



**Law
Commission**
Reforming the law

Modernising Wills Law

Volume II: draft Bill for a new Wills Act



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(Law Com No 419)

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Volume II: draft Bill for a new Wills Act

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The Law Commission

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

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Wills Bill

[DRAFT]

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B I L L

TO

Restate, with modifications, the Wills Act 1837 and other enactments relating to wills; to make provision about testamentary capacity; to make provision about the formal validity requirements for wills in electronic form; to confer powers on the court to deem the formal validity requirements to be met in relation to a will and to save dispositions of property by a will that would otherwise be invalid; to make provision about testamentary undue influence; to make provision about the interpretation of wills; to codify some of the common law rules relating to wills; to make other provision relating to wills; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

POWER TO MAKE A WILL AND DISPOSE OF PROPERTY ETC BY A WILL

1 Power to make a will and dispose of property etc by a will

- (1) An individual may make a will.
- (2) The individual, having made their will, may—
 - (a) alter or revoke it, or
 - (b) having revoked it, revive it.

In this Act, doing anything in paragraph (a) or (b) is referred to as making a relevant change to a will.

- (3) The individual may, by their will, dispose at the time of their death of any property they are entitled to at that time and which devolves on their personal representatives.
- (4) Schedule 1 makes provision about some of the other things that may be done by a will.

PART 2

VALIDITY OF WILLS AND CHANGES TO WILLS ETC

*Capacity***2 Testators aged 16 or over**

- (1) Where a will or a relevant change to a will is made by a testator aged 16 or over, the will or change is not valid unless—
 - (a) the testator had capacity to make the will or change at the time it was made, or
 - (b) in a case where the testator lacked that capacity at that time, subsection (2) applies in relation to the will or change.
- (2) This subsection applies in relation to a will or a relevant change to a will where—
 - (a) prior to making the will or change, the testator gave instructions for it to be made,
 - (b) at the time the testator gave those instructions, they had capacity to make the will or change, and
 - (c) at the time the will or change was made, the testator had capacity to understand that—
 - (i) they had previously given instructions for it to be made, and
 - (ii) they were making a will or a relevant change to a will.

3 Testators aged under 16

- (1) Where a will or a relevant change to a will is made by a testator aged under 16, the will or change is not valid unless the testator was authorised to make the will or change by an order under this section.
- (2) An order under this section may be made by the family court on an application by the individual who proposes to make the will or change.
- (3) An order under this section authorises the individual to make the will or change in the terms specified, or to the extent specified, in the order.
- (4) The family court may make an order under this section only if it is satisfied that the individual is competent to make the will or change authorised by the order.
- (5) An order under this section may authorise an individual to make a will or a relevant change to a will subject to conditions.

*Knowledge and approval***4 Knowledge and approval**

- (1) A will or a relevant change to a will is not valid unless—

- (a) the testator understood at the time the will or change was made—
 - (i) that they were making a will or a relevant change to a will, and
 - (ii) the content and broad effect of the will or change, or
 - (b) in a case where the testator lacked capacity to make the will or change at the time it was made, subsection (2) applies in relation to the will or change.
- (2) This subsection applies in relation to a will or a relevant change to a will where—
 - (a) prior to making the will or change, the testator gave instructions for it to be made,
 - (b) the will or change gave effect to those instructions,
 - (c) those instructions still reflected the testator’s intentions at the time the will or change was made, and
 - (d) at the time the will or change was made, the testator understood that—
 - (i) they had previously given instructions for it to be made, and
 - (ii) they were making a will or a relevant change to a will.

Formalities

5 The formality requirements

Schedule 2 explains what references in this Act to “the formality requirements” mean in relation to—

- (a) wills, and
- (b) relevant changes to wills.

6 Making a will

A will is not valid unless the formality requirements are met in relation to it.

7 Altering a will

- (1) A will is not validly altered unless it is altered—
 - (a) by writing the alteration, or a description of the alteration, on the will where the formality requirements are met in relation to the alteration or description, or
 - (b) by the testator obliterating, or another individual whom the testator directed to do so obliterating in the testator’s presence, words used in the will where—
 - (i) it is no longer apparent on the face of the will what the words were, or what the effect of the will was, before the obliteration, and
 - (ii) the testator intended for the obliteration to alter the will in the way the obliteration in fact altered the will.

- (2) For the purposes of determining whether the formality requirements are met in relation to an alteration or description –
 - (a) references in sections 10, 26(2) and 27(1) and Schedule 2 to a will include references to the alteration or description, and
 - (b) an alteration or description is signed if the signature appears next to, near to or at the end of the alteration or description.

8 Revoking a will

- (1) A will is not validly revoked unless it is revoked –
 - (a) by a later valid will,
 - (b) by a document –
 - (i) which expressly demonstrates the testator’s intention to revoke the will, and
 - (ii) in relation to which the formality requirements are met,
 - (c) by its destruction by the testator with the intention of revoking it, or
 - (d) by its destruction in the testator’s presence by another individual whom the testator, with the intention of revoking the will, directed to destroy it on their behalf.
- (2) For the purposes of determining whether the formality requirements are met in relation to a document which expressly demonstrates the testator’s intention to revoke a will, references in sections 10, 26(2) and 27(1) and Schedule 2 to a will include references to the document.

9 Reviving a will

- (1) A validly revoked will is not validly revived unless it is revived –
 - (a) by the formality requirements being met again in relation to it, or
 - (b) by a valid codicil.
- (2) Where a will is revoked after previously being revoked in part, any subsequent revival of the will does not revive any previously revoked part.
- (3) Subsection (2) is subject to any contrary intention that appears from the document reviving the will.

10 Power to deem the formality requirements to be met

- (1) Where one or more of the formality requirements are not met in relation to a will, a person may make an application to the court for an order under this section.
- (2) The court may, by an order under this section, deem the formality requirements to be met in relation to the will.
- (3) The court may make an order under this section only if it is satisfied that the will –
 - (a) demonstrated the testamentary intentions of the deceased person at the time it was made, and

- (b) continued to demonstrate the testamentary intentions of the deceased person until their death.
- (4) References in this section to a will do not include a will that is not contained in a document.
- (5) See sections 7(2) and 8(2) for further provision about the power to make an order under this section in relation to alterations to wills and the revocation of wills.

Wills made by service personnel etc

11 Service wills

- (1) Section 2 (capacity: testators aged over 16) does not apply in relation to the making of—
 - (a) a service will, or
 - (b) a relevant change to a will by a service will.
- (2) Section 6 (formalities: making a will) does not apply in relation to the making of a service will.
- (3) Sections 7, 8 and 9 (formalities: altering, revoking and reviving a will) do not apply in relation to the making of a relevant change to a will by a service will.
- (4) In section 4 (knowledge and approval), subsections (1)(b) and (2) do not apply in relation to the making of—
 - (a) a service will, or
 - (b) a relevant change to a will by a service will.
- (5) A will is a service will if it was made by a testator who, at the time the will was made—
 - (a) was aged 16 or over,
 - (b) had capacity to make the will, and
 - (c) was—
 - (i) a member of the regular forces or the reserve forces and, in either case, on active service, or
 - (ii) a civilian subject to service discipline who, if they were instead a member of the regular forces or the reserve forces, would have been on active service.
- (6) In this section “active service” means service—
 - (a) in an action or operation against an enemy;
 - (b) in an operation outside the British Islands for the protection of life or property;
 - (c) in the military occupation of a foreign country or territory;
- (7) Terms used in this section and in the Armed Forces Act 2006 have the same meaning in this section as they have in that Act.

*Validity of dispositions and powers of appointment***12 Invalid dispositions**

- (1) A disposition of property by a will is invalid if, or to the extent that the disposition is to—
- (a) the authorised individual in relation to the will (see requirement B in Schedule 2),
 - (b) a witness who attested the will (see requirement E in Schedule 2), or
 - (c) the spouse, civil partner or cohabitant of an individual within paragraph (a) or (b).

But this is subject to subsections (2) and (3).

- (2) A disposition is not invalidated by subsection (1) if—
- (a) the formality requirements are met in relation to the will by virtue of an order under section 10 (power to deem formality requirements to be met), or
 - (b) subsection (1) is disapplied in relation to the disposition by an order under section 13 (power to save an otherwise invalid disposition).
- (3) A disposition to—
- (a) a witness who attested the will, or
 - (b) the spouse, civil partner or cohabitant of the witness,
- is not invalidated by subsection (1) if the will would still have met requirement E in Schedule 2 even if it had not been attested by the witness and any other witness a disposition to whom would be invalidated by subsection (1).
- (4) Where a disposition to an individual is invalidated by subsection (1), that subsection also invalidates the disposition as regards anyone claiming under that individual.
- (5) In this section—
- (a) references to a disposition of property—
 - (i) are to the disposition of a beneficial interest in the property, but
 - (ii) do not include references to the repayment of a debt or remuneration for services;
 - (b) “cohabitant” is to be read in accordance with the meaning of “cohabitants” in Part 4 of the Family Law Act 1996 (see section 62 of that Act).

13 Power to save an otherwise invalid disposition

- (1) Where a disposition of property by a will would (but for this section) be invalidated by section 12(1), a person may make an application to the court for an order under this section.
- (2) If the court considers it just and reasonable to do so, the court may, by an order under this section, disapply section 12(1) in relation to the disposition.

- (3) For the purposes of determining whether it is just and reasonable to make an order under this section, the court must (among other things) have regard to the conduct, in relation to the making and proving of the will, of the individual in section 12(1) to whom the disposition is made.

14 Powers of appointment exercised by a will

- (1) The exercise of a power of appointment by a will is not valid unless the will is valid.
- (2) The exercise of a power of appointment by a valid will is not prevented from being valid merely because the power is not exercised in accordance with any particular formality required by the power.

Testamentary undue influence

15 Testamentary undue influence

- (1) Subsection (2) applies if, in proceedings on a probate claim—
 - (a) a party alleges in any particulars of claim, defence or other statement of case that a person exerted undue influence over a testator in relation to the making of the testator’s will or a relevant change to the testator’s will, and
 - (b) there is evidence which provides reasonable grounds to suspect that the undue influence was exerted.
- (2) In deciding the claim, the court may find the undue influence to have been exerted unless the contrary is proved on the balance of probabilities.
- (3) In determining whether there is evidence which satisfies subsection (1)(b), the court must (among other things) have regard to any evidence about—
 - (a) the conduct, in relation to the making of the will or change, of the person alleged to have exerted undue influence over the testator;
 - (b) any relationship of influence between the person and the testator;
 - (c) the circumstances in which the will was made.
- (4) For the purposes of this section a person exerts undue influence over a testator in relation to the making of the testator’s will or a relevant change to the testator’s will if the will or change is made as result of the person overpowering the testator’s volition (without convincing the testator’s judgment).
- (5) In this section “probate claim” means any claim relating to the business of obtaining probate and administration, other than non-contentious or common form probate business (within the meaning of Part 5 of the Senior Courts Act 1981 (see section 128 of that Act)).
- (6) Nothing in this section prevents a court from finding undue influence to have been exerted as a result of an allegation in subsection (1) being proved on the balance of probabilities.

PART 3**RECTIFICATION AND INTERPRETATION OF WILLS ETC****16 Rectification**

- (1) The court may by order rectify a will to carry out a testator's intentions where it is satisfied that—
 - (a) the will is expressed in such a way that it fails to give effect to the testator's intentions, and
 - (b) the failure is because of—
 - (i) a clerical error,
 - (ii) a failure to understand the testator's instructions, or
 - (iii) a failure to understand the meaning or direct effect of the language used in the will.
- (2) An application for an order under this section must be made before the end of the period of six months beginning with the day after the day on which representation with respect to the estate of the testator is first taken out.
- (3) But the court may grant permission for an application for an order under this section to be made after the end of the period mentioned in subsection (2).
- (4) For the purposes of subsection (2), when determining when representation with respect to the estate of a testator was first taken out, no account is to be taken of—
 - (a) a grant limited to settled land or to trust property;
 - (b) any other grant that does not permit any of the estate to be distributed;
 - (c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time;
 - (d) a grant, or its equivalent, made outside the United Kingdom (but see subsection (5)).
- (5) For the purposes of subsection (4)(d), a grant sealed under section 2 of the Colonial Probates Act 1892 is to be treated as a grant made in the United Kingdom and as dated on the day of sealing.
- (6) This section does not make the personal representatives of a testator liable for having distributed any part of the testator's estate, after the end of the period mentioned in subsection (2), 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.
- (7) But subsection (6) does not affect any power to recover, by reason of the making of an order under this section, any part of the estate so distributed.

17 Admissibility of extrinsic evidence

- (1) Subsection (2) applies to a will in so far as—

- (a) the will is meaningless,
 - (b) the language used in the will is ambiguous on the face of the will, or
 - (c) evidence, other than evidence of the testator's intention, shows that the language used in the will is ambiguous in the light of surrounding circumstances.
- (2) Extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in the will's interpretation.

18 Prescribed forms that may be referred to in wills

- (1) The Lord Chancellor may by regulations made by statutory instrument –
 - (a) prescribe forms to which a testator may refer in a will, and
 - (b) give directions as to the manner in which such forms may be referred to in a will.
- (2) Where a will refers to a prescribed form in accordance with any directions given by the Lord Chancellor, the form is deemed to be incorporated into the will (and a prescribed form may not be deemed to be so incorporated in any other circumstances).

19 Further provision about interpretation

Schedule 3 makes further provision about how a will is to be interpreted.

PART 4

AMENDMENTS TO OTHER LEGISLATION

20 Financial provision out of property held under a mutual wills agreement

- (1) The Inheritance (Provision for Family and Dependants) Act 1975 is amended as follows.
- (2) In section 1 (application for financial provision from deceased's estate) –
 - (a) in subsection (1) –
 - (i) at the beginning insert “Subsection (1ZA) applies”;
 - (ii) omit the words after paragraph (e);
 - (b) after subsection (1) insert –
 - “(1ZA) A person mentioned in paragraph (a) to (e) of subsection (1) (“the applicant”) may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by virtue of –
 - (a) the deceased's will,
 - (b) the law relating to intestacy,
 - (c) an enforceable mutual wills agreement, or
 - (d) the combination of anything mentioned in paragraphs (a) to (c),

is not such as to make reasonable financial provision for the applicant.”

