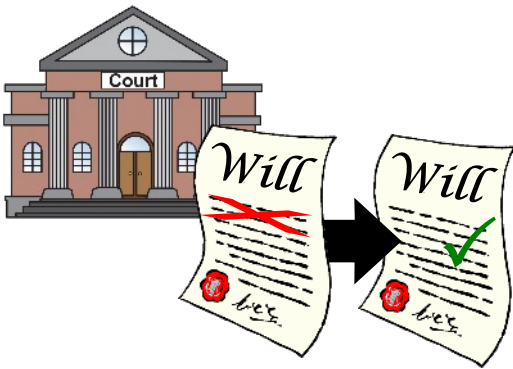
- the person who wrote the will did not understand what the person wanted.



What happens now

The court cannot make changes to correct a will if the person who wrote the will did not understand what the words they wrote meant.

What we think should happen



We recommend that the court be able to correct a will if it is satisfied that the will does not say what the person wanted it to say because the person who wrote it did not understand the meaning of the words they used, including technical legal words.

This will protect people from bad advice.

2. Protecting people from being controlled and fraud



Some people can be **vulnerable**.

Vulnerable means easy to trick or hurt.



A person can be vulnerable for a lot of different reasons, including because:

- they are very old



- someone close to them has recently died



- they rely on others for their care.



Vulnerable people are sometimes abused or bullied by other people.



We want the law to protect vulnerable people in 3 areas:

- where a vulnerable person has been forced into what they say in their will



- where a witness to the will or person who signs the will for the person, or their spouse or **cohabitant**, gets a gift in the will

Cohabitant means when 2 people live together as a couple but are not married.



- when a person marries or enters a civil partnership with someone who might have tricked them.



Protecting a vulnerable person who has been forced into what they say in their will

When someone forces a person to make a will or a gift in a will, it is called **undue influence**.

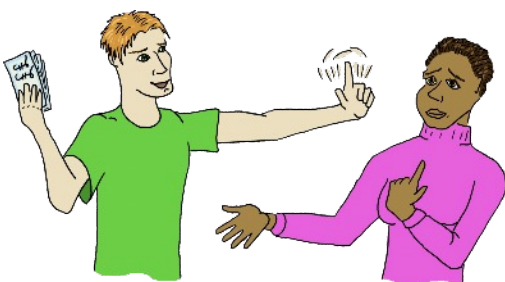


What happens now

If someone wants to question the will because they think the person was forced, they have to prove it in a court.



Undue influence is hard to prove. It often happens behind closed doors and by someone close to the person.



So vulnerable people can be financially abused.



Because undue influence is hard to prove, instead sometimes someone might decide to question whether the person knew what the will said.

So the law is confusing.



What we think should happen

We recommend that courts be allowed to look at evidence and decide if a will seems **suspicious**, meaning that the person was forced.

Suspicious means making you feel that something is wrong.



Courts will need to look at evidence to decide if the will seems suspicious and think about:

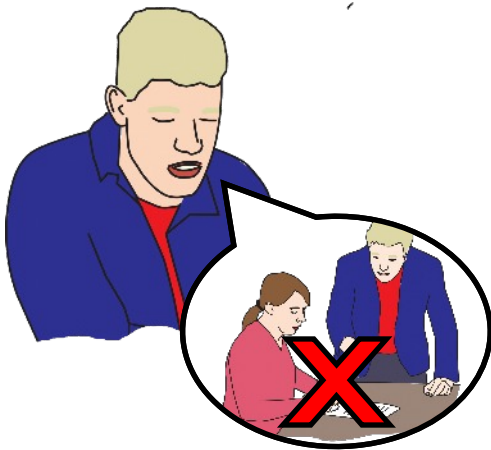
- the relationship between the person who may have used undue influence and the person who made the will



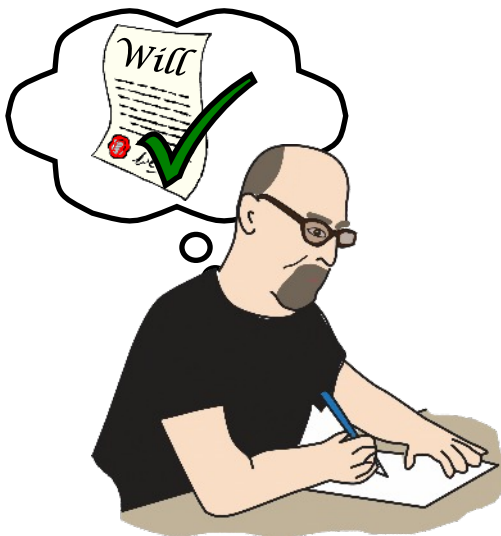
- that person's role in making the will



- what was happening when the will was made.



