Title: Wills Law Reform **IA No**: LAWCOM0084 **RPC Reference No:** N/A **Lead department or agency:** Law Commission **Other departments or agencies:** **Ministry of Justice**	Impact Assessment (IA) **Date: 30/06/2025** **Stage:** Development/Options **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Elizabeth.welch@lawcommission.gov.uk

Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value N/A	**Business Net Present Value** N/A	**Net cost to business per year** N/A	**Business Impact Target Status** Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

A will - sometimes referred to as a "last will and testament" - is the primary way a person can determine what happens to their estate when they die. The Annual Wills 2024 report estimates that only 53% of UK adults have a will although the proportion rises to 69% among those aged 55 and above. The UK also has an ageing population such that the number of people aged 65 and over is projected to increase by 3.3 million in the next 20 years and by 6.5 million in the next 40 years. However, when someone dies intestate – without leaving a will, or a will that is not valid – it can cause difficulties for the family, adding to stress at a time of bereavement. Likewise, financial abuse is also on the rise and disproportionately impacts the elderly. The law governing wills is also 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 hundreds of years. This Impact Assessment relates to the recommendations in the Law Commission's 2025 *Modernising Wills Law* report which, if implemented, will amend important areas of the law of wills to reduce barriers to will-making, ensure that testator's wishes are given effect after they die, protect testators from indue influence and fraud, and clarify the law. Government intervention is required as primary legislation is needed to reform the law

What are the policy objectives of the action or intervention and the intended effects?

The associated policy objectives are to: enable more people to make wills and to ensure people's testamentary wishes are given effect; protect testators from financial abuse, including that arising from undue influence and fraud; and increase the clarity and certainty in the law where possible, including by updating the legislation so that it is clear and accessible.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options are considered in this IA:

- **Option 0/Do Nothing**: Make no changes to the law concerning will-making;
- **Option 1**: Full implementation of the Law Commission's recommendations via enacting the draft Bill for a new Wills Act.

Option 1 is preferred because it achieves all the policy objectives and is cost proportionate.

Will the policy be reviewed? It will/will notbe reviewed. **If applicable, set review date:** Month/Year

Is this measure likely to impact on international trade and investment?		Yes / No		
Are any of these organisations in scope?	**Micro** **Yes/No**	**Small** Yes/No	**Medium** **Yes/No**	**Large** **Yes/No**
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

Summary: Analysis & Evidence

Policy Option 1

Description: Full implementation of the Law Commission's recommendations via enacting the draft Bill for a new Wills Act.

FULL ECONOMIC ASSESSMENT

Price Base Year 2025	PV Base Year 2025	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected group

None

Other key non-monetised costs by 'main affected groups'

Transitional costs: Judges and legal practitioners, including probate registrars, will need to update their knowledge. New provision for electronic wills will require clear guidance and specialist training of the groups indicated below; Rules of practice and procedure will need updating; The probate registry and probate portal will need technological development; The Mental Capacity Act Code of Practice will need updating.

On-going costs: HMCTS – Cost of court applications for 16- and 17-year-olds now eligible to make a valid will; Increase in litigation on the formal validity of a will; Increased claims by surviving spouses or civil partners for family provision; Increase in litigation on the requirements for mental capacity.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	**Optional**
High	Optional	Optional	**Optional**
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

On-going benefits: Reduced number of contentious probate disputes with better evidence of mental capacity; Increased clarity on will-making law resulting in fewer occasions of invalid wills; Efficiency savings through reduced need to manage paper supplies supporting the government's environmental and net zero commitments; Testators' intended beneficiaries receiving gifts from their estate rather than others the testator had not intended. Charities particularly benefit as they cannot benefit from the estate of a person who dies intestate; Promoting and improving legal autonomy for testators and protection; The expansion to include 16- and 17-year olds with the right to make a will providing a fair outcome and removes the need to apply for the court to appoint an administrator; Fewer statutory wills applications and instances of invalid wills following the abolition of the revocation by marriage rule; Decreased distress for the victims of predatory marriage and their families; Creation of a new electronic will-making market contributing to increased employment opportunities and helping to establish the economy's technological prowess; Expanded scope of rectification providing a less adversarial solution to professional negligence.