- (3) In section 2 (powers of court to make orders) –
 - (a) in subsection (1) –
 - (i) in the words before paragraph (a), for the words from “by his will” to “that law” substitute “as mentioned in section 1(1ZA)”;
 - (ii) in paragraph (h), for the words in brackets substitute “(whether arising by virtue of the will, the law relating to intestacy, an enforceable mutual wills agreement or a combination of those)”;
 - (b) in subsection (4)(b), for the words from “by the will” to “intestacy” substitute “as mentioned in section 1(1ZA)”;
- (4) In section 3 (matters to which the court is to have regard in exercising powers under section 2), in subsection (1), in the words before paragraph (a), for the words from “by his will” to “that law” substitute “as mentioned in section 1(1ZA)”.
- (5) In section 19 (effect, duration and form of orders), in subsection (1), for “or the law relating to intestacy, or both the will and the law relating to intestacy” substitute “, the law relating to intestacy, an enforceable mutual wills agreement or any combination of the will, the law relating to intestacy and an enforceable mutual wills agreement”.
- (6) In section 25 (interpretation) –
 - (a) in subsection (1), in the definition of “beneficiary” –
 - (i) omit the “and” at the end of paragraph (a);
 - (ii) at the end of paragraph (b) insert “, and
 - (c) where the deceased held property in which another person had an interest as a beneficiary as a result of an enforceable mutual wills agreement, that beneficiary.”;
 - (b) in subsection (2) –
 - (i) the words after “in subsection (1) above” become paragraph (a);
 - (ii) at the end of that paragraph insert “;
 - (b) property held by the deceased but in which another person had an interest as a beneficiary as a result of an enforceable mutual wills agreement is to be treated as property which the deceased had power to dispose of by their will.”

21 Preservation of interests on disposal of property

- (1) The Mental Capacity Act 2005 is amended as follows.
- (2) In section 18(4) (section 16 powers: property and affairs), at the end insert “(and see also section 43A)”.

- (3) After section 43 insert –

“43A Preservation of interests on disposal of property

- (1) Subsection (2) applies if –
- (a) a person’s (“P’s”) property has been disposed of –
 - (i) by virtue of section 18, or
 - (ii) by a donee of a lasting power of attorney or an enduring power of attorney (within the meaning of Schedule 4) granted by P,
 - (b) under P’s will or intestacy, or by a gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, and
 - (c) on P’s death, any property belonging to P’s estate represents the property disposed of.
- (2) The person takes the same interest, if and so far as circumstances allow, in the property representing the disposed property.
- (3) References in this section to the disposal of property are to –
- (a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money;
 - (b) the removal of property from one place to another;
 - (c) the application of money in acquiring property;
 - (d) the transfer of money from one account to another;
- and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.
- (4) The court may give such directions as appear to it necessary or expedient for the purpose of facilitating the operation of this section, including the carrying of money to a separate account and the transfer of property other than money.”
- (4) In Schedule 2 (preservation of interests in property disposed of on behalf of person lacking capacity) –
- (a) omit paragraph 8 and the heading before it (preservation of interests in property disposed of on behalf of person lacking capacity);
 - (b) before paragraph 9 insert –
 - “Power of court to impose charge on improved property etc”;
 - (c) in paragraph 9(3), for “paragraph 8(1) to (3)” substitute “section 43A”.

22 Minor and consequential amendments

Schedule 4 makes minor and consequential amendments to other legislation.

PART 5**GENERAL****23 Interpretation**

- (1) In this Act—
 - “the court” means the High Court;
 - “the formality requirements” has the meaning given by Schedule 2;
 - “property” means a legal or equitable estate or interest in property, including—
 - (a) a contingent, executory or future interest in property;
 - (b) a right of entry (including a right of entry for condition broken);
 - “relevant change to a will” is to be read in accordance with section 1(2);
 - “testator” in relation to a will, means the individual who made the will;
 - “will” includes a testament, a codicil and any testamentary disposition of property (and references in this Act to a will include references to part of a will).
- (2) In this Act, references to a disposition of property by a will include references to—
 - (a) a devise or bequest of property by the will;
 - (b) the exercise by the will of a power of appointment over property (but this is subject to paragraphs 3 and 6(2) of Schedule 3).
- (3) In this Act, references to a person who has, or who lacks, capacity are to be read in accordance with the Mental Capacity Act 2005.

24 Extent

- (1) Paragraph 1 of Schedule 4 (repeal of the Wills Act 1837), and section 22 so far as it relates to that paragraph, extend to England and Wales only.
- (2) Paragraph 4 of Schedule 4 (repeal of the Wills (Soldiers and Sailors) Act 1918), and section 22 so far as it relates to that paragraph, extend to England and Wales and Scotland only.
- (3) Other repeals, revocations or amendments made by this Act have the same extent as the provision repealed, revoked or amended.
- (4) Otherwise this Act extends to England and Wales only.

25 Commencement

- (1) Subject to subsection (2), this Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (2) The following come into force on the day on which this Act is passed—
 - (a) this Part;
 - (b) any power to make regulations under this Act.

26 Application

- (1) Subject to subsections (2) to (10), this Act applies in relation to a will, or relevant change to a will, made after the end of the period of two months beginning with the day on which it is passed.
- (2) Section 10 applies in relation to a will made by a person who dies on or after the day on which that section comes into force.
- (3) Section 15 applies in relation to a will, or a relevant change to a will, made by a person who dies on or after the day on which that section comes into force.
- (4) Section 16, the repeal of section 20 of the Administration of Justice Act 1982 by paragraph 10 of Schedule 4, and paragraph 23 of that Schedule, apply in relation to a will made by a person who dies on or after the day on which section 16 comes into force.
- (5) Section 20 applies in relation to deaths occurring on or after the day on which that section comes into force.
- (6) Section 21 applies in relation to disposals of property (within the meaning of section 43A of the Mental Capacity Act 2003 (as inserted by section 21)) made on or after the day on which that section comes into force.
- (7) Paragraph 7 of Schedule 3, and the repeal of section 33A of the Wills Act 1837 by paragraph 1 of Schedule 4, apply in relation to a will made by a person who dies on or after the day on which Schedule 3 comes into force.
- (8) Paragraph 9 of Schedule 3 applies in relation to a will made by a person who dies on or after the day on which that Schedule comes into force.
- (9) Paragraph 10 of Schedule 3 applies in relation to contracts entered into or options granted on or after the day on which that Schedule comes into force.
- (10) The repeals of sections 18 and 18B of the Wills Act 1837 by paragraph 1 of Schedule 4 apply in relation to marriages and civil partnerships occurring on or after the day on which that Schedule comes into force.

27 Transitional and saving provision

- (1) In its application in relation to a will made before the end of the period of two months beginning with the day on which this Act is passed, section 10 is to be read as if for subsections (1) and (2) there were substituted –
 - “(1) A person may make an application to the court for an order under this section where –
 - (a) a will is not executed in accordance with the requirements of section 9 of the Wills Act 1837,
 - (b) a document expressing a testator’s intention to revoke a will is not executed in accordance with the requirements of section 20 of that Act, or

- (c) an alteration to a will is not executed in accordance with the requirements of section 21 of that Act.
- (2) The court may, by an order under this section, deem the will, document or alteration to be executed in accordance with those requirements.”
- (2) Any form prescribed, and any directions given, under section 179 of the Law of Property Act 1925 (prescribed forms for reference in wills) are to be treated as having been prescribed or given under section 18 of this Act (prescribed forms that may be referred to in wills).
- (3) Paragraph 8 of Schedule 5 to the Mental Capacity Act 2005 (transitional and saving provision: preservation of interests on disposal of property) applies in relation to disposals of property under section 43A(1) of that Act made on or after the day on which section 21 of this Act comes into force as it applies in relation to disposals of property under paragraph 8(1) of Schedule 2 to that Act made before the day on which section 21 of this Act comes into force.

28 Short title

This Act may be cited as the Wills Act 2025.

SCHEDULES

SCHEDULE 1

Section 1

OTHER THINGS THAT MAY BE DONE BY A WILL

Power to bar an entail by a will

- 1 (1) An individual aged 16 or over may by their will dispose of any entailed property of which they are the beneficiary in possession at the time of their death, as if—
 - (a) the entail had been barred, and
 - (b) at the time of their death they were, in equity, the tenant in fee-simple or absolute owner of the property.
- (2) But sub-paragraph (1) does not apply where—
 - (a) the individual is prevented by any Act from barring or defeating the entail concerned (whether or not the property in respect of which they are so prevented was purchased with money provided by Parliament in consideration of public services), or
 - (b) the individual is the beneficiary of the entailed property after possibility of issue extinct.
- (3) For the purposes of this paragraph—
 - (a) a will disposes of entailed property if a disposition in the will refers—
 - (i) specifically to the entailed property concerned or to the instrument under which it was acquired, or
 - (ii) generally to entailed property;
 - (b) references to a beneficiary in possession of entailed property include an owner of a base fee in possession who has power to enlarge the base fee into a fee-simple without the agreement of any other person.
 - (c) an individual is deemed to be the tenant in tail in possession of money (including the proceeds of property directed to be sold) at their death if the money was to be invested in the purchase of property of which, if the money had been so invested, the individual would have been tenant in tail in possession at their death.
- (4) Nothing in this paragraph—
 - (a) makes any entailed interest which is not disposed of by a will liable for the debts or other liabilities of the individual who made the will, or
 - (b) affects the manner in which any entailed property not disposed of by a will devolves on the death of the beneficiary in possession (see section 130 of the Law of Property Act 1925).

Appointments and giving of consent

- 2 The following enactments make further provision about some of the other things that may be done by a will –
- (a) section 5 of the Children Act 1989 (appointment of guardians);
 - (b) sections 2 and 3 of the Human Tissue Act 2004 (giving of appropriate consent);
 - (c) section 4 of the Human Tissue Act 2004 (appointment of representatives);
 - (d) section 8 of the Human Transplantation (Wales) Act 2013 (appointment of representatives).

SCHEDULE 2

Section 5

THE FORMALITY REQUIREMENTS

Meaning of “the formality requirements”

- 1 (1) For the purposes of this Act, the formality requirements in relation to a will are –
- (a) requirements A to E, and
 - (b) if the will is in electronic form, requirement F.
- (2) See sections 7(2) and 8(2) for further provision about the formality requirements in relation to alterations to wills and the revocation of wills.

Requirement A: will to be in writing

- 2 Requirement A is that the will is in writing.

Requirement B: will to be signed by or on behalf of testator

- 3 Requirement B is that the will –
- (a) is signed by the testator, or
 - (b) is signed in the testator’s presence by another individual whom the testator directed to sign the will on their behalf (“the authorised individual”).

Requirement C: signature indicates intention for will to have effect

- 4 Requirement C is that it appears from the testator’s signature, or from the signature of the authorised individual, that the testator intended the will to have effect.

Requirement D: will to be signed in the presence of witnesses

- 5 Requirement D is that –

- (a) the testator, or the authorised individual, signed the will in accordance with requirement B in the presence of two or more witnesses who were present at the same time,
- (b) the testator signed the will in accordance with requirement B and subsequently, in the presence of two or more witnesses who were present at the same time, the testator acknowledged that signature, or
- (c) the authorised individual signed the will in accordance with requirement B and subsequently, in the presence of two or more witnesses who were present at the same time, the testator acknowledged—
 - (i) the signature of the authorised individual, and
 - (ii) that the authorised individual signed the will in accordance with requirement B.

Requirement E: will to be signed and attested by witnesses

- 6 (1) Requirement E is that two or more of those witnesses, in the presence of the testator (but not necessarily in the presence of each other or any other witnesses)—
 - (a) signed and attested the will, or
 - (b) acknowledged that they earlier signed the will and that the signature on the will is theirs, and attested the will.
- (2) For the purposes of requirement E—
 - (a) it does not matter whether a witness knew that what was being signed or attested was a will;
 - (b) a witness attests a will if, by their signature or by acknowledging their signature, the witness attests that requirement D was met in relation to the will.

Requirement F: use of a reliable system

- 7 Requirement F is that a reliable system is used—
 - (a) at the time of the signing of the will, to link any signature with the person whose signature it is,
 - (b) to identify the will so that it can be distinguished from any copies, and
 - (c) to protect the will against alteration or destruction other than by the testator or a person authorised or directed by the testator to alter or destroy the will.

Regulations about the formality requirements in relation to wills in electronic form

- 8 (1) The Secretary of State may by regulations made by statutory instrument make provision about how the formality requirements are to be, or may be, met in relation to a will in electronic form (including those requirements as modified by sections 7(2) and 8(2)).

- (2) Regulations under sub-paragraph (1) may, among other things, identify systems, or descriptions of systems, that are, or are not, reliable systems for the purposes of requirement F.
- (3) Before making regulations under sub-paragraph (1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) Regulations under sub-paragraph (1) may –
 - (a) make different provision for different purposes, and
 - (b) make supplementary, incidental, consequential, transitional or saving provision.
- (5) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

Supplementary

- 9 (1) Any individual who is able to sign and attest a will for the purposes of requirement E may be a witness for the purposes of that requirement and requirement D.
- (2) For the purposes of this Schedule so far as it relates to a will in electronic form –
 - “presence” includes presence by means of visual transmission;
 - “signature” means an electronic signature (within the meaning of section 7 of the Electronic Communications Act 2000).

SCHEDULE 3

Section 19

INTERPRETING A WILL

PART 1

INTRODUCTION

Schedule subject to contrary intention appearing from a will

- 1 The provisions of this Schedule apply in relation to a will, subject to any contrary intention appearing from the will concerned.

PART 2

DISPOSITIONS OF PROPERTY

Will to be interpreted as if made immediately before death

- 2 Any reference in a will to property disposed of by the will is to be read as if the will had been made immediately before the death of the testator.