If the court thinks the will seems suspicious, the person accused will have to prove that they did not force the person making the will.



We also recommend that the law should clearly state that a person needs to know what their will says when they sign it. This rule prevents a person from being tricked or being confused about the will they make.

Where a person has left a gift



This part is about when a person's will says they want to make a gift to someone.

What happens now



The Wills Act 1837 says witnesses should not have **interests** under the will. A gift is an **interest**. That is because the witness might need to provide evidence about whether the will is valid.



A person who witnesses the will, or their husband, wife or civil partner, cannot receive a gift made in the person's will.

This rule protects the person making the will from possible abuse.



But a person cohabiting with a witness can receive a gift made in the will.



And a person who signs a will for someone who can't, when the person asks them to, can receive a gift made in that person's will.



What we think should happen

We recommend that a gift in a will should not go to:

- the person who witnessed the will, their husband, wife, civil partner or cohabitant,
- a person who signed the will on behalf of someone, their husband, wife, civil partner or cohabitant.



This will protect the person making the will by making sure that there will be evidence about the validity of the will from people who don't have interests in the will.



But we also recommend that the court should be able to allow a witness or a person who signs on behalf of someone, or their husband, wife, civil partner or cohabitant to receive a gift, so that the court can help if a mistake was made because someone didn't know the rules.

When you marry or enter a civil partnership

What happens now



The law says your will is cancelled if you get married or form a civil partnership. To have a valid will you will need to make a new one.



People we spoke to said most people do not know about your will being cancelled when you marry.



We are worried about **predatory marriages**.

A **predatory marriage** or civil partnership happens when someone marries a vulnerable person for their money or property.



The vulnerable person may not know their will is cancelled by marriage and the new partner gets most of their money and property when the person dies if they did not make a new will.

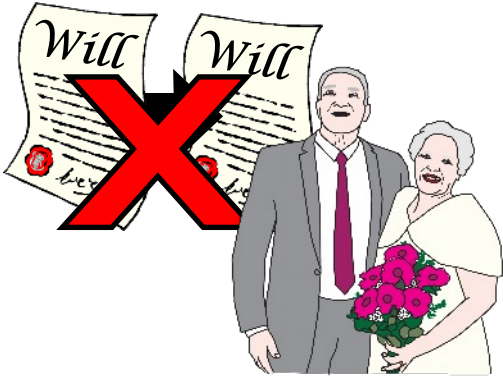
This is financial abuse.

What we think should happen

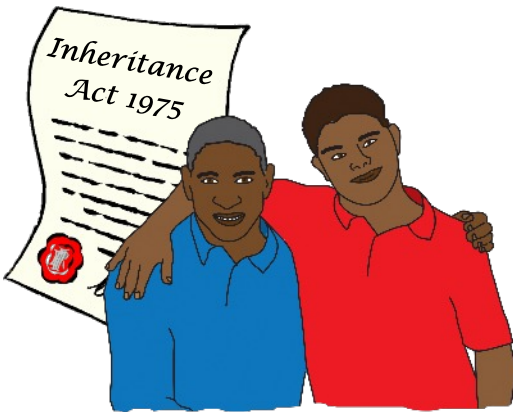
The old law does not work today because:

- many couples live together before marrying

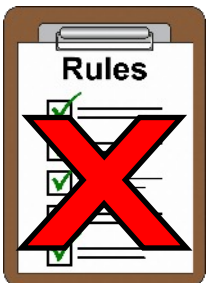




- people who marry for a second time may not want to change the plans they have made for their children and grandchildren

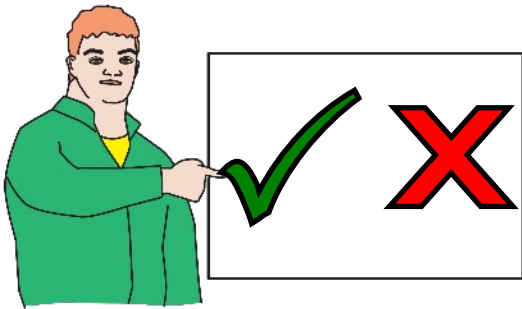


- families can use another law called the Inheritance (Provision for Family and Dependants) Act 1975 where someone has been left out of a will and needs more support.