Key assumptions/sensitivities/risks

Discount rate 3.5%

None

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	**Benefits:** N/A	**Net:** N/A	

Evidence Base

A. Background

Introduction

1. A will – sometimes referred to as the person's "last will and testament" – is the primary way a person can determine what happens to their estate (meaning their property, money and possessions) when they die. On average there are about 550,000 deaths per year in England and Wales, with those in the 55+ age group accounting for just over 90% of all deaths.[1]

- The Annual Wills 2024 report estimates that some 53% of UK adults have a will.[2] There are, however, variations in the extent of will-making, notably across geographical region, relationship status and age/gender:[3]

    - In England and Wales, London and the Southwest are the largest will writing areas with between 57 to 58% of adults in these regions having a will.

    - Those in a relationship are more likely to have a will with proportions increasing if married, divorced or widowed.

    - 41% of those aged between 18 to 24 years old have a will, followed by 47% of 25- to 54-year-olds having a will while 69% of the over 55s have a will.

    Based on the above evidence a conservative estimate of those dying with a will per year would be just over 370,000 adults.[4]

2. The UK has an ageing population such that the number of people aged 65 and over is projected to increase by 3.3 million in the next 20 years and by 6.5 million in the next 40 years.[5]

3. There is also a notable shift in the value of estates over time. Home ownership rates for today's older generations are rising fast compared to their predecessors.[6] Likewise, and according to HMRC data for the five-year period ending 2021/22, the number of high-value estates (meaning those exceeding £1 million) was around 50% higher than at the beginning of the period.[7]

---

[1] Five-year average (2017-2023) excluding 2020 and 2021. See Office for National Statistics, *Deaths registered in England and Wales: 2023*, table 8, https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/deathsregisteredinenglandandwalesseriesdrreferencetables (last visited 22 May 2025).

[2] The National Wills Register, The National Wills Report (2024) p 3, https://www.nationalwillregister.co.uk/app/uploads/2024/10/The-National-Wills-Report-2024.pdf (last visited 22 May 2025). Note that these statistics are drawn from the UK as a whole, but the Law Commission's project and recommendations are limited to England and Wales.

[3] In its 2017 consultation response, Which? told us about a survey it undertook in October 2016 of just under 2,100 adults using an online panel provided by populous. The results revealed that just over a third of UK adults (37%) have a will. This increases with age (7% of 18- to 24-year-olds compared to 79% of those aged over 65). Those with children are more likely to have a will (48%) than those who do not have children (25%).

[4] Using the latest 2023 data on the number of deaths in persons aged 55+ assuming 69% have a will. See Office for National Statistics, *Deaths registered in England and Wales: 2023*, table 8, https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/deathsregisteredinenglandandwalesseriesdrreferencetables (last visited 22 May 2025).

[5] Centre for Ageing Better, *Our Ageing Population: The State of Ageing 2025*, https://ageing-better.org.uk/our-ageing-population-state-ageing-2025 (last visited 5 June 2025).

[6] Resolution Foundation, *The Million Dollar Be-question* (Intergenerational Commission Report: Wealth Series, 2017) p 13, https://resolutionfoundation.org/app/uploads/2017/12/Inheritance.pdf (last visited 22 May 2025).

[7] Unpublished internal estimates from HMRC. The net figures referenced exclude lifetime gifts.

4. As a consequence of both the ageing population and the increasing value of estates, the inter-generational transfer of wealth via inheritance is becoming more significant. Inheritances are therefore set to more than double over the next two decades and to peak in 2035, as the older generations pass their assets to those following on.[8] This means a greater share of young people today are likely to benefit from intergenerational transfers of wealth than did in the past.