General dispositions of property include powers of appointment

- 3 Where a will makes a disposition of property which refers to the property disposed of in general terms, the disposition—
- (a) includes any property, falling within the terms of the disposition, over which the testator has a general power of appointment, and
 - (b) has effect as an exercise of the power.

Estates and interests that are included in dispositions

- 4 A disposition of property by a will has effect as a disposition of all of the estates or interests in the property (whether legal or equitable) which the testator has power to dispose of under section 1(3).

Certain contingent etc dispositions to carry the intermediate income

- 5 (1) Where a will makes any of the following dispositions of property—
- (a) a contingent or future specific disposition of property,
 - (b) a contingent residuary disposition of a freehold estate, or
 - (c) a specific or residuary disposition of a freehold estate on trust for a person whose interest is contingent or executory,
- the disposition carries the intermediate income of the property from the death of the testator.
- (2) This paragraph is subject to section 14 of the Perpetuities and Accumulations Act 2009 (restriction on accumulation for charitable trusts).

Failed dispositions

- 6 (1) Where a disposition of property by a will is ineffective, the will has effect as if the property were included in the testator's residuary estate.
- (2) In sub-paragraph (1), the reference to a disposition of property does not include a reference to the exercise of a power of appointment over property that is not a general power of appointment.

Disclaimer or forfeiture of dispositions

- 7 (1) Where a will makes a disposition of property to a person who—
- (a) disclaims it, or
 - (b) has been precluded by the forfeiture rule from acquiring it,
- the disposition has effect as if the person died immediately before the testator.
- (2) Sub-paragraph (1) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify the forfeiture rule) in a case within sub-paragraph (1)(b).
- (3) In this paragraph “forfeiture rule” has the same meaning as in the Forfeiture Act 1982 (see section 1 of that Act).

PART 3

ADEMPTION: EXCEPTIONS

Changes in the nature of a testator's estate or interest in property

- 8 Where, after the making of a will, the nature of the testator's estate or interest in any property disposed of by the will changes, the disposition of that property has effect as a disposition of the changed estate or interest.

Property destroyed or lost at the same time as the testator's death

- 9 (1) Where –
- (a) after the making of a will, property, or any part of property, specifically disposed of by the will is destroyed or lost, and
 - (b) it is uncertain whether the testator died before or after the property was destroyed or lost,
- the disposition has effect as if the testator died immediately before the property was lost or destroyed.
- (2) For the purposes of this paragraph, property is specifically disposed of by a will where a disposition in the will specifically refers to the property.

Incomplete transactions

- 10 (1) Where at the time of a testator's death, property specifically disposed of by their will is subject to a relevant transaction, the disposition has effect subject to the transaction.
- (2) For the purposes of this paragraph –
- (a) property is specifically disposed of by a will where a disposition in the will specifically refers to the property;
 - (b) property is subject to a relevant transaction where the testator –
 - (i) enters into (or is deemed to have entered into) a contract under which they are bound to transfer the property to another person, or
 - (ii) grants an option that binds the testator to transfer the property to another person when the option is exercised.

PART 4

FAMILY RELATIONSHIPS

Dispositions to spouses or civil partners and issue

- 11 Where a testator –
- (a) disposes by their will of property to their spouse or civil partner in terms which in themselves would give an absolute interest to the spouse or civil partner, but

- (b) by the same instrument purports to give the testator’s issue an interest in the same property,
the disposition to the spouse or civil partner is absolute despite the purported disposition to the issue.

Dispositions to children etc of a testator who have children etc

- 12 Where—
- (a) a testator disposes by their will of property to their child or remoter descendant (“the intended beneficiary”),
 - (b) the intended beneficiary dies before the testator, and
 - (c) issue of the intended beneficiary are living at the testator’s death (“living issue”),
- the disposition has effect as if it were to the living issue.
- 13 Where—
- (a) a testator disposes by their will of property to a class of persons consisting of their children or remoter descendants,
 - (b) a member of the class dies before the testator, and
 - (c) issue of that member are living at the testator’s death (“living issue”),
- the disposition has effect as if the class included the living issue.
- 14 (1) Issue take under paragraphs 12 and 13 through all degrees, according to their stock, in equal shares if more than one, any property which their parent would have taken if their parent had not died before the testator.
- (2) Accordingly (subject to paragraph 7) no issue take under those paragraphs if their parent is living at the testator’s death.
- (3) For the purposes of paragraphs 12 and 13, a person conceived before, but born living after, the testator’s death is to be treated as if they had been living at the testator’s death.

Dissolution or annulment of marriage or civil partnership

- 15 (1) Where, after a testator makes a will, the testator’s marriage or civil partnership is ended in accordance with sub-paragraph (2) or (3)—
- (a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the testator’s former spouse or civil partner, have effect as if the former spouse or civil partner died on the date on which the marriage or civil partnership was ended, and
 - (b) any disposition of property to the former spouse or civil partner by the will has effect as if the former spouse or civil partner died on that date.
- (2) A marriage is ended in accordance with sub-paragraph where—
- (a) a court of civil jurisdiction in England and Wales dissolves or annuls the marriage, or

- (b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part 2 of the Family Law Act 1986.
- (3) A civil partnership is ended in accordance with this sub-paragraph where—
 - (a) a court of civil jurisdiction in England and Wales dissolves the civil partnership or makes a nullity order in respect of it, or
 - (b) the civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004.
- 16 Paragraph 15 does not affect any right of a former spouse or former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975.

Conversion of a civil partnership into a marriage and vice versa

- 17 (1) Any reference in a will (however expressed) to—
 - (a) a civil partnership or civil partners is to be read in relation to any civil partnership that has been converted into a marriage, or civil partners who have converted their civil partnership into a marriage, as referring to that marriage or married couple, as the case may be;
 - (b) a marriage or spouses is to be read in relation to any marriage that has been converted into a civil partnership, or a married couple who have converted their marriage into a civil partnership, as referring to that civil partnership or the parties to it, as the case may be.
- (2) For the purpose of this paragraph, a civil partnership has been converted into a marriage if—
 - (a) the civil partnership has been converted into a marriage under—
 - (i) section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section;
 - (ii) Part 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 (S.I. 2014/3181) where the civil partnership is a convertible Northern Ireland civil partnership (within the meaning of those regulations);
 - (iii) Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143);
 - (b) the civil partnership has been changed into a marriage under—
 - (i) the Marriage (Scotland) Act 1977;
 - (ii) the Marriage and Civil Partnership (Scotland) Act 2014 (asp 5);
 - (iii) any order made under section 104 of the Scotland Act 1998 in consequence of the Marriage and Civil Partnership (Scotland) Act 2014.

- (3) For the purposes of this paragraph, a marriage has been converted into a civil partnership if it has been converted under Part 3, 4 or 5 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020.

PART 5

NON-CHARITABLE BODIES

18 (1) Where –

- (a) a testator disposes by their will of property to a non-charitable body (“the original body”),
 - (b) the original body does not exist at the time of the testator’s death, but
 - (c) a successor body in relation to the original body exists at that time, the disposition has effect as if it were to the successor body.
- (2) For the purposes of this paragraph a body is a “successor body” in relation to the original body if it is a body which –
- (a) carries on relevant activities, and
 - (b) for purposes connected with those activities, had transferred to it, immediately before or at the time when the original body ceased to exist, all of the property and liabilities that the original body had at the time of the transfer.
- (3) In this section –
- “body” means a body corporate or an unincorporated association other than a partnership;
 - “non-charitable body” means a body which is not a charity;
 - “relevant activities” means activities which are the same as or similar to the activities that were carried on by the original body.

SCHEDULE 4

Section 22

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

PRIMARY LEGISLATION

Wills Act 1837 (c. 26)

- 1 The Wills Act 1837 is repealed.

Evidence Act 1851 (c. 99)

- 2 In the Evidence Act 1851 omit section 5 (nothing in Act to repeal any provision of the Wills Act 1837).

Married Women's Property Act 1893 (c. 63)

- 3 The Married Women's Property Act 1893 is repealed.

Wills (Soldiers and Sailors) Act 1918 (c. 58)

- 4 The Wills (Soldiers and Sailors) Act 1918 is repealed.

Law of Property (Amendment) Act 1924 (c. 5)

- 5 In Schedule 9 to the Law of Property (Amendment) Act 1924 (statutes affected by the Law of Property Act 1922), in the table omit the entry for the Wills Act 1837.

Law of Property Act 1925 (c. 20)

- 6 (1) The Law of Property Act 1925 is amended as follows.
- (2) In section 130(4) (entailed interests in real and personal property), for “by this Act” substitute “by paragraph 1 of Schedule 1 to the Wills Act 2025”.
- (3) Omit Part 10 (wills).

Administration of Estates Act 1925 (c. 23)

- 7 (1) The Administration of Estates Act 1925 is amended as follows.
- (2) In section 3 (interpretation of Part 1) –
- (a) in subsection (2), for “by statute” substitute “by paragraph 1 of Schedule 1 to the Wills Act 2025”;
- (b) in subsection (3), for “by statute” substitute “by that paragraph”.
- (3) In section 35(1) (charges on property of deceased to be paid primarily out of property charged), for “statutory power” substitute “power conferred by paragraph 1 of Schedule 1 to the Wills Act 2025”.
- (4) In section 36(1) (effect of assent or conveyance by personal representatives), for “statutory power” substitute “power conferred by paragraph 1 of Schedule 1 to the Wills Act 2025”.
- (5) In section 41(9) (powers of personal representatives as to appropriation), for “statutory power” substitute “power conferred by paragraph 1 of Schedule 1 to the Wills Act 2025”.
- (6) In section 55(3) (definitions), for “statutory power” substitute “power conferred by paragraph 1 of Schedule 1 to the Wills Act 2025”.

Wills Act 1968 (c. 28)

- 8 The Wills Act 1968 is repealed.

Family Law Reform Act 1969 (c. 46)

- 9 (1) Section 3 of the Family Law Reform Act 1969 (provisions relating to wills and intestacy) is amended as follows.
- (2) Omit subsections (1) and (3).
- (3) In subsection (4) omit ““will” has the same meaning as in the said Act of 1837 and”.

Administration of Justice Act 1982 (c. 53)

- 10 In Part 4 of the Administration of Justice Act 1982 (wills) omit sections 17 to 22.

Family Law Act 1986 (c. 55)

- 11 In the Family Law Act 1986 omit section 53 (effect of divorces and annulments on wills).

Children Act 1989 (c. 41)

- 12 (1) The Children Act 1989 is amended as follows.
- (2) In section 5 (appointment of guardians), for subsection (5) substitute—
- “(5) An appointment under subsection (3) or (4) does not have effect unless—
- (a) it is made in writing and is dated and signed—
- (i) by the person making the appointment,
- (ii) in the case of an appointment made by a will which is not signed by the testator, at the direction of the testator in accordance with requirement B in Schedule 2 to the Wills Act 2025 (formality requirements), or
- (iii) in any other case, at the direction of the person making the appointment, in their presence and in the presence of two witnesses who each attest the signature, or
- (b) it is contained in a service will within the meaning of section 11 of the Wills Act 2025 (service wills).”
- (3) In Schedule 13 (consequential amendments) omit paragraph 1 and the italic heading before it (amendment to section 1 of the Wills Act 1837).
- (4) In Schedule 14 (transitional and saving provision) omit paragraph 14.

Law Reform (Succession) Act 1995 (c. 41)

- 13 (1) The Law Reform (Succession) Act 1995 is amended as follows.
- (2) Omit section 3 (effect of dissolution or annulment of marriage on will).
- (3) In the Schedule (repeals), in the table omit the entry for the Wills Act 1837.

Trusts of Land and Appointment of Trustees Act 1996 (c. 47)

- 14 In Schedule 4 to the Trusts of Land and Appointment of Trustees Act 1996 (repeals), in the table omit the entry for the Wills Act 1837.

Trustee Act 2000 (c. 29)

- 15 (1) The Trustee Act 2000 is amended as follows.
- (2) In section 28(4) (trustee's entitlement to payment under trust instrument), for paragraph (a) (including the final "and") substitute –
- “(a) section 12 of the Wills Act 2025 (invalid dispositions), and”.
- (3) In section 33(2) (application) omit paragraph (a) (including the final “or”).

Human Tissue Act 2004 (c. 30)

- 16 (1) The Human Tissue Act 2004 is amended as follows.
- (2) In section 2(6) (“appropriate consent”: children) –
- (a) omit the “or” at the end of paragraph (a);
- (b) at the end of paragraph (b) insert “, or
- (c) it is contained in a will of the child concerned which meets the formality requirements in Schedule 2 to the Wills Act 2025.”
- (3) In section 3(5)(c) (“appropriate consent”: adults) –
- (a) in the words before sub-paragraph (i) omit “made in accordance with the requirements of”;
- (b) for sub-paragraph (i) (including the final “or”) substitute –
- “(i) which meets the formality requirements in Schedule 2 to the Wills Act 2025, or”;
- (c) in sub-paragraph (ii), at the beginning insert “which is made in accordance with the requirements of”.
- (4) In section 4(5)(c) (nominated representatives) –
- (a) in the words before sub-paragraph (i) omit “which is made in accordance with the requirements of”;
- (b) for sub-paragraph (i) (including the final “or”) substitute –
- “(i) which meets the formality requirements in Schedule 2 to the Wills Act 2025, or”;
- (c) in sub-paragraph (ii), at the beginning insert “which is made in accordance with the requirements of”.
- (5) In Schedule 6 (consequential amendments) omit paragraph 1 and the italic heading before it (amendment of section 1 of the Wills Act 1837).

Civil Partnership Act 2004 (c. 33)

- 17 (1) The Civil Partnership Act 2004 is amended as follows.
- (2) In section 71 (wills, administration of estates and family provision) –
- (a) in the heading omit “Wills,”;
 - (b) in the text of the section omit “wills,”.
- (3) In Schedule 4 (wills, administration of estates and family provision) –
- (a) in the heading omit “Wills,”;
 - (b) omit Part 1 (wills).