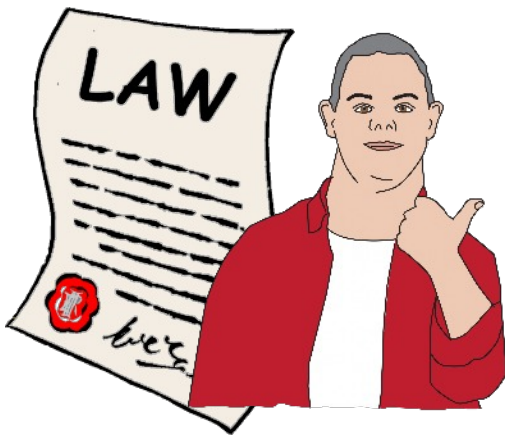
We recommend the rule about your will being cancelled when you marry or enter a civil partnership should be removed, so that a person's will remains valid when they marry.

3. Making the law clear and easy to understand

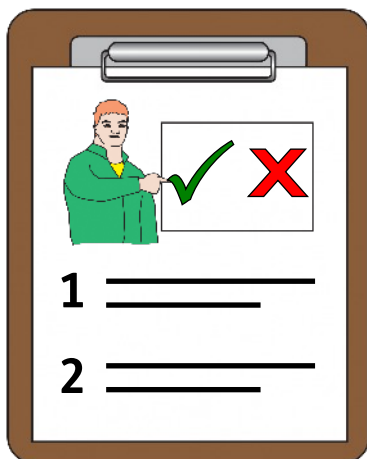


A person making a will needs to have **capacity**.

Capacity is being able to make decisions for yourself, knowing and understanding what you are doing.



A person's capacity to make a will is important and the law needs to be clear.



What happens now

There are 2 ways to test a person's mental capacity to make a will.



Banks v Goodfellow

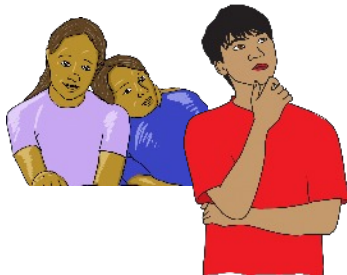
The first rules about mental capacity come from an old legal case called Banks v Goodfellow from 1870. It says a person has the mental capacity to make a will if:



- they can understand they are making a will, and what it means



- they can understand what their estate is



- they can understand who may want to claim from their estate, for example their children



- they do not have a mental condition that affects them making decisions

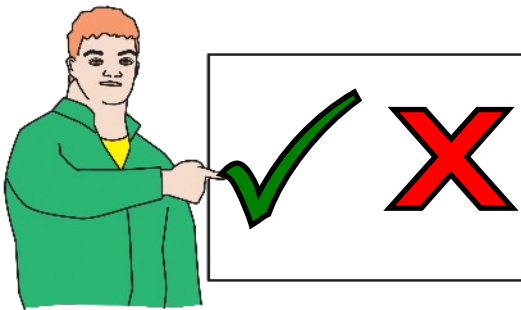


This test is used to check if a will that a person has made for themselves is valid.



Mental Capacity Act 2005

The Mental Capacity Act 2005 provides the current test for whether a person has the mental capacity to make decisions about their finances and welfare.



The Mental Capacity Act test is in 2 parts. It looks at:

1. whether a person can understand the information about the decision and can make a decision
2. if a person can't, if it is because of a mental condition.



The Court of Protection can use this test in deciding if a person has the capacity to make a will for themselves.



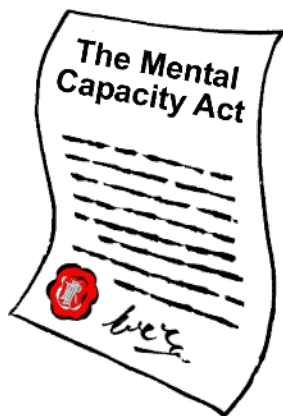
If the person does not have the capacity, the Court of Protection can order a **statutory will** be made for them.