5. While the above shows the importance of having a valid will, there is no requirement to make one. If someone dies without doing so, the intestacy rules will apply, determining the hierarchy of the family members who will receive the deceased's estate and in what order:

    - If the person has a surviving spouse or civil partner, and
        - no surviving children (or other direct descendants), the spouse or civil partner receives the entire estate; or
        - surviving children (or other direct descendants), the spouse or civil partner receives a fixed net sum (currently £322,000) and half of any remainder, with the other half going to the deceased's children (or other direct descendants).

    - If the deceased does not have a surviving spouse or civil partner, then their estate goes to their children (or other direct descendants); if they have no children (or direct descendants), it goes to their parents; if they have no parents, then to their siblings, grandparents, or aunts and uncles, in that order.[9]

Problem Under Consideration

6. 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 hundreds of years. It is also a large area of law, covering the requirements to make a will, comprising rules for formal validity and substantive validity; the revocation of wills; the interpretation and rectification of wills; and the validity of gifts in a will, including the ademption and lapse of gifts.[10] It also includes the rules for when the court can make a will on behalf of a person who lacks capacity to make their own will (called a "statutory will").

7. However, even when professional drafters are engaged, there is the possibility of errors due to oversight, legal technicalities, and the inherent difficulties in communicating testamentary wishes entirely unambiguously. Where errors are made, the deceased's intentions may not be given effect, meaning their estate will be distributed in a way that does not reflect their wishes. When errors are the fault of legal professionals, the consequences extend beyond the immediate case as negligence awards may lead to higher professional indemnity insurance premiums, which can be passed on to consumers as increased service costs.

8. Many individuals also lack sufficient knowledge about what makes a will or a gift in a will invalid or fail, which is often more nuanced and less well understood than the basic requirements for a formally valid will. For example, many people are unaware that marriage automatically revokes a previously made will. This kind of informational failure can lead to unintended outcomes that do not reflect the deceased's actual wishes.

9. The broader social and economic implications of having a valid will are also notable. Charities, which often rely heavily on bequests, can be disproportionately affected when

[8] Resolution Foundation *The Million Dollar Be-question* (Intergenerational Commission Report: Wealth Series, 2017) p 13, https://resolutionfoundation.org/app/uploads/2017/12/Inheritance.pdf (last visited 22 May 2025).

[9] Administration of Estates Act 1925, s 46 and Sch 1A; Administration of Estates Act 1925 (Fixed Net Sum) Order 2023 (SI 2023 No 758), art 2.

[10] Ademption is where a specific gift in a will fails because the testator no longer owns the gifted property when they die. Lapse is where a gift fails because the beneficiary of the gift predeceases the testator.

individuals die intestate (without a will), especially if the deceased had a valuable estate and intended to leave a charitable bequest on their death. This results in a loss of potential social benefit that could have been generated through charitable giving.

10. Many people also do not make a valid will before they die. There may be gaps in access or a lack of choice in will-making services, especially for those who might benefit from more convenient or tailored channels — such as online platforms for making an electronic will. The introduction of such options, providing that proper safeguards are in place, could increase uptake. Encouraging more people to make valid wills would lead to more efficient outcomes and certainty for beneficiaries.

11. It appears that, increasingly, people will expect to be able to make their will electronically. This might be especially true for younger generations, and other groups of people who are less likely to make a will. Over the past 20 years, the UK has seen a transformation in how people use the internet. According to OFCOM[11] in 2005 only 59% of UK adults were online,[12] but by 2023 that figure has increased to 92%.[13] The internet has become an essential part of everyday life for most people and the way people use the internet has changed over time.

12. Additionally, the development of electronic wills represents an opportunity for technological innovation and market growth. Start-ups and legal tech companies entering this space contribute not only to service diversification but also to broader economic growth through job creation and increased productivity.

13. Finally, these issues are especially pronounced in infrequent cases involving children, including those aged 16 or 17, who may have strong preferences regarding their estates or funeral arrangements. Current legal limitations on their ability to create wills can prevent their wishes from being respected, raising questions about fairness and autonomy.