Mental Capacity Act 2005 (c. 9)

- 18 The Mental Capacity Act 2005 is amended as follows.
- 19 In section 18(2) (powers to make decisions: wills), for “18” substitute “16”.
- 20 (1) Schedule 2 (property and affairs: supplementary provisions about wills) is amended as follows.
- (2) In paragraph 3 (wills: requirements relating to execution), after sub-paragraph (2) insert –
- “(3) In sub-paragraph (2), so far as it applies in relation to a will in electronic form –
- (a) references to signatures are to electronic signatures (within the meaning of section 7 of the Electronic Communications Act 2000), and
 - (b) references to presence include presence by means of visual transmission.”
- (3) In paragraph 4 (wills: effect of execution) –
- (a) for sub-paragraph (2) substitute –
- “(2) The Wills Act 2025 has effect in relation to the will as if it were signed by P’s own hand, except that –
- (a) sections 2 (capacity: testators aged over 16), 4 (knowledge and approval) and 6 (formalities: making a will) of that Act do not apply, and
 - (b) in any other provisions of that Act, references to the formality requirements being met in relation to the will is to be read as references to the will being executed in accordance with paragraph 3.”;
- (b) in sub-paragraph (3) –
- (i) omit the “and” at the end of paragraph (a);
 - (ii) for paragraph (b) substitute –
- “(b) the formality requirements (within the meaning of the Wills Act 2025) were met in relation to the will, and
- (c) at the time the will was made, P understood –

- (i) that they were making a will, and
- (ii) the content and broad effect of the will.”;
- (c) omit sub-paragraphs (4) and (5).

Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 (c. 7)

- 21 In the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 omit section 2 (disclaimer or forfeiture of a gift under a will).

Human Transplantation (Wales) Act 2013 (anaw 5)

- 22 (1) The Human Transplantation (Wales) Act 2013 is amended as follows.
- (2) In section 8(5)(c) (appointed representatives) –
- (a) in the English language text, for the words after “will which” to the end substitute “meets the formality requirements in Schedule 2 to the Wills Act 2025”;
 - (b) in the Welsh language text, for the words after “a honno’n ewyllys” to the end substitute “sy’n bodloni’r gofynion o ran ffurf yn Atodlen 2 i Ddeddf Ewyllysiau 2025”.
- (3) Omit section 17 (consequential amendment to section 1 of the Wills Act 1837).

Inheritance and Trustees' Powers Act 2014 (c. 16)

- 23 In Schedule 3 to the Inheritance and Trustees' Powers Act 2014 (determination of date when representation is first taken out) omit paragraph 3 (amendment to section 20 of the Administration of Justice Act 1982).

Divorce, Dissolution and Separation Act 2020 (c. 11)

- 24 In the Schedule to the Divorce, Dissolution and Separation Act 2020 (minor and consequential amendments) omit paragraph 43 (amendment to section 18A of the Wills Act 1837).

PART 2

SECONDARY LEGISLATION

Civil Partnership (Treatment of Overseas Relationships No. 2) Order 2005 (S.I. 2005/3284)

- 25 The Civil Partnership (Treatment of Overseas Relationships No. 2) Order 2005 is revoked.

The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168)

- 26 In the Schedule to the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 omit paragraph 1 and the heading before it (consequential amendments to the Wills Act 1837).

The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458)

- 27 In Schedule 2 to the Civil Partnership (Opposite-sex Couples) Regulations 2019 omit paragraph 5 (transitional provision relating to section 18B of the Wills Act 1837).

The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 (S.I. 2020/952)

- 28 The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 is revoked.

The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143)

- 29 In the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 omit regulation 32 (consequential amendments to the Wills Act 1837).

The Wills Act 1837 (Electronic Communications) (Amendment) Order 2022 (S.I. 2022/18)

- 30 The Wills Act 1837 (Electronic Communications) (Amendment) Order 2022 is revoked.

Explanatory Notes to the draft Bill for a new Wills Act

- 1.1 These Explanatory Notes relate to the draft Wills Bill (“the Bill”), which gives effect to the recommendations made by the Law Commission in its report, *Modernising Wills Law*, published on 16 May 2025.¹ They have been produced by the Law Commission in order to assist the reader of the Bill. They do not form part of the Bill and they have not been endorsed by Parliament.
- 1.2 These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy, and set out additional information on how the Bill will affect existing legislation in this area, in particular the Wills Act 1837.
- 1.3 These Explanatory Notes would best be read alongside the Bill. They are not – and are not intended to be – a comprehensive description of the Bill.

OVERVIEW OF THE BILL

- 1.4 The Bill will, if enacted, entirely replace the Wills Act 1837 in England and Wales. It will (among other things):
 - (1) give the courts new powers to validate an otherwise invalid will or an otherwise invalid gift in a will in specific circumstances;
 - (2) restate (with and without modifications), consolidate, and, in some cases, repeal other provisions in the Wills Act 1837;
 - (3) put on a statutory footing – and amend – aspects of the common law governing wills to reflect the Law Commission’s policy recommendations; and
 - (4) consolidate into the Bill provisions governing wills which are currently in other Acts. Specifically, it repeals and restates and/or consolidates the Wills (Soldiers and Sailors) Act 1918; the Wills Act 1968; sections 20 to 22 of the Administration of Justice Act 1982; Part 10 of the Law of Property Act 1925; and paragraphs 3 and 4 of Schedule 4 to the Civil Partnership Act 2004. It repeals without restating the Married Women’s Property Act 1893.
- 1.5 As part of the wills project, the Law Commission consulted on some (albeit not all) of the old interpretation provisions in the Wills Act 1837. Consultees provided the Commission with helpful information about the potential continuing use of those provisions, which was reinforced by further research carried out by the Commission. The Bill therefore retains a significant number of these provisions, but does so by restating them in a modern and accessible way, using updated and simplified language.

¹ Law Com No 419.

POLICY BACKGROUND

- 1.6 The wills project was commenced as part of the Law Commission's Twelfth Programme of Law Reform, beginning in 2016. The Programme explained that the project would consist of a wide-ranging review of wills law, including consideration of whether the law could be reformed to encourage and facilitate will-making in the 21st Century.
- 1.7 While the Law Commission comes to its conclusions independently, this project was supported by the Ministry of Justice.
- 1.8 Further information on the policy and background to the Law Commission's recommendations is provided in its final report, *Modernising Wills Law*, as well as the consultation and supplementary consultation papers which preceded it.

LEGAL BACKGROUND

- 1.9 The law governing wills is largely a product of the Victorian era. It is governed by both legislation – primarily the Wills Act 1837 – and case law, some of which has been developing for over a hundred years. For example, the law that specifies when a person has the capacity to make a will was set out in a case from 1870.²

TERRITORIAL EXTENT AND APPLICATION

- 1.10 The Law Commission's wills project concerned the law of England and Wales, and consequently the Bill extends for the most part to England and Wales only.³ However, there are some narrow exceptions, where the Bill amends or repeals provisions that extend to Northern Ireland and Scotland to clean up the statute book by removing provisions that no longer apply in those jurisdictions.⁴

COMMENTARY ON PROVISIONS OF THE BILL

- 1.11 The Bill contains 28 clauses and 4 Schedules.

Part 1: Power to make a will and dispose of property etc by will

Clause 1: Power to make a will and dispose of property etc by a will

- 1.12 Clause 1 is a restatement of section 3 of the Wills Act 1837. The effect of clause 1 is to empower a testator to dispose by their will of all the property that they own or have an interest in at the time of their death. Clause 1 also provides that a testator can alter or revoke a will they have made, and can revive a will which they have already revoked (and doing any of those things is referred to in the Bill as making a relevant change to a will).
- 1.13 To outline which property a person can dispose of by will, clause 1 relies on the pre-existing law that determines which property devolves on a person's personal

² *Banks v Goodfellow* (1870) LR 5 QB 549.

³ Draft Bill, cl 24(4).

⁴ Draft Bill, cl 24(2) and (3). For more detail, see the discussion of cl 24 at para 1.69 and following below.

representatives: namely, the common law in respect of personal property,⁵ and Part 1 of the Administration of Estates Act 1925 for real property and chattels real.

- 1.14 Subsection (4) introduces Schedule 1, which makes further provision about some (but not all) of the further things that may be done by will, including the appointment of guardians.

Part 2: Validity of wills and changes to wills etc

Capacity

Clause 2: Testators aged 16 or over

- 1.15 Clause 2 lowers the age at which a person can make or change a will from 18 to 16 years old. It provides that a person who is 16 years old or older can make or change a will, provided they have capacity to do so.
- 1.16 Clause 2 – together with clause 23(3) – establishes that the test of capacity in the Mental Capacity Act 2005 applies to determine whether a person has capacity to make or change a will. By adopting the MCA to govern the meaning of “capacity”, clauses 2 and 23(3) also ensure that there is a statutory presumption that a person has capacity to make or change a will.
- 1.17 Furthermore, clause 2 retains the rule in *Parker v Felgate*⁶ so far as it relates to capacity. Subsections (1)(b) and (2) place that rule on a statutory footing, and so ensure that the rule continues to apply in light of the adoption of the MCA test.

Clause 3: Testators aged under 16

- 1.18 Clause 3 gives the power to the Family Court to authorise a child who is under 16 years old to make or change a will in specific terms. To make the order, the Family Court must be satisfied that the child is “competent” to make or change the will. The reference to the child’s competence is a reference to the common law *Gillick* competence test.⁷ Accordingly, any developments in relation to that common law test will be reflected in its application in this context.
- 1.19 Where the Family Court makes an order under clause 3, that will mean that the child is authorised to make or change a will in the way specified in the order. However, the other rules governing the validity of wills or of changes to wills – including the formality requirements set out in Schedule 2 to the Bill – will also apply, as they do in any other case.

⁵ As well as, for example, in relation to causes of action (being a thing in action), the Law Reform (Miscellaneous Provisions) Act 1934, s 1.

⁶ (1883) 8 PD 171.

⁷ *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112, [1985] 3 WLR 830.

Knowledge and approval

Clause 4: Knowledge and approval

- 1.20 Clause 4(1)(a) places the common law requirement of knowledge and approval on a statutory footing. Subsections (1)(b) and (2) also place the rule in *Parker v Felgate*⁸ – so far as it applies as an exception in relation to the requirement for knowledge and approval – on a statutory footing.
- 1.21 Clause 4 codifies (without amending) the common law in this area. As a result, the existing case law, including on the rule in *Parker v Felgate*, will continue to be relevant.

Formalities

Clause 5: The formality requirements

- 1.22 Clause 5 introduces Schedule 2, which explains what is meant by references in the Bill to “the formality requirements” in relation to wills and changes to wills.

Clause 6: Making a will

- 1.23 Clause 6 provides that, in order to be valid, a will must comply with the formality requirements.

Clause 7: Altering a will

- 1.24 Clause 7 restates section 21 of the Wills Act 1837, to outline how a testator can validly alter their existing will. It does not change the law. It provides that a testator can alter their will either by:
- (1) writing the alteration or a description of the alteration on the will itself (so long as the formality requirements are met in relation to the alteration or description); or
 - (2) obliterating (or directing someone to obliterate in their presence) words used in the will, with the intention of altering the will.

Clause 8: Revoking a will

- 1.25 Clause 8 restates and consolidates sections 19 and 20 of the Wills Act 1837. Clause 8 provides that a will can only be revoked by a later valid will, a document revoking the will, or by an act of destruction coupled with the testator’s intention to revoke. It does not amend the law in relation to these three methods of revocation, and accordingly the case law about them will continue to be relevant. Although there is no direct case law on what amounts to destruction of an electronic will, the principles from the existing case law will similarly be relevant in such cases.

⁸ (1883) 8 PD 171.

- 1.26 By providing that a will can only be revoked in those particular ways, the effect of clause 8 is that the previous rule that marriage or the formation of a civil partnership revokes a testator's existing will,⁹ is abolished.

Clause 9: Reviving a will

- 1.27 Clause 9 restates section 22 of the Wills Act 1837, and so provides that a testator may revive a previously revoked will only by the formality requirements being met again in relation to it (that is by re-executing it), or by a valid codicil. It does not change the law on revival.

Clause 10: Power to deem the formality requirements to be met

- 1.28 Clause 10 allows any person to apply to the court for an order where one or more of the formality requirements is not met in relation to a will, an alteration to a will or a document revoking a will. Clause 10(4) provides that the will etc must be in the form of a "document" (or documents), which includes both written and electronic records, such as sound and video recordings, but purely oral statements are not included.
- 1.29 The court is only able to make an order under this provision if it is satisfied that the document or documents demonstrated the testamentary intentions of a deceased person at the time it was made, and that the document or documents continued to reflect the deceased person's testamentary intentions at the time they died. Where the court is satisfied about that, the court has the discretion to make an order deeming the formality requirements to be met in relation to the document or documents. The effect of such an order is that the document or documents will be a formally valid will (or a formally valid revocation or alteration of a will).
- 1.30 However, in order to be a valid will (or a valid revocation or alteration of a will), the substantive validity requirements must also be met: namely, that the person must have had capacity or have been competent at the time they made the document or documents, they must have known and approved of the contents thereof, and the document or documents must not have been procured as a result of fraud or undue influence.
- 1.31 The power under clause 10 is exercisable by the High Court (as is made clear by the definition of "court" in clause 23(1)). The power applies to documents regardless of whether they are made before or after the enactment of the power, so long as the testator dies after the power is enacted (see clause 26(2)).
- 1.32 Clause 10 does not apply to revocation of a will by destruction under clause 8(1)(c) or (d), because there are no formality requirements in relation to revocation by destruction.

Wills made by service personnel etc

Clause 11: Service wills

- 1.33 Clause 11 restates and consolidates section 11 of the Wills Act 1837 and the Wills (Soldiers and Sailors) Act 1918, which provide for what are often referred to as

⁹ In the Wills Act 1837, ss 18 and 18B.

“privileged will”: wills which can be made without complying with the formality requirements. The Bill, however, refers to them as “service wills”.