A **statutory will** is a will made by the court on behalf of a person who lacks the capacity to make their own.

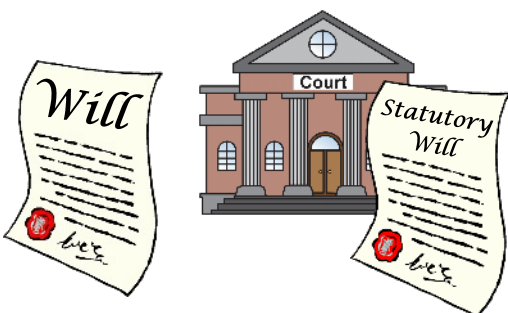


What we think should happen

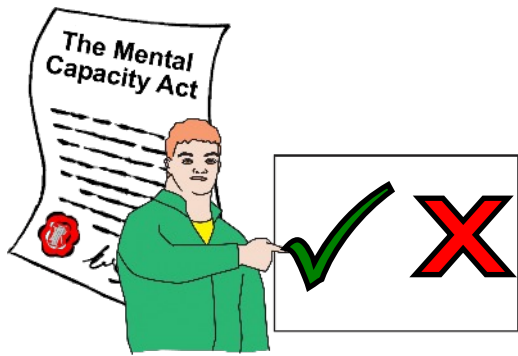
We think it is confusing to have two tests about a person's mental capacity to make a will.



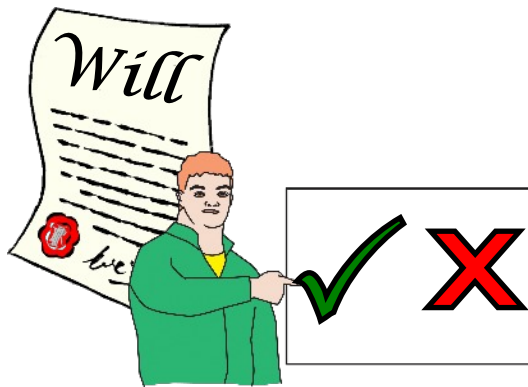
We recommend that the test set out in the Mental Capacity Act should be used to test a person's capacity.



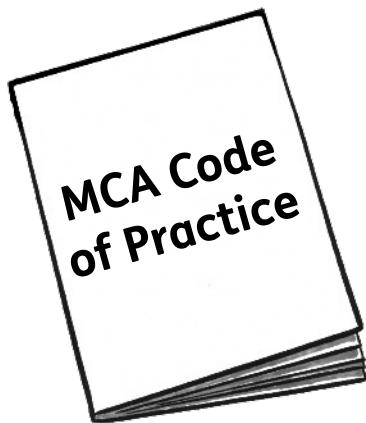
Using the Mental Capacity Act means the test will be the same whether a person's capacity is assessed about a will they made for themselves or a will the Court of Protection is making for them.



The Mental Capacity Act 2005 assumes a person has capacity unless it is proved that they do not.



We recommend that this assumption of capacity should apply to people making a will. But we do not think this will change what happens in court because the court will look at all of the available evidence to make a judgment.



Doctors and other people who use the Mental Capacity Act to assess a person's capacity are guided by the MCA Code of Practice.



We recommend that the Code of Practice should explain what the legal cases say about what information the person needs to be able to understand to make a will.



Assessing a person's capacity can be hard, especially after a person has died.



It is important that solicitors and will writers have clear guidance on assessing capacity. They need to keep good records of their assessments.



We recommend that the Code of Practice should say:

- when a person needs to have their capacity assessed
- who should assess capacity
- how capacity should be assessed





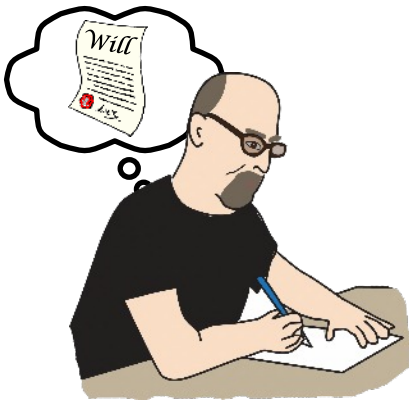
- what the instructions should say
- how long a capacity assessment should take
- record keeping of the assessment.