Modernising Wills Law

14. This Impact Assessment ("IA") relates to the 31 recommendations in the Law Commission's Report, *Modernising Wills Law*[14] which, if implemented, would amend important areas of the law of wills to reduce barriers to will-making, ensure that testator's wishes are given effect after they die, protect testators from indue influence and fraud, and clarify the law.

15. The terms of reference for the Law Commission review were to review generally the law relating to wills, comprising:

    - The formal and substantial validity of a will, including:
        - Testamentary capacity.
        - The formalities for a valid will (currently governed by section 9 of the Wills Act 1837), including an examination of the issue of a will being made electronically or otherwise than in writing.
        - The interpretation and rectification of a will.
        - The possibility of a power to dispense with the formalities otherwise necessary for a will to be valid.
        - The age at which a will can validly be made.
        - Knowledge and approval and undue influence in the testamentary context.

---

11 OFCOM is the commonly used abbreviation for the Office of Communication.

12 Ofcom, *Media Literacy – Adults' Media Use and Attitudes 2005-14*, https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/media-lit-10years/media_lit_10_years_at_a_glance_infographic.pdf?v=334848 (last visited 23 May 2025).

13 Ofcom, *Adults' Media Use and Attitudes Report 2023* (2023) p 4, https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/adults/adults-media-use-and-attitudes-2023/adults-media-use-and-attitudes-report-2023.pdf?v=329409 (last visited 23 May 2025).

14 Modernising Wills Law (2025) Law Com No 419 (hereinafter, "the Report").

- Statutory wills (a will made by the court on behalf of a person who lacks capacity to make their own will).
- Mutual wills (when two or more people make wills under an agreement that prevents the survivor from changing their will after the first testator dies).
- Ademption (a type of failure) of testamentary gifts and revocation of wills.
- The registration of wills.
- Donationes mortis causa (a doctrine under which a person makes a gift in contemplation of and conditional on their death).
- The comparative and international context of the law of wills.
- Other areas of the law of wills as set out in the Wills Act 1837.

16. The Commission's recommendations have been shaped through extensive engagement with stakeholders and consultees. We have held two public consultation periods, during which we spoke to and heard from a wide range of interested people and organisations.

    - In our 2017 consultation, we held events around England and Wales. We received consultation responses from approximately 180 consultees, who included academics, representative legal bodies, law firms, practising lawyers, judges, and charities.

    - In our supplementary consultation in 2023, we again received approximately 180 responses, again from legal professionals, academics, and charities. Due to the focus of the Supplementary Consultation Paper, we also received responses from software providers and groups advocating for or working with vulnerable adults.

<u>Rigidity of the law governing formalities</u>

17. An important aspect of wills law is the formality requirements. The formality requirements serve important functions – evidentiary, cautionary, channelling, and protective – that are critical to ensure that wills provide a clear record of an individual's own testamentary wishes. They outline the form that a will must be in and the execution process for a will to be valid.

18. However, these formality requirements can act as a barrier to will-making. As inflexible rules, they can operate to invalidate genuine attempts to make a will. The formal validity of a will is assessed when the will is submitted for probate, after the testator has died. Accordingly, deficiencies in form can prevent a testator's wishes from taking effect, at a point in time when nothing can be done to address the error.

19. The formal validity of a will is sometimes disputed, although these disputes do not appear to arise frequently: in many cases, the will itself, together with the presumption of due execution, may prevent disputes from arising. Moreover, litigation does not arise when a will is clearly formally invalid.

20. There is no data on the number of wills that are not admitted to probate due to a clear failure, on the face of the document, to comply with the formality requirements. And our consultation did not result in a clear picture of how often wills are invalid due to non-compliance with the formality requirements. Some consultees thought that it is rare and others thought it is relatively common. However, one clear theme was that homemade wills are more often invalid due to non-compliance than professionally drafted wills.

21. In our view, the problem is not with the formality requirements, but with the significant consequence of a failure to comply: invalidity. Under the current law, it is not possible, where a testator did not express their testamentary wishes in the form required but those wishes were clear and genuine, for those wishes to be given effect. The formality requirements are rigid, and this rigidity does not uphold testamentary freedom.