- 1.34 Clause 11 also amends the law in relation to who benefits (and the circumstances in which they benefit) from the privilege of being able to make a will without complying with the formality requirements.
- (1) It confines the scope of the privilege to those serving in the British Armed Forces (whether in the regular or reserve forces) Consequently, the privilege is removed from mariners and sailors. It also expands the scope of the privilege to include civilians who are subject to service discipline.
 - (2) Members of the British Armed Forces only benefit from the privilege when they are on active military service. Consequently, members of the Naval or Marine Forces will no longer benefit from the privilege while “at sea” unless they are also on active military service. The requirement to be on “active service” appropriately – and consistently across the branches of the Armed Forces – captures the circumstances where the privilege should apply.
 - (3) Civilians subject to service discipline will only benefit from the privilege in circumstances where they would have been considered to be on active service if they were themselves members of the British Armed Forces.

Validity of dispositions and powers of appointment

Clause 12: Invalid dispositions

- 1.35 Clause 12 restates and consolidates the existing law governing the invalidity of gifts to witnesses and their spouses and civil partners (which is found in section 15 of the Wills Act 1837, the Wills Act 1968, and paragraph 3 of Schedule 4 to the Civil Partnership Act 2004). It also amends the law to extend the invalidity rule, to make gifts invalid where they are made to:
- (1) cohabitants of witnesses, and
 - (2) to persons signing the will on behalf of the testator, as well as their spouses, civil partners and cohabitants.
- 1.36 Clause 12(1) provides that a disposition in a will is invalid if it is to:
- (1) a person who signs a will on the testator’s behalf, (referred to in the Bill as an “authorised individual”);
 - (2) a witness who attested the will; or
 - (3) a person who, at the time of the execution of the will, was the spouse, civil partner or cohabitant of the authorised individual or the witness.
- 1.37 However, clause 12(2)(a) and (b) respectively provide that dispositions are not invalid where:
- (1) the court has exercised its power under clause 10 to deem the formality requirements to be met in relation to the will; or

(2) the court has exercised its power under clause 13 to save the disposition.

- 1.38 Clause 12(3) preserves the provision in section 1 of the Wills Act 1968 and paragraph 3(b) of Schedule 4 to the Civil Partnership Act 2004: a gift to a witness (or a person connected to the witness) is not invalid if the will would have been duly executed even without that witness being involved.
- 1.39 Clause 12(4) provides that a gift which is invalidated under clause 12 will also be invalid in respect of someone claiming under anyone in the prohibited categories of person (such as where a witness who attested the will dies, and their personal representative or executor claims under them).
- 1.40 Clause 12(5)(a) makes further provision as to the meaning of “disposition”. It preserves the existing exceptions that the invalidity rule only applies to gifts of the beneficial interest (so that a gift to a trustee, conveying the legal interest, would not be invalid). Furthermore, it provides that the invalidity rule does not apply to gifts in the repayment of a debt or for remuneration of services.
- 1.41 Clause 12(5)(b) defines “cohabitant”, by reference to Part 4 of the Family Law Act 1996, as “two persons who are neither married to each other nor civil partners of each other but are living together as if they were a married couple or civil partners”. Accordingly, there is no requirement that the cohabitation has been for a specified period of time.

Clause 13: Power to save an otherwise invalid disposition

- 1.42 Clause 13 amends the law to allow a person to apply to the High Court for an order saving a gift that would otherwise be invalidated by clause 12.
- 1.43 Clause 13(2) provides that the court can only make an order where it is satisfied that it is just and reasonable to do so. In deciding what is just and reasonable, clause 13(3) requires the court to have regard to the behaviour of the relevant person in relation to the making of the will and, if relevant, proving the will after the testator has died.

Clause 14: Powers of appointment exercised by will.

- 1.44 Clause 14 restates section 10 of the Wills Act 1837, which prevents formalities or solemnities additional to those required to make a valid will from being required for the valid exercise of a testamentary power of appointment.
- 1.45 Clause 14 amends the law by extending this rule to service wills. Accordingly, a service will which is valid under clause 11 will be formally valid with respect to any appointment under a testamentary power of appointment made in it.
- 1.46 The effect of clause 14, together with clause 1, is not to empower a testator to exercise a power of appointment. Property over which a testator has a power of appointment, without more, is not property which the testator owns or has a property right in.¹⁰ It is not necessary for testators to be empowered to exercise a testamentary

¹⁰ Although the donee of a general power of appointment is, in effect, treated as beneficially owning the property, even though they do not. If the testator is donee of a general power of appointment, and they

power of appointment, because the ability to exercise the power by will follows the conferral of the power. However, the Bill's definition of "will" in clause 23(1), read with clause 23(2) means that an exercise of a testamentary power of appointment, whether a general, special or hybrid power, is itself a will, which on its own (without any disposition of the testator's property) could be valid.

Testamentary undue influence

Clause 15: Testamentary undue influence

- 1.47 Clause 15 enables the court to find that a will or a change to a will was made as a result of testamentary undue influence in certain situations where it currently cannot do so.
- 1.48 Clause 15(1) provides that the court can do this where in a probate claim testamentary undue influence is alleged in a statement of case, and there is evidence which provides reasonable grounds to suspect that the undue influence was exerted in relation to a testator making or changing a will. Clause 15(3) provides that in determining whether there is evidence which provides reasonable grounds to suspect undue influence, the court must have regard to the conduct of the person who is alleged to have exerted the undue influence, to the relationship between that person and the testator, and to the wider circumstances in which the will was made. The court can also consider any other evidence it considers relevant.
- 1.49 Where the court is satisfied that the evidence provides reasonable grounds to suspect undue influence, it may make a finding that the undue influence was exerted unless it is proved on the balance of probabilities that the testator was not in fact unduly influenced. In other words, the court may only find undue influence in these circumstances where it has not been proved that the testator acted free from undue influence.
- 1.50 Clause 15 does not otherwise alter the common law governing testamentary undue influence. The definition of "undue influence" in clause 15(4) reflects the common law definition of testamentary undue influence and testamentary undue influence will continue to be able to be proved in the usual way, as is made clear by clause 15(6). The consequence of a finding of undue influence, whether under this clause or otherwise, will continue to be that it makes the will (or the relevant part of the will, or the change to the will) invalid.
- 1.51 Clause 15(5) defines "probate claim" for the purposes of this clause, limiting the clause's application to contentious probate cases.

exercise that power in their will, the property subject to the general power becomes their assets for the purpose of paying their debts and liabilities, and devolves on their personal representatives. Whether or not they exercise it, property over which the testator had a general power of appointment will be part of their "net estate" out of which family provision orders can be made: Administration of Justice Act 1925, ss 3(2), 32, 55(3) and para 7 of Sch 1; Inheritance (Provision for Family and Dependants) Act 1975, s 25(1).

Part 3: Rectification and interpretation of wills etc

Clause 16: Rectification

- 1.52 Clause 16 restates section 20 of the Administration of Justice Act 1982, while also expanding its scope by including a new, third type of mistake which caused the will to fail to give effect to the testator's intentions.
- 1.53 Clause 16(1) sets out the circumstances in which the court may rectify a will, namely where it is satisfied that the will is expressed in a way that fails to give effect to the testator's intentions, and that the failure to do so is because of:
- (1) a clerical error (under clause 16(1)(b)(i));
 - (2) a failure to understand the testator's intentions (under clause 16(1)(b)(ii)); or
 - (3) a failure to understand the meaning or direct effect of the language which was used in the will (under clause 16(1)(b)(iii)).

Paragraphs (1) and (2) above restate the existing rectifiable mistakes in section 20 of the Administration of Justice Act 1982, whereas paragraph (3) represents an expansion of the law.

- 1.54 The wording of clause 16(1)(b)(iii) reflects the distinction – from case law regarding the rectification of deeds and settlements¹¹ – between a mistake as to the effect of a document and a mistake as to the consequences of a document. The distinction is subtle but important: a mistake about the document's intended legal effect is rectifiable, but a mistake about the consequences of that legal effect is not. Often, this distinction arises between the intended legal mechanism versus the intended fiscal, including tax, consequences. For example, if the settlor intended to create a discretionary trust, the fact that the discretionary trust failed to result in the tax savings the settlor wanted is not rectifiable; however, if the settlor had instead intended to create an interest in possession trust but created a discretionary trust, it would be rectifiable.¹² Clause 16(1)(b)(iii) permits the court to rectify a mistake of this type in a will to the same degree that it can under its equitable jurisdiction to rectify a unilateral document.

Clause 17: Admissibility of extrinsic evidence

- 1.55 Clause 17 is a restatement of section 21 of the Administration of Justice Act 1982. It provides that extrinsic evidence may be admitted to assist with the interpretation of a will insofar as the will is meaningless, or the language used in the will is ambiguous.
- 1.56 The clause does not change the law in relation to the direct evidence of the testator's intention that is admissible in interpreting a will.

¹¹ Including (among others) in: *Re Butlins ST* [1976] Ch 251, [1976] 2 WLR 547; *Racal Group Services Ltd v Ashmore* [1995] STC 1151, [1995] 10 WLUK 112; and *Giles v Royal National Institute for the Blind* [2014] EWHC 1373 (Ch), [2014] STC 1631.

¹² See eg *Allnut v Wilding* [2007] EWCA Civ 412, [2007] BTC 8003 and *Bullard v Bullard* [2017] EWHC 3 (Ch).

Clause 18: Prescribed forms that may be referred to in wills

- 1.57 Clause 18 is a restatement of section 179 of the Law of Property Act 1925. The clause gives the Lord Chancellor the power to prescribe forms which may be referred to in a will.

Clause 19: Further provision about interpretation

- 1.58 Clause 19 introduces Schedule 3, which contains other provisions governing the interpretation of a will.

Part 4: Amendments to other legislation

Clause 20: Financial provision out of property held under a mutual wills agreement

- 1.59 Clause 20 amends the Inheritance (Provision for Family and Dependants) Act 1975 (“the 1975 Act”) to introduce a new ground on which a person may apply for reasonable financial provision under the 1975 Act.
- 1.60 The clause inserts a new section 1(1ZA) into the 1975 Act. New section 1(1ZA) enables existing categories of person who may make a claim under the 1975 Act to do so on the ground that they have not received reasonable financial provision from the deceased person’s estate due to its distribution being in accordance with a mutual wills agreement. It also amends section 2 of the 1975 Act to enable the court to make an order for reasonable financial provision in those circumstances.
- 1.61 Clause 20(4) and (5) make associated changes to the 1975 Act.
- 1.62 Clause 20(6) makes two amendments to the interpretation provision (section 25) of the 1975 Act.
- (1) Clause 20(6)(a) amends the definition of “beneficiary” in the 1975 Act so that it includes a beneficiary of a mutual wills agreement. As a result, in considering whether to make an order under section 2 of the Act, relevant matters under section 3 to which the court must have regard apply equally to a beneficiary under a mutual wills agreement. For instance, the court will need to consider the financial resources and financial needs which any beneficiary under a mutual wills agreement has or is likely to have in the foreseeable future (under section 3(1)(c) of the 1975 Act).
 - (2) Clause 20(6)(b) amends the 1975 Act so that property that is subject to a mutual wills agreement falls within a person’s “net estate”. As a result, property that is subject to a mutual wills agreement is brought within the scope of the deceased person’s estate, out of which an order for reasonable financial provision can be made.

Clause 21: Preservation of interests on disposal of property

- 1.63 Clause 21 repeals paragraph 8 of Schedule 2 to the MCA, and restates and expands it as a new section 43A in that Act.
- 1.64 New section 43A of the MCA therefore restates the existing exception whereby ademption does not apply where a person’s property is disposed of during their life where the property is disposed of by the Court of Protection or by the person’s deputy.

The existing exception operates to prevent a disposal by the court or by the testator's deputy from adeeming a specific gift in the testator's will, meaning that the exception prevents the gift from failing; instead, the beneficiary of the gift will take the same interest in any property representing the disposed property (such as the proceeds of sale).

- 1.65 Furthermore, it extends – in new section 43A(1)(a)(ii) – the existing exception so that it covers disposals of a person's property during their life by donees of a lasting power of attorney or by attorneys under an enduring power of attorney. As a result, a disposal by a donee under a lasting power of attorney or an attorney under an enduring power of attorney will also not operate to adeem a specific gift in the testator's will.
- 1.66 New section 43A does not, however, restate sub-paragraphs 8(3) and (4) of Schedule 2. These provisions originally derived from the Lunacy Act 1890, which was based in part on section 135 of the Lunacy Regulation Act 1853. Their purpose had been to ensure that actual conversion was disappplied to authorised sales of land and purchases of property on behalf of a person who lacked capacity. They disappplied conversion to preserve the respective rights of the person's heir at law and next of kin, so that the sale or purchase of property did not change who was entitled to the property on the person's death. This was necessary because, historically, real property (estates and interests in land¹³) passed directly to a person's heir at law, and personal property (that is, chattels and things in action) devolved to their personal representatives, for the benefit of their next of kin: selling land (real property) would result in the person having money (personal property) rather than land, and buying land would result in the person having land rather than money, with the effect that it might change who among the person's family was entitled to the property on their death. However, the difference in how property devolves based on whether the property is real or personal has been abolished by the Administration of Estates Act 1925, which provides that the deceased's real property devolves on their personal representatives.¹⁴ As a result, all of a person's property, real and personal, vests in their personal representatives on their death. Moreover, there is no distinction as to who is entitled to the property on intestacy based on the type of property.¹⁵ Accordingly, paragraphs 8(3) and (4) are not preserved in new section 43A.

Clause 22: Minor and consequential amendments

- 1.67 Clause 22 introduces Schedule 4, which makes minor and consequential amendments to other legislation.

¹³ Excluding leaseholds (interests in property that are for terms of years), which were classified as personal property called "chattels real".

¹⁴ Administration of Estates Act 1925, Part 1. It was originally abolished by the Land Transfer Act 1897, Part 1.

¹⁵ Administration of Estates Act 1925, Parts 3 and 4. The other rules governing descent of property were also abolished. However, entailed interests are excepted, so the particular rules of descent which apply to entails continue to apply.