Electronic wills

The Wills Act 1837 said that to be valid:

- your will must be in writing
- you must sign the will or have someone signing for you





- your signature must show you understand what you are signing



- you must sign the will in front of two or more witnesses



- the witnesses must sign the will.



Electronic wills are made and stored using a computer or other device.



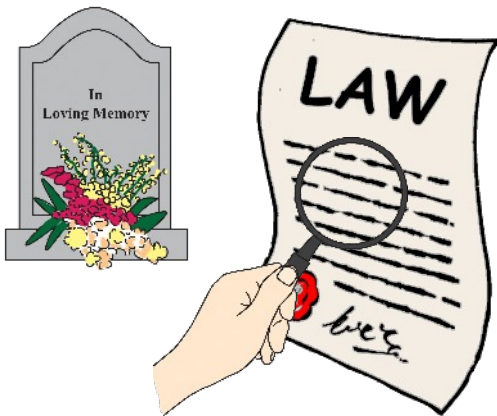
Many important documents are now made and signed on computers and not paper.



There were no electronic wills in 1837 so we don't know if an electronic will would be valid.



Wills are often made without the help of anyone apart from the two witnesses to the person's signature.



Checking that a will is valid can take place a long time after the person makes it because it can only be checked when the person dies.



Some wills may be **forged**, often by someone close, such as a family member, friend, or carer.

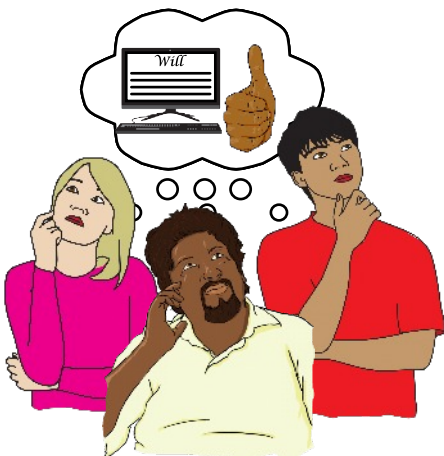
Forged means the document may be fake because the person making it pretended to be someone else.



The people who took part in our consultation were not sure about trusting electronic wills in 2017.



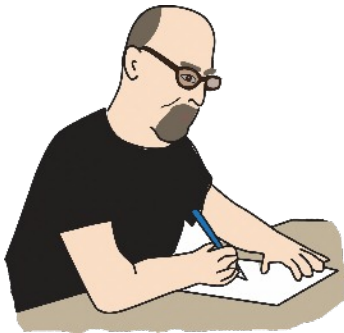
During the COVID-19 pandemic people had to socially distance so the Government let people witness wills using video conference.



The people who took part in our next consultation in 2023 were more positive about electronic wills



We recommend that electronic wills should now be allowed.



They must have the same safety checks as paper wills:

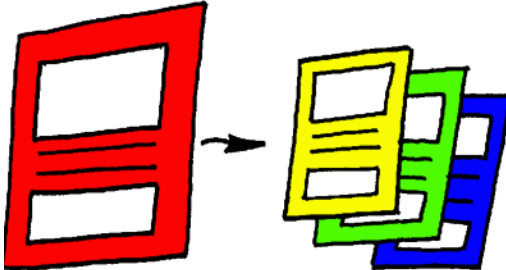
- evidence that the will was written by the person who made the will
- rules to encourage the person to think carefully about what they wanted in their will
- rules so that is clear that the person was making a will
- protections for the person against fraud and force when making their will.

We also think there must be a good system to keep the will safe. This means that to be valid electronic wills must meet the same requirements as paper wills.

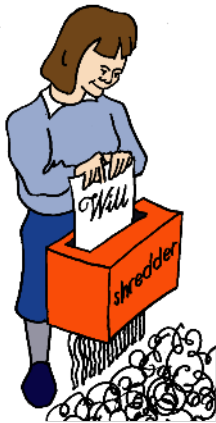


They must also show proof:

- of the person's and witnesses' signatures being their own



- that the document is the original and not a copy



- that only the person making the will or a person authorised can change or destroy the will.