The inability of children to make wills

22. The age of testamentary capacity – the age a person must be in order to make a will – is 18 years old. If a person attempts to make a will before they turn 18, it will be invalid. Therefore, when a child younger than 18 years old dies, the intestacy rules apply. In most cases, the intestacy rules will result in the deceased child's estate being divided between their parents, with the parents jointly administering the estate.[15]

23. However, this result might be unjust in some situations. The first is where it is against the child's wishes to have both parents administer their estate as well as make decisions about what happens with their remains after they die.[16] This was illustrated in *Re JS (Disposal of Body)*.[17]

24. The second situation is where it is against the child's wishes for both parents to inherit their estate, such as where one parent has not been involved in their care. This problem may be particularly acute where the child has substantial assets, such as due to an award under a personal injury claim. This was illustrated in the Queensland, Australia case of *Re K*.[18]

Drafting errors and litigation

25. Rectification is the process by which the court (or, where it is uncontested, the registrar[19]) can correct mistakes in a will so that the will reflects what the testator intended to say. Under section 20 of the Administration of Justice Act 1982, the court or registrar can rectify a will where it fails to carry out the testator's intentions due to 1) a clerical error or 2) the drafter's failure to understand the testator's instructions.

26. The court or registrar cannot, however, rectify a drafting error, that is where the testator or drafter failed to understand the effect of the words used in the will. Accordingly, even if there is clear evidence of what the testator did intend, a will cannot be rectified if the testator's or drafter's mistake was to intentionally choose language which did not have the meaning or effect they intended.

27. The inability to rectify a drafting error means that where words were inadvertently used (which is a clerical error), the testator's intentions can be given effect, but this is not possible where the words were deliberately used. This could result in unfair outcomes, because the remedy depends on the mindset of the drafter, rather than the intentions of the testator. It might also be creating a perverse incentive for professional will writers to be careless rather than careful.

28. In the case of a drafting error, a claim of professional negligence might be able to be made against the drafter. In these cases, the availability of a remedy for the testator's intended beneficiaries depends on the testator having sought professional advice and, in those cases, also on the will drafter's insurance policy. However, we understand that professional negligence claims are likely to be more expensive to litigate than claims for rectification because in the former case the drafter's insurers are likely be involved, which might result in a more adversarial approach. Negligence claims may also result in the insurance premiums increasing for professional will writers, who may then pass the costs onto their clients.

---

[15] Administration of Estates Act 1925, s 46; Non-Contentious Probate Rules 1987 (SI 1987 No 2024), r 22.

[16] Under the Senior Courts Act 1981, s 116 or alternatively under the inherent jurisdiction of the High Court.

[17] [2016] EWHC 2859 (Fam); [2017] 4 WLR 1. JS, a 14-year-old girl suffering from terminal cancer, wished to have her body frozen for cryonic preservation. Her mother supported this wish, but her estranged father did not. Because JS could not make a will, she could not appoint her mother as an executor to carry out her wishes, which would have prevented her father from having a say in what happened to her body when she died. The court resolved this by an order appointing the mother as sole administrator of her estate.

[18] [2014] QSC 94. K, who was 16 years old, was likely to receive a large settlement; K's mother had acted as his sole carer for many years, and he was estranged from his father. K was unable to make a will to provide that his estate should pass to his mother alone.

[19] Non-Contentious Probate Rules 1987 (SI 1987 No 2024), r 55.

29. A professional negligence claim also results in a windfall: the intended beneficiaries are compensated under the negligence claim, but the unintended beneficiaries continue to receive the gift under the will which the testator did not intend them to have.

The difficulty in establishing testamentary undue influence

30. Where a testator has made a will (or a gift in a will) as a result of pressure from someone which overpowered their mind or intentions, the will (or gift) is invalid. This is known as undue influence. The current law means that if someone wants to challenge a will on the basis that the testator has been unduly influenced, it falls to them to demonstrate, on the balance of probabilities, that the testator was more likely than not to have been coerced into making the will in the terms they did.