Part 5: General

Clause 23: Interpretation

1.68 Clause 23(1) defines a number of important terms used in the Bill, including the following.

- (1) “Court” is defined to mean the High Court, meaning that all the references to “court” in the Bill are to the High Court. The exception to this is clause 3, which specifically refers to the Family Court. Although “court” means “High Court”, it will include the County Court up to the County Court limit, because jurisdiction over contentious probate matters has been conferred on the County Court under section 23 of the County Court Act 1984.¹⁶
- (2) “Property” is defined broadly, and no distinction is made within the Bill between real and personal property. For the avoidance of doubt, the definition of property expressly includes contingent, executory and future interests in property (to avoid any doubt in relation to such rights in personal property) and rights of entry, including rights of entry for condition broken (to avoid any doubt about equitable rights of entry).
- (3) “Testator” is used as a gender-neutral term, incorporating within it the term “testatrix”.

Clause 24: Extent

1.69 Clause 24 outlines the extent of the Bill.

1.70 The vast majority of provisions in the Bill extend to England and Wales only, as provided for in subsections (1) and (4). However, subsections (2) and (3) outline the limited exceptions to this, where the Bill amends or repeals provisions that extend to Northern Ireland and Scotland.

1.71 Clause 24 provides that repeals made by the Bill extend to Scotland and Northern Ireland (as well as to England and Wales).

- (1) The effect of clause 24(2) together with paragraph 4 of Schedule 4 is to repeal the Wills (Soldiers and Sailors) Act 1918 in Scotland as well as in England and Wales. The 1918 Act continuing to extend to Scotland has no practical effect: only section 3(2) of the 1918 Act related to Scotland, and it was repealed by the Succession (Scotland) Act 1964. However, the 1918 Act was not repealed for Scotland at that time. (The Wills (Soldiers and Sailors) Act 1918 still extends to Northern Ireland in substance, so the Bill does not repeal it in that jurisdiction.)
- (2) The effect of clause 24(3) together with paragraph 10 of Schedule 4 is to repeal sections 17 and 19 of the Administration of Justice Act 1982 in Northern Ireland as well as in England and Wales. These sections of the 1982 Act amended sections in the Wills Act 1837 which, at the time, also extended to Northern

¹⁶ The limit being £350,000: County Court Jurisdiction Order (SI 2014 No 503), para 3.

Ireland. However, as a result of the Wills and Administration Proceedings (Northern Ireland) Order 1994, they no longer do so.

1.72 Clause 24 also provides that certain consequential amendments made by the Bill also extend to Northern Ireland (as well as to England and Wales).

- (1) Under the Bill, 16- and 17-year-old children will be able to make a valid will.¹⁷ Accordingly, a child will be able to express consent in their will for activities involving their body, such as organ donation and the removal and use of tissues from their body, under section 2 of the Human Tissue Act 2004, in accordance with the amendment made by paragraph 16(2) of Schedule 4 to the Bill. The 2004 Act, and the Bill's amendment of it, extends to Northern Ireland as well as England and Wales, such that consent in a valid will in England and Wales will be recognised as valid consent in Northern Ireland. As a consequence, children will be able to express consent under the 2004 Act in Northern Ireland in a will that is valid under English law, despite the fact that children cannot make a valid will under the law of Northern Ireland.
- (2) The Bill makes provision for the formal validity of electronic wills. Accordingly, a child or adult will be able to express consent for the use of their body, and an adult will be able to make a nomination for a person to provide consent on their behalf after their death, in an electronic will under the Human Tissue Act 2004. The necessary consequential amendments to the Human Tissue Act 2004 are made in paragraph 16 of Schedule 4 to the Bill. Because the 2004 Act extends to Northern Ireland as well as England and Wales, and the Bill's amendment of the 2004 Act does too, the Bill will enable electronic wills to be recognised for the purposes of the 2004 Act in Northern Ireland, even though electronic wills are not provided for under the law of Northern Ireland.

Clause 25: Commencement

1.73 Clause 25 sets out when the Bill, once enacted, will come into force.

1.74 Clause 25(1) provides that the majority of the Bill comes into force at the end of the period of two months after it is passed. As set out in clause 25(2), there are two exceptions to this: Part 5 (dealing with interpretation, extent, commencement, application, transitional and saving provisions, and the short title) and any power in the Bill to make regulations come into force on the day on which the Bill is passed.

1.75 As a result, the repeal of the Wills Act 1837, and other major changes under this draft Bill, do not take effect until two months after the Bill is passed.

Clause 26: Application

1.76 Clause 26 provides for the application of the provisions in the Bill.

1.77 Clause 26(1) provides that the Bill generally applies to wills – or relevant changes to wills – which are made two months after the Bill is passed.

¹⁷ Or a child of any age authorised by the court to make a will under cl 3.

1.78 Clause 26(2) to (10) provide for some exceptions to this general rule, as follows.

- (1) Under clause 26(2), the power of the court to deem the formality requirements to be met (under clause 10) applies in relation to the will (or the alteration or revocation of a will) of a person who dies on or after the day on which clause 10 comes into force (that is, two months after the Bill is passed).
- (2) Under clause 26(3), the power of the court to make a finding of testamentary undue influence (under clause 15) applies in relation to the will, or a relevant change to a will, of a person who dies on or after the day on which clause 15 comes into force (that is, two months after the Bill is passed).
- (3) Under clause 26(4), the power of the court to rectify a will (under clause 16), together with the repeal of section 20 of the Administration of Justice Act 1982 (under paragraph 10 of Schedule 4), apply in relation to the will of a person who dies on or after the day on which clause 16 comes into force (that is, two months after the Bill is passed).
- (4) Under clause 26(5), the power of the court to make an order for financial provision from the deceased's estate out of property subject to a mutual wills agreement (under clause 20) applies in relation to the will of a person who dies on or after the day on which clause 20 comes into force (that is, two months after the Bill is passed).
- (5) Under clause 26(6), the exceptions to ademption set out in new section 43A of the MCA (under clause 21), apply to disposals of property that are made on or after the day on which clause 21 comes into force (that is, two months after the Bill is passed).
- (6) Under clause 26(7), the interpretation rule applying to disclaimers or forfeitures of dispositions (in paragraph 7 of Schedule 3) applies in relation to the will of a person who dies on or after the day on which Schedule 3 comes into force (that is, two months after the Bill is passed).
- (7) Under clause 26(8), the interpretation rule that presumes property was destroyed after the testator died, in circumstances where the order of the two events cannot be determined (in paragraph 9 of Schedule 3), applies in relation to a will of a person who dies on or after the day on which Schedule 3 comes into force (that is, two months after the Bill).
- (8) Under clause 26(9), the exception from ademption applying to incomplete transactions (in paragraph 10 of Schedule 3) applies in relation to contracts entered into or options granted on or after the day on which Schedule 3 comes into force (that is, two months after the Bill is passed).
- (9) Under clause 26(10), the repeal of the rule that getting married or forming a civil partnership revokes a person's pre-existing will (in sections 18 and 18B of the Wills Act 1837, which are repealed by paragraph 1 of Schedule 4 to the Bill) applies in relation to marriages and civil partnerships entered on or after the day on which Schedule 4 comes into force (that is, two months after the Bill is passed).

Clause 27: Transitional and saving provision

1.79 Clause 27 makes specific transitional and saving provisions.

- (1) Subsection (1) modifies clause 10 so that the power in that clause – which allows the court to deem the formality requirements to be met – applies in relation to a will or a change to a will where the testator dies after the coming into force of clause 10, but their will or the change was made before the coming into force of that section. In that case, the formal validity of such a will or change would be governed by the Wills Act 1837, so this subsection allows the court to deem the will or change to meet the requirements of that Act (rather than the requirements in the Bill).
- (2) Subsection (2) provides that the standard forms prescribed under section 179 of the Law of Property Act 1925¹⁸ will be treated as having been made under clause 18, ensuring both that they remain in force despite section 179 being repealed and can be revoked under clause 18.
- (3) Subsection (3) provides that, on clause 21 coming into force (inserting new section 43A into the Mental Capacity Act 2005), paragraph 8 of Schedule 5 to the Mental Capacity Act 2005 applies in relation to disposals of property under section 43A(1) of that Act, as it applies in relation to disposals of property under paragraph 8(1) of Schedule 2 to that Act made before the day on which clause 21 comes into force.

Clause 28: Short title

1.80 Clause 28 sets out the short title of the Act.

Schedule 1: Other things that may be done by a will

1.81 Schedule 1 is introduced by clause 1(4) and sets out a non-exhaustive list of things that can be done in a will.

Paragraph 1: Power to bar an entail in a will

- 1.82 Paragraph 1 of Schedule 1 restates section 176 of the Law of Property Act 1925, which empowers a beneficiary of an entailed interest in possession to bar the entailed interest in property by will. It uses the term “beneficiary of an entailed interest in possession” rather than the more common “tenant in tail in possession” to avoid the inappropriate use of the term “tenant” in the context of an entailed interest in personal property.
- 1.83 Because an entailed interest is equitable, someone aged under 18 years old could be a beneficiary of the interest. Paragraph 1 requires the beneficiary to be 16 years or older, aligning the age at which a person can bar an entailed interest by will with the age at which a testator can make a will under clause 2.

¹⁸ Statutory Will Forms 1925, SI 1925 No 780.

Paragraph 2: Appointments and giving consent

- 1.84 Paragraph 2 outlines other things that a person may do in their will. In so doing, it effectively restates part of section 1 of the Wills Act 1837, which – in defining a “will” – provides that appointments of a guardian of a child, or of a representative under the Human Tissue Act 2004 or Human Transplantation (Wales) Act 2013, and expression of consent under the Human Tissue Act 2004, are themselves “wills”.
- 1.85 However, paragraph 2 takes a different approach to section 1 of the 1837 Act. It instead signposts to the provisions in those Acts which allow for such consents or appointments to be made in a will.

Schedule 2: The formality requirements

- 1.86 Schedule 2 is introduced by clause 5.
- 1.87 Paragraphs 1 to 9 outline the formality requirements to make a valid will. These paragraphs restate (with and without modifications) and consolidate sections 9, 13, 14, 16 and 17 of the Wills Act 1837.
- 1.88 Moreover, Schedule 2 expressly provides for electronic wills to be formally valid. Other than in Schedule 2, the Bill does not make a distinction between electronic wills and conventional paper wills. The effect of this is that paper and electronic wills are equally valid, such that they can alter, revoke and revive each other.

Paragraph 1: Meaning of “the formality requirements”

- 1.89 Paragraph 1 outlines the formality requirements that apply to conventional paper wills, and those that apply to electronic wills, as well as to changes to both types of will. Sub-paragraph (1)(b) has the effect that an electronic will cannot be formally valid by virtue of complying only with the requirements for paper wills; to be valid, an electronic will must additionally comply with the bespoke requirements for electronic wills set out in requirement F.

Paragraph 2: Requirement A: will to be in writing

- 1.90 Paragraph 2 restates the requirement in section 9(1)(a) of the Wills Act 1837 that a will must be in writing.

Paragraph 3: Requirement B: will to be signed by or on behalf of the testator

- 1.91 Paragraph 3 restates the requirement in section 9(1)(a) of the Wills Act 1837 that the will must be signed by the testator, or signed by another person (“the authorised individual”) on the testator’s behalf and in their presence.
- 1.92 What amounts to a signature is not defined in the Bill, except in relation to signatures on electronic wills (in paragraph 9(2) of Schedule 2). Accordingly, the case law under the Wills Act 1837 about what it means for a person to sign will continue to be relevant.

Paragraph 4: Requirement C: signature indicates intention for will to have effect

- 1.93 Paragraph 4 restates the requirement in section 9(1)(b) of the Wills Act 1837 that it appears from the testator's signature (or from the signature of the authorised individual) that the testator intended to give effect to the will.

Paragraph 5: Requirement D: will to be signed in the presence of witnesses

- 1.94 Paragraph 5 restates the requirement in section 9(1)(c) of the Wills Act 1837 that the will is signed in the presence of two or more witnesses (present at the same time), or that the testator acknowledges their or the authorised individual's earlier signature in the presence of two or more witnesses (present at the same time).

Paragraph 6: Requirement E: will to be signed and attested by witnesses

- 1.95 Sub-paragraph (1) restates the requirement in section 9(1)(d) of the Wills Act 1837, that two or more witnesses, in the presence of the testator (but not necessarily each other), sign and attest the will, or acknowledge their earlier signature and attest the will.
- 1.96 Sub-paragraph (2)(a) restates section 13 of the Wills Act 1837, which provides that a will is valid without "any other publication thereof". "Publication" means "a declaration by the testator in the presence of witnesses that the instrument produced to them was his will".¹⁹ Sub-paragraph (2)(a) uses a more modern formulation of this rule, which is that a witness can validly witness the execution of a will without knowing the nature of the document.
- 1.97 Sub-paragraph (2)(b) amends the law to require that a witness who acknowledges their signature in the presence of the testator also attests, just as a witness who signs in the testator's presence is required to do. Sub-paragraph (2)(b) also clarifies what it means to "attest" – drawing on case law, for example, *Sherrington v Sherrington*²⁰ – by setting out what the witness needs to attest to: namely, that Requirement D was met in relation to the will.
- 1.98 Paragraph 6 provides what a witness must attest to (in sub-paragraph (2)(b)), but, unlike section 9(1) of the Wills Act 1837, it does not further provide that "no form of attestation shall be necessary". Nevertheless, the effect of paragraph 6 – as is the case under the Wills Act 1837 – is that an attestation clause in any particular form is not a requirement for a will's validity. Although attestation clauses will continue not to be required for a will's formal validity, they will remain relevant to how a will is proved, in terms of whether additional evidence of due execution is necessary.