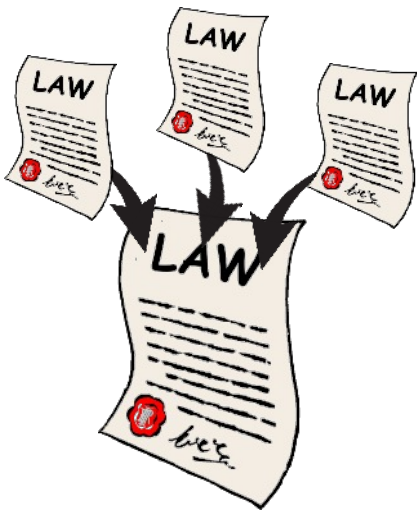


We also recommend people should be able to witness electronic wills using video conference.

Our draft Bill for a new Wills Act



We have written a draft Bill for a new Wills Act.



It will be a single, modern Act that contains all the laws in **legislation** about wills in one place.

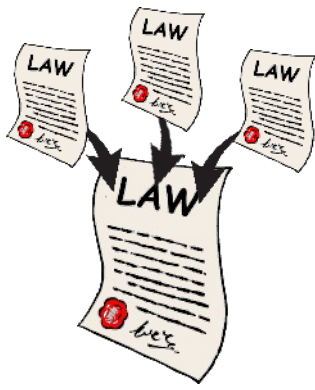
Legislation means a law or a set of laws suggested by government and made official by a parliament.



If this happens, the new Wills Act will:

- use our recommendations for change
- update other parts of the Wills Act 1837

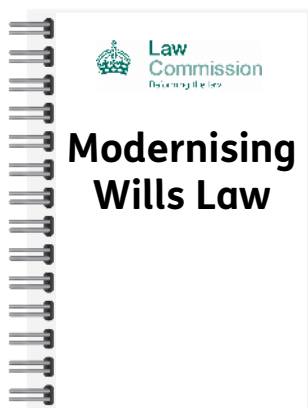




- bring all laws in legislation about wills into one place



- remove parts of the 1837 Act that no longer work.



There is more information in the full report.

What happens next

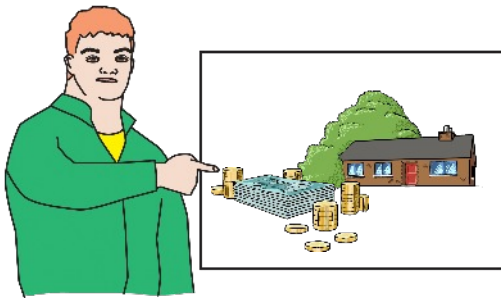


The recommendations in our report and the draft Bill will provide a new law of wills which:

- is clearer



- offers greater protection for vulnerable people



- supports a person's freedom to choose what will happen to their estate after their death.



The Government will now look at our recommendations.



The responsible Minister will reply to the recommendations with a first response within 6 months of publication of the report and a full response within a year.

What the words mean

Bill - the first step in making a new law.

Capacity - being able to make decisions for yourself, knowing and understanding what you are doing.

Cohabitant - when 2 people live together as a couple but are not married.

Consultation - when we ask people to tell us what they think.

Electronic wills - wills that are made and stored using a computer or other device.

Estate - a person's property, money and possessions.

Executor - the person you say can carry out your wishes in your will after you die.

Forged - the document may be fake because the person making it pretended to be someone else.

Fraud - when someone tricks another person for financial or personal gain.

Independent - not be influenced by anyone.

Intestate - a person who has died without making a will.

Legislation - a law or a set of laws suggested by government and made official by a parliament.

Mental capacity - you can make decisions for yourself.

Predatory marriage or civil partnership - when someone marries a vulnerable person for their money or property.

Recommendation – means suggestion we have made to Government.

Statutory will - a will made by the court on behalf of a person who lacks the capacity to make their own.

Suspicious - making you feel that something is wrong.

Testator - a person who made a will.

Typo - a word accidentally added or missed.

Undue influence – when someone forces a person to make a will or a gift in a will.

Valid – true or correct.

Vulnerable - easy to trick or hurt.

Will - a document that tells people what you want to happen after you die.



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