31. However, undue influence is very difficult to prove, especially given that it must be proved after the testator has died, and where the evidence available is often only circumstantial. Undue influence often happens behind closed doors, by someone who is close to the testator, or someone who is in a position of trust, meaning it can be extremely difficult to prove that undue influence has occurred. This means that the court is likely to find that the testator was persuaded legitimately, rather than coerced.

32. In some cases, the current requirements for proof may present an insurmountable hurdle to establishing that the testator was coerced. Vulnerable testators, in particular, are at substantial risk of financial abuse and are not adequately protected under the current law of undue influence.

Predatory marriages and unintentional intestacies

33. Once a person makes a will, they can choose to revoke it. However, under sections 18 and 18B of the Wills Act 1837, a person's will is also automatically revoked if they get married or form a civil partnership.

34. When a will is revoked by a marriage or civil partnership, unless the person makes a new will, the intestacy rules will apply on their death. Under the intestacy rules, the person's surviving spouse or civil partner will receive the majority of their estate, if not their entire estate. Further, on intestacy, the surviving spouse or civil partner will have the authority to make funeral arrangements and decide whether the person's body should be buried or cremated, and where the remains should be interred.

35. The Inheritance (Provision for Family and Dependants) Act 1975 (the "1975 Act") allows people in specific relationships to the deceased person to apply to the court on the grounds that the deceased person's will and/or the operation of the intestacy rules does not make reasonable financial provision for them. However, other beneficiaries under the deceased person's previous will in these cases, who may include their adult children, are unlikely to be able to make a successful claim under the 1975 Act. This is because surviving spouses and civil partners benefit from favourable treatment under the 1975 Act as compared to other types of potential claimant, as they can apply for such provision that would be reasonable in the circumstances for them to receive. This standard includes consideration of the provision that might have been expected on divorce. All other applicants – including children – may only apply for such financial provision as is reasonable for their maintenance and moreover may need to show a moral claim to be successful.

36. Evidence from consultees indicates that there is low public awareness of the automatic revocation rule. The result is that testators' wills are being revoked without their knowledge, and without testators necessarily wanting their wills to be revoked. It can create "unintentional intestacies". The rule therefore operates contrary to testamentary freedom.

37. This problem can be particularly stark in cases of people who marry later in life, including second marriages. Such people may have settled testamentary intentions, and may not have wanted to change the succession of their estate when they married, with their later relationship not being one that would have resulted in the expectation of sharing the entirety of each the couple's lifetime assets together.

38. In addition, due to the higher level of mental capacity required to make a will than to get married or form a civil partnership, the automatic revocation rule also operates to revoke a testator's will when they lack testamentary capacity. In this case, the only option to prevent the intestacy rules from applying is for a statutory will to be made for the testator (which must take place while the testator is alive).

39. There is also anecdotal evidence that the automatic revocation rule is being exploited to commit financial abuse against vulnerable people. That is, there is evidence that it is motivating some people to engage in predatory marriages. A predatory marriage to be one where a person marries someone, often someone who is elderly or who lacks the mental capacity to marry, as a form of financial abuse. Testamentary capacity, knowledge and approval, and lack of undue influence are all requirements that have a protective function in wills law: they seek to protect vulnerable testators from financial abuse by ensuring that their will reflects their testamentary intentions. But they do not provide a remedy for a predatory marriage.

Inconsistency and lack of guidance in the law governing testamentary capacity

40. In order to make a valid will, the testator must have testamentary capacity. If a person lacks capacity to make their own will, the Court of Protection can make what is called a statutory will on their behalf.

41. There are currently two tests of capacity that apply in the testamentary context: the common law test, as originally outlined in *Banks v Goodfellow*,[20] which applies to assessments of whether someone does or did have capacity to make their own will, and the statutory test in the Mental Capacity Act 2005 (the "MCA"), which applies to assessments of whether the Court of Protection can make a statutory will on a person's behalf. The reason for these two different approaches is purely historical; there is no logical justification for having both.