Paragraph 7: Requirement F: use of a reliable system

- 1.99 Paragraph 7 outlines the additional, bespoke formality requirement (Requirement F) that applies only to electronic wills, over and above the requirements that apply to conventional paper wills. Paragraph 7 requires the use of a reliable system which

¹⁹ R Kerridge (assisted by A H R Brierley), *Parry and Kerridge: The Law of Succession* (13th ed 2016) para 7-65, n 196. See also New Zealand Law Commission, *Succession Law: A Succession (Wills) Act* (Report 41, 1997) p 3.

²⁰ [2005] EWCA Civ 326, [2005] WTLR 587. See also *Re Sangha (Deceased)* [2023] EWCA Civ 660, [2023] 4 WLR 60 at [92]; and *James v Scudamore* [2023] EWHC 966 (Ch) at [103] and [104].

must: establish a link between a person and their signature at the time of signing the will; identify a single, authoritative version of the will; and ensure that a will cannot have been improperly or unintentionally altered or destroyed after being executed.

Paragraph 8: Regulations about the formality requirements in relation to wills in electronic form

1.100 Paragraph 8 enables the Secretary of State to make regulations to provide the detail as to how electronic wills may or must fulfil the formality requirements (including by identifying or describing systems that are – or are not – reliable systems for the purposes of Requirement F). However, this power does not need to be exercised in order for an electronic will to be valid under Schedule 2.

Paragraph 9: Supplementary

1.101 Paragraph 9(1) consolidates and restates sections 14, 16 and 17 of the Wills Act 1837.

1.102 Sections 14, 16 and 17 disappplied elements of the law of evidence which otherwise applied at the time of the Wills Act 1837, to allow people who were not competent to give evidence in civil cases nonetheless to be able validly to witness a will.²¹

1.103 Under the current law of evidence, anyone capable of attesting the execution of a will can be a witness, including a child. Paragraph 9(1) states who can act as a witness to a will and in doing so reflects the current law of civil evidence as to who is competent to give evidence.

1.104 Paragraph 9(2) defines “presence” and “signature” for the purpose of Schedule 2. The effect is that an electronic will is only capable of being signed with an electronic signature, and that, for electronic wills, the requirement for the presence of witnesses and authorised individuals can be met by remote presence.

Schedule 3: Interpreting a will

1.105 Schedule 3 makes provision about how a will is to be interpreted, and is introduced by clause 19.

Part 1: Introduction

Paragraph 1: Schedule subject to contrary intention appearing from a will

1.106 Paragraph 1 provides that the provisions in Schedule 3 are subject to the testator expressing an intention to the contrary in their will. The effect of this is the same as many of the existing interpretation provisions in the Wills Act 1837, which are stated to apply “unless a contrary intention shall appear by the will”.

²¹ See A Learmonth, J Clarke, K Shuman, C Ford and T Fletcher, *Theobald on Wills* (19th ed 2021) para 3-021; *Phipson on Evidence* (20th ed 2022) paras 9-03 to 9-07 and 40-28; B Sloan, *Borkowski’s Law of Succession* (4th ed 2020) para 5.2.5.1. See also C Allen, *The Law of Evidence in Victorian England* (1997) p 1.

Part 2: Dispositions of property

Paragraph 2: Will to be interpreted as if made immediately before death

- 1.107 Paragraph 2 restates section 24 of the Wills Act 1837. Its effect is to provide a default interpretation rule that references in a will to property disposed of by that will are to be interpreted in the light of the property the testator owned at the time of their death, rather than what they owned at the time they made the will (or any other time).

Paragraph 3: General dispositions of property to include powers of appointment

- 1.108 Paragraph 3 restates section 27 of the Wills Act 1837. Its effect is to provide a default interpretation rule that any specific gifts of property or gifts of residue of property, where the property is described in a general way, act to exercise any general power of appointment held by the testator over any property which falls within the general description.

Paragraph 4: Estates and interests that are included in dispositions

- 1.109 Paragraph 4 restates and consolidates sections 26, 28, 30 and 31 of the Wills Act 1837, so as to provide a default rule of interpretation in relation to the extent of the estate or interest which falls within a gift.
- 1.110 Section 26 provides that a general devise of the testator's land or lands, such as by reference to a location, will be interpreted to include the testator's leasehold estate or estates, as well as any freehold estates, absent a contrary intention appearing by their will. This section might have been intended to abolish the rule established in the 17th century case *Rose v Bartlett*²² that:
- a general devise of lands, tenements, and hereditaments did not carry leaseholds, if there were any freeholds; on the other hand, if there were no freeholds, leaseholds might pass.²³
- 1.111 Section 28 provides that a gift of real property without words of limitation (also called words of inheritance) pass the testator's whole interest, such as a fee simple. Under the common law, a gift of real property would only pass a life estate unless it expressed an intention to create a fee simple or fee tail; accordingly, to pass a fee simple or fee tail, words of limitation / inheritance needed to be used, such as "to A and her heirs".²⁴ (Section 60 of the Law of Property Act 1925 later addressed this issue for lifetime dispositions.²⁵)
- 1.112 Sections 30 and 31 both provide for gifts of property to trustees and executors to convey the testator's whole interest.

²² (1631) 79 ER 856.

²³ A Learmonth, J Clarke, K Shuman, C Ford and T Fletcher, *Theobald on Wills* (19th ed 2021) para 26-040.

²⁴ M Dixon, J Bignell, and N Hopkins, *Megarry and Wade: The Law of Real Property* (10th ed 2024) para A-016; L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 236 to 237.

²⁵ M Dixon, J Bignell, and N Hopkins, *Megarry and Wade: The Law of Real Property* (10th ed 2024) para A-006.

- 1.113 The previous common law rule in relation to the construction of gifts in wills to trustees was that, absent a contrary intention appearing from the will, the gift would pass the fee simple to the trustees if the purpose of the trust required that they have this level of interest, either because they needed to take an action which required ownership of the fee (such as to sell it) or that they would need to have the property for an indefinite period of time to fulfil the purposes of the trust.²⁶
- 1.114 An exception to – or gloss on – this rule, appears to have first arisen in 1593 in *Cordal's Case*.²⁷ In his will, the testator had devised land to his executors for the payment of his debts, and, once the debts were paid, to the testator's brother for life, and the remainder to his brother's heirs in tail. The court determined that his will only gave the executors a chattel interest, not a freehold, which determined when the profits should have paid the debts.²⁸ Section 30 reversed this rule, although made an exception for a gift of an advowson to trustees.
- 1.115 The courts then applied this rule, apparently at the beginning of the 19th century, to cases of gifts in wills to trustees, even if the wording of the gift was sufficient to give the trustees the fee simple.²⁹ Section 31 reverses it.
- 1.116 Sections 26, 28, 30 and 31 are necessary to retain, to avoid the common law reviving on these points. Paragraph 4 restates them all.
- 1.117 But unlike section 30 of the Wills Act 1837, paragraph 4 does not contain an exception for gifts to trustees of advowsons, also called rights of presentation or patronage. This obscure and rarely encountered exception is no longer needed.

Paragraph 5: Certain contingent etc dispositions to carry the intermediate income

- 1.118 Paragraph 5 restates section 175 of the Law of Property Act 1925. Like section 175, it provides that the income of property gifted in a will generally goes to the ultimate beneficiary of any future or contingent gift, absent the testator expressly disposing of the intermediate income.

Paragraph 6: Failed dispositions

- 1.119 Paragraph 6 restates section 25 of the Wills Act 1837. Section 25 reversed the common law rule that a failed gift of real property would not fall into the residue of a person's estate but would instead pass to the person's heir at law; it was not necessary for section 25 to make this provision for failed gifts of personal property, because under the common law they already fell into the residue. Although strictly unnecessary to make provision for failed gifts of personal property, paragraph 6 follows the general approach in the Bill of not distinguishing between real and

²⁶ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) p 254.

²⁷ (1593) 8 Co Rep 96a, Cro Eliz 316, 78 ER 566.

²⁸ See L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 272 to 272.

²⁹ H Sugden, *An Essay on the Law of Wills as altered by 1 Victoria c 26* (1837) pp 120 to 122, citing *Doe v Simpson* (1804) 5 East 162, 102 ER 1031; L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) p 274.

personal property, and so applies to all failed gifts, to make clear that the default rule of interpretation is that the property falls into the residue of the testator's estate, rather than going on intestacy. Accordingly, the property of the failed gift will fall within any residuary gift.

- 1.120 Section 25 did not have the consequence that a failed exercise of special or hybrid power of appointment fell within a residuary gift, such that the residuary gift exercised the power, due to its interaction with section 27 of the Wills Act 1837. Paragraph 6(2) makes this point explicit.

Paragraph 7: Disclaimer or forfeiture of dispositions

- 1.121 Paragraph 7 restates section 33A of the Wills Act 1837, while also clarifying its application. Its effect is that when the beneficiary of the gift disclaims or forfeits it, the default interpretation rule results in the gift lapsing, so that the person next entitled to the gift will be able to inherit it.
- 1.122 Concerns have been raised about the operation of subsection 33A(2), which provides that the person is only treated as predeceasing the testator "for the purposes of [the Wills Act 1837]". The concern arises because the Wills Act 1837 arguably does not govern the validity of wills generally, the construction of wills, or the doctrine of lapse. Consequently, there is an argument that section 33A can only apply when section 33 – the only provision in the Wills Act 1837 addressing a situation of lapse – also applies. Section 33 applies to modify the effect of lapse where the beneficiary of the gift is a lineal descendant of the testator. Accordingly, it is thought that section 33A might not apply to modify the consequences of disclaimer or forfeiture by anyone other than a lineal descendant of the testator, or in favour of the beneficiary of a substitutionary gift.³⁰ This uncertainty has been noted in *Macmillan Cancer Support v Hayes* [2017] EWHC 3110 (Ch) and *White v Williams* [2025] EWHC 115 (Ch).
- 1.123 Paragraph 7 addresses this point, by applying the rule to the effect of the gift in the will, rather than confining its effect to "the purposes of [the Bill]".

Part 3: Ademption: exceptions

Paragraph 8: Changes in the nature of a testator's estate or interest in property

- 1.124 Paragraph 8 restates section 23 of the Wills Act 1837. It provides a default rule of interpretation that a gift in a will operates in relation to the property the testator owns at their death despite a conveyance or other dealing with the property after the making of the will altering the nature of the testator's interest in the property (such as acquiring the freehold of a leasehold property).
- 1.125 Like section 23 before it, paragraph 8 does not prevent a specific gift from being adeemed when the gifted property changes in substance after the will is made.

³⁰ See R F D Barlow, R A Wallington, S L Meadway, J A D MacDougald, and J E Kirby, *Williams on Wills* (11th ed 2021) para 9.17; and Brian Sloan, "Forfeiture and the effect of the Wills Act 1837 s 33A" [2021] 1 *Conveyancer and Property Lawyer* 33.

Instead, it applies only where the nature of the testator's interest in the property changes, not where the property itself changes.

Paragraph 9: Property destroyed or lost at the same time as the testator's death

- 1.126 Paragraph 9 amends the law. It provides a default rule of interpretation that applies where the testator dies simultaneously with the subject matter of a gift made in the testator's will being destroyed or lost, or in other circumstances where it cannot be determined whether the testator died before the property was destroyed. In those circumstances, it has the effect of creating a presumption that the testator died before the property was destroyed or lost. As a consequence, the beneficiary of a specific gift of the lost or destroyed property will be able to step into the testator's shoes in relation to property, such that the beneficiary will inherit any value in the testator's estate that represents the destroyed or lost item, such as any insurance proceeds.

Paragraph 10: Incomplete transactions

- 1.127 Paragraph 10 amends the law. It applies where the testator makes a specific gift of property in their will, but afterwards enters into a contract to sell the property (including a conditional or statutory contract) or grants an option to purchase the property. Its effect is that the gift will not be adeemed by the contract or option. The beneficiary of the specific gift will therefore be entitled to the property which represents the gifted property at the time of the testator's death, such as the purchase price subject to the costs of the sale.
- 1.128 Paragraph 10 applies to specific gifts, that is where the testator makes a gift of an identifiable item or parcel of land that they own, such as "my house in Solihull". It will also apply to residuary gifts of real property, such as a gift of "all of my land" or "all the real property in my estate when I die". Technically such gifts cannot be adeemed, since they are not a gift of an identifiable parcel of property to be ascertained at a time before the testator dies. However, because the testator entered into a contract for sale or granted an option to purchase the property, the doctrine of conversion will operate to change the property in the testator's hands from land or real property to personal property. Accordingly, the property will not fall within the meaning of land or real property for the purpose of the residuary gift at the time the testator dies, and the gift will not include that property. In referring to dispositions that specifically refer to the property, paragraph 10 will prevent the doctrine of conversion from operating to take the property out of the residuary gift of real property where the property is described by reference to the testator's specific property, that is, "my land" or "the real property in my estate".

Part 4: Family relationships

Paragraph 11: Dispositions to spouses or civil partners and issue

- 1.129 Paragraph 11 restates and consolidates section 22 of the Administration of Justice Act 1982 and paragraph 5 of Schedule 4 to the Civil Partnership Act 2004. Its effect is to provide a default rule of interpretation that a gift by the testator to their spouse or civil partner of a full interest will take effect as a full rather than a life interest, even where the testator also attempted to give the testator's children an interest in the same property.

Paragraphs 12 to 14: Dispositions to children etc of a testator who have children etc

1.130 Paragraphs 12 to 14 restate section 33 of the Wills Act 1837. These paragraphs apply where the testator made a gift to their child or grandchild,³¹ and the child or grandchild predeceased the testator. The effect of paragraphs 12 to 14 is to prevent a gift from lapsing where the child or grandchild has their own child or children or direct descendants, such that the gift takes effect as a gift to them, on a per stirpes basis. It also applies to class gifts to children or grandchildren.

Paragraphs 15 and 16: Dissolution or annulment of marriage or civil partnership

1.131 Paragraphs 15 and 16 restate and consolidate sections 18A and 18C of the Wills Act 1837. They apply where the testator made a gift to their spouse or civil partner in their will, or appointed them as an executor or trustee or conferred a power of appointment on them, but afterwards the marriage or civil partnership was dissolved or annulled. They provide that the gift or appointment will be interpreted, absent a contrary intention, as if the former spouse or partner predeceased the testator, dying on the date of the dissolution or annulment. The effect is that the gift or appointment will lapse or any substitutionary gift will take effect.

Paragraph 17: Conversion of a civil partnership into marriage and vice versa

1.132 Paragraph 17 restates and consolidates sections 18D and 18E of the Wills Act 1837, in relation to the interpretation of the meaning of “marriage”, “spouses” and “civil partners” when those terms are used in wills.

Part 5: Non-charitable bodies

Paragraph 18: Non-charitable bodies

1.133 Paragraph 18 introduces a new interpretative provision.

1.134 Paragraph 18(1) provides that a gift in a will to a non-charitable body which has ceased to exist at the time of the testator’s death takes effect as a gift to the successor body, if there is one. The effect is to save such a gift from lapse.

1.135 Paragraph 18(2) and (3) define a “successor body” as a body which carries on the same activities as (or similar activities to) the original non-charitable body, and which had transferred to it all of the property and liabilities of the original body immediately before or at the time the original body ceased to exist. Whilst the original body must be non-charitable, the successor body can be charitable or non-charitable.

1.136 Paragraph 18(3) also defines a “body” as a corporate body or an unincorporated association other than a partnership. Corporate bodies include limited liability partnerships (which are bodies incorporated under the Limited Liability Partnerships Act 2006), co-operative or community benefit societies (which are registered under the Co-operative and Community Benefit Societies Act 2014), and friendly societies (incorporated under the Friendly Societies Act 1992).

1.137 Paragraph 18 does not apply to non-charitable trusts.

³¹ Or great-grandchildren, and so on.

Schedule 4: Minor and consequential amendments

1.138 Schedule 4, which is introduced by clause 22, makes minor and consequential amendments to other legislation.

Part 1: Primary legislation

Paragraph 1: Wills Act 1837

1.139 Paragraph 1 repeals the Wills Act 1837.

1.140 Many provisions in the Wills Act 1837 are restated or consolidated throughout the other clauses of and schedules to the Bill. However, three sections of the Wills Act 1837 in particular are not restated under the Bill: sections 18, 18B and 29.

1.141 Sections 18 and 18B are not restated and, as a result, the rule that entering a marriage or a civil partnership revokes a will is abolished. As a consequence, the Bill also does not restate certain subsections of sections 18D and 18E, because it is no longer necessary to provide that the conversion of a marriage or civil partnership does not revoke a will.

1.142 Section 29 of the Wills Act 1837 is not restated, because its primary aim has been exhausted.

- (1) Before the Wills Act 1837 came into force, common phrases in wills such as dying “without”, “without leaving” or “without having” issue “were construed to mean a failure of issue at any future time”.³² This meant that if the will made a gift to A, with a gift over in default of issue, A received a fee tail, rather than a fee simple, as the testator probably intended.³³ *Shelford on Wills* explained that wills with “the words ‘die without issue,’ and other expressions of a similar import” were a “fruitful source of uncertainty and litigation in the construction of wills”.³⁴ Accordingly, the main purpose of section 29 was to abolish this rule of construction from the case law, so as to prevent the court from interpreting a gift as creating a fee tail when the testator most likely intended to give a larger estate, such as a fee simple.³⁵ Section 29 also, in some cases, prevented a life estate from being enlarged by construction into a fee tail.³⁶

This section is no longer needed to prevent estate tails from being created in wills by construction. Since the Trusts of Land and Appointment of Trustees Act 1996, new entailed interests cannot be created, and an attempt to do so will instead be a declaration that the property is held on trust absolutely for the

³² A Learmonth, J Clarke, K Shuman, C Ford and T Fletcher, *Theobald on Wills* (19th ed 2021) para 22-013.

³³ A Learmonth, J Clarke, K Shuman, C Ford and T Fletcher, *Theobald on Wills* (19th ed 2021) para 32-161; L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 318 to 320.

³⁴ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) p 317.

³⁵ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 319 to 319.

³⁶ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) p 321.

purported tenant in tail.³⁷ Repealing the Wills Act 1837 without restating section 29 will not revive the common law, because the common law position was contingent on it being possible to create an estate tail.

- (2) Section 29 was also intended to prevent these same types of gifts from being interpreted in a way that contravened the rule against perpetuities.³⁸ This aspect of section 29 has been made express in its restatement in some Australian jurisdictions.³⁹

However, it is unnecessary to retain a version of section 29 to deal with the rule against perpetuities in the law of England and Wales. First, the modern approach to interpretation of wills should apply to ensure that “failure of issue” is construed in line with the testator’s meaning, rather than there being a court presumption that it should somehow mean failure of issue at any point in the future. Secondly, in interpreting conveyances, “the court leans in favour of vesting” to save gifts from falling foul of the perpetuity rule where possible;⁴⁰ this appears to have been true in relation to gifts to issue in wills even prior to the enactment of section 29.⁴¹ With the rule against perpetuities now governed by statute – the Perpetuities and Accumulations Act 2009 – it is not necessary to retain a discrete interpretation rule with respect to gifts in wills using specific terms in the legislation governing wills.

Paragraph 2: Evidence Act 1851

- 1.143 Paragraph 2 repeals section 5 of the Evidence Act 1851, which is spent following the repeal of the Wills Act 1837.

Paragraph 3: Married Women’s Property Act 1893

- 1.144 Paragraph 3 repeals the Married Women’s Property Act 1893.

- 1.145 Section 3 of the Married Women’s Property Act 1893 is the only substantive provision of that Act which remains in force. It provides that section 24 of the Wills Act 1837 applies to a will made by a married woman during her coverture and that she is not required to re-execute or republish her will after her husband’s death.

- 1.146 At the time of the 1893 Act, section 8 of the Wills Act 1837 provided that a will made by a married woman was not valid. The application of section 8 had been modified by section 1 of the Married Women’s Property Act 1882, which allowed a married

³⁷ Trusts of Land and Appointment of Trustees Act 1996, sch 1, para 5; A Learmonth, J Clarke, K Shuman, C Ford and T Fletcher, *Theobald on Wills* (19th ed 2021) para 32-148. And as explained to us by Christopher Jessel in his consultation response.

³⁸ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 322 to 329. See also *Re Thomas* [1921] 1 Ch 306.

³⁹ See eg Victoria’s Wills Act 1997, s 44(3).

⁴⁰ National Committee for Uniform Succession Laws, *Uniform Succession Laws: The Laws of Wills* (Report 85 1998) para 8-023.

⁴¹ L Shelford, *A Practical Treatise on the Law of Wills, as altered by The Statute 7 Will IV & 1 Vict c 26 for the Amendment of the Laws with Respect to Wills* (1838) pp 322 to 329.

woman, during her coverture, to dispose by will of property which she held separately from her husband.

1.147 However, section 1 of the 1882 Act was interpreted by the courts in such a way that section 24 of the Wills Act 1837 did not apply to wills made by married women during their coverture. Accordingly, property that a married woman received after her coverture ended (such as when a woman received further property under a marriage settlement on her husband's death) could not be disposed of by any will she had made during her coverture.⁴² Section 3 of the Married Women's Property Act 1893 therefore appears to have been necessary to reverse this case law, so that section 24 could apply to women's wills made during their coverture.

1.148 Coverture has been abolished. Accordingly, no women will be making a will "during coverture". Section 8 of the Wills Act 1837 has been repealed, and with it, section 1 of the Married Women's Property Act 1882. Accordingly, section 24 of the 1837 Act – and paragraph 2 of Schedule 3 to the Bill – straightforwardly applies to married women.

1.149 Accordingly, the Married Women's Property Act 1893 can be – and, under paragraph 3 of Schedule 4 to the Bill, is – repealed.

Paragraph 4: Wills (Soldiers and Sailors) Act 1918

1.150 Paragraph 4 repeals the Wills (Soldiers and Sailors) Act 1918, which is replaced by provision in clause 11.

Paragraph 5: Law of Property (Amendment) Act 1924

1.151 Paragraph 5 removes the reference to the Wills Act 1837 in Schedule 9 to the Law of Property (Amendment) Act 1924.

Paragraph 6: Law of Property Act 1925

1.152 Paragraph 6 makes consequential amendments to the Law of Property Act 1925, omitting provisions that are restated in the Bill and updating a statutory cross-reference to the power to bar an entail in a will.

Paragraph 7: Administration of Estates Act 1925

1.153 Paragraph 7 makes consequential amendments to the Administration of Estates Act 1925 that update statutory cross-references to the power to bar an entail in a will.

Paragraph 8: Wills Act 1968

1.154 Paragraph 8 repeals the Wills Act 1968, which is replaced by provision in clause 12.

Paragraph 9: Family Law Reform Act 1969

1.155 Paragraph 9 makes consequential amendments to provisions in the Family Law Reform Act 1969 which modified provisions in the Wills Act 1837.

⁴² See eg *Re Price; Stafford v Stafford* [1884] P 2772, (1885) 28 Ch D 709.

Paragraph 10: Administration of Justice Act 1986

1.156 Paragraph 10 makes consequential repeals of sections 17 to 22 of the Administration of Justice Act 1982 (which are restated or otherwise made spent by the Bill).

Paragraph 11: Family Law Act 1986

1.157 Paragraph 11 makes a consequential repeal of section 53 of the Family Law Act 1986, which amended section 53 of the Wills Act 1837.

Paragraph 12: Children Act 1989

1.158 Paragraph 12 amends the Children Act 1989 so as to update references to the Wills Act 1837 and to make it clear that a guardian can be appointed in a service will (see clause 11).

1.159 This point was previously unclear: the general requirements in section 5 of the Children Act 1989 would mean that a privileged will, which was not in writing and signed by the testator, could not make a valid appointment of a guardian; but section 4 of the Wills (Soldiers and Sailors) Act 1918 specifically provided that an appointment of a guardian in a valid privileged will would be valid.

Paragraph 13: Law Reform (Succession) Act 1995

1.160 Paragraph 13 makes consequential amendments to the Law Reform (Succession Act 1995), repealing provisions that amended the Wills Act 1837.

Paragraph 14: Trusts of Land and Appointment of Trustees Act 1996

1.161 Paragraph 14 removes a reference to the Wills Act 1837 in Schedule 4 to the Trusts of Land and Appointment of Trustees Act 1996.

Paragraph 15: Trustee Act 2000

1.162 Paragraph 15 amends section 28 of the Trustee Act 2000 to ensure that provision in a will for the remuneration of a solicitor or other professional is not void on the basis that the solicitor or other professional signed the will on behalf of the testator.

Paragraph 16: Human Tissue Act 2004

1.163 Paragraph 16 makes consequential amendments to the Human Tissue Act 2004, updating references to provisions in the Wills Act 1837.

Paragraph 17: Civil Partnership Act 2004

1.164 Paragraph 17 makes consequential amendments to the Civil Partnership Act 2004, repealing provisions that amended the Wills Act 1837 or which are restated in the Bill.

Paragraphs 18 to 20: Mental Capacity Act 2005

1.165 Paragraphs 18 to 20 make minor amendments to the Mental Capacity Act 2005.

1.166 Paragraph 19 amends section 18(2) of the Mental Capacity Act 2005, with the effect that the age at which a statutory will can be made for a person is reduced from 18 to 16 years.

1.167 Paragraph 20 amends Schedule 2 to the Mental Capacity Act 2005.

- (1) Paragraph 20(2) makes amendments enabling statutory wills to be made in electronic form.
- (2) Paragraph 20(3)(a) and (b) make consequential amendments, including amendments that flow from placing the requirement for knowledge and approval on a statutory footing in the Bill (see clause 4).
- (3) Paragraph 20(3)(c) makes amendments so that the limitation in paragraph 4(4) and (5) of Schedule 2 to the MCA is removed, such that a statutory will authorised by the Court of Protection has effect in relation to –
 - (a) immovable property outside of England and Wales, and
 - (b) any other property or matter where the person is domiciled outside of England and Wales and the question of their testamentary capacity does not fall to be determined in accordance with the law of England and Wales.

Paragraph 21: Estates of Deceased Persons (Forfeiture and Law of Succession) Act 2011

1.168 Paragraph 21 makes a consequential repeal of section 2 of the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011, which amended the Wills Act 1837.

Paragraph 22: Human Transplantation (Wales) Act 2013

1.169 Paragraph 22 makes consequential amendments to the Human Transplantation (Wales) Act 2013, updating references to the Wills Act 1837 and repealing provisions that amended that Act.

Paragraph 23: Inheritance and Trustees' Powers Act 2014

1.170 Paragraph 23 makes consequential amendments to the Inheritance and Trustees' Powers Act 2014, which amended a provision of the Administration of Justice Act 1982 that is being repealed by the Bill.

Paragraph 24: Divorce, Dissolution and Separation Act 2020

1.171 Paragraph 24 makes consequential amendments to the Divorce, Dissolution and Separation Act 2020, which amended the Wills Act 1837.

Part 2: Secondary legislation

Paragraph 25: Civil Partnership (Treatment of Overseas Relationships No 2) Order 2005

1.172 Paragraph 25 revokes the Civil Partnership (Treatment of Overseas Relationships No 2) Order 2005.

Paragraph 26: The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014

- 1.173 Paragraph 26 makes consequential amendments to the Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014.

Paragraph 27: The Civil Partnership (Opposite-sex Couples) Regulations 2019

- 1.174 Paragraph 27 makes consequential amendments to the Civil Partnership (Opposite-sex Couples) Regulations 2019.

Paragraph 28: The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020

- 1.175 Paragraph 28 revokes the Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020.

Paragraph 29: The Marriage and Civil Partnership (Northern Ireland) (No 2) Regulations 2020

- 1.176 Paragraph 29 makes a consequential amendment to the Marriage and Civil Partnership (Northern Ireland) (No 2) Regulations 2020.

Paragraph 30: The Wills Act 1837 (Electronic Communications) (Amendment) Order 2022

- 1.177 Paragraph 30 revokes the Wills Act 1837 (Electronic Communications) (Amendment) Order 2022.

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