42. Assessing a person's capacity is often a difficult task, particularly where the assessment is retrospective, taking place after the person has died. Generally speaking, in order for a person drafting a will to accept instructions from a testator, they must be satisfied that the testator has capacity to engage them. However, it is not necessary, or worthwhile, for a solicitor or will writer to conduct a detailed assessment of capacity in cases where there is no doubt about the testator's capacity. A rule of best practice, called the "Golden Rule", currently outlines in what circumstances, and by whom, a testator's capacity should be assessed, stating that a medical practitioner should satisfy themselves of the testator's capacity where the testator is "aged" or has suffered a serious illness.

43. While the Golden Rule is simple, the guidance it offers is limited. It does not provide complete answers to questions that are fundamental to assessing capacity. It lacks the nuance necessary to offer guidance about the diverse range of situations that arise, leading to uncertainty and lack of evidence in cases where the testator's capacity, and so the validity of their will, is challenged.

Lack of provision for electronic wills

[20] (1870) LR 5 QB 549.

44. The formality requirements to make a valid will are outlined in section 9 of the Wills Act 1837. These long-standing requirements apply straightforwardly to paper documents, the only type of documents in mind when they came into force.

45. These nearly 200-year-old requirements do not, of course, expressly cater for electronic wills and it is not clear whether these wills could be valid under the current formality requirements. It is also a subject of debate whether electronic wills should be able to satisfy the formality requirements.

46. Electronic documents and electronic execution are increasingly accepted in a wide range of contexts. However, it is contentious whether they should be accepted in the wills context. However, our review has led us to conclude that electronic wills are capable of providing the same level of security against fraud and undue influence and providing the same level of certainty and evidence about the testator's intentions as paper wills.

47. The COVID-19 pandemic highlighted the advantage of being able to witness wills remotely, which electronic execution facilitates, while provision for electronic wills in other places, such as in several US states, in British Columbia in Canada, and Victoria in Australia, means that the idea of electronic wills is not as novel as it was when we first consulted on the issue.

B. Rationale and Policy Objectives

Rationale

48. The conventional economic approach to Government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate or in existing interventions. In both cases the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of equity.

49. The rationale for intervention in this instance is both efficiency and equity. In terms of efficiency, one of the primary constraints with will-making lies in the problem of incomplete information. For example, many are unaware that marriage automatically revokes a previously made will. Another efficiency issue is where errors by will drafters may lead to higher professional indemnity insurance premiums that are likely to be passed on to consumers as increased service costs (a negative externality).

50. Equity concerns mainly relate to ensuring that the wishes of those making wills are respected. Such equity concerns are especially pronounced in infrequent cases involving children, including those aged 16 or 17, who may have strong preferences regarding their estates or funeral arrangements. Current legal limitations on their ability to create wills can prevent their wishes from being respected, raising questions about fairness and autonomy.

Policy objectives

50. The associated policy objectives are to:

- support the exercise of testamentary freedom.
- protect testators, including from undue influence and fraud; and
- increase clarity and certainty in the law where possible.

C. Main Stakeholder Groups, Organisations and Sectors

51. The options assessed in this IA will most directly affect the following groups:

- Testators aged over 18 years and their intended beneficiaries, including the charity sector
- Children aged under 18 years who may wish to make a will
- HM Courts and Tribunal Services (HMCTS), the Probate Registry, and Probate Registrars
- Technology providers and start-ups
- Legal practitioners offering will-making services
- Legal practitioners involved in contentious probate disputes
- The Ministry of Justice
- The judiciary
- Medical practitioners and others responsible for assessing capacity

D. Description of Options Considered

51. The following options are considered in this IA:

    - **Option 0 – Do nothing. Under this option, the problems outlined above would persist.**
    - **Option 1 – Full implementation of the Law Commission's recommendations via enacting the draft Bill for a new Wills Act.**

52. Option 1 is preferred as it best meets the policy objectives.

Option 0

53. Under this option, no changes would be made to the law concerning wills. Under this option, the various issues described above would persist.

Option 1

54. As noted above, we made 31 recommendations in our report. For this IA, we considered dividing up our recommendations, with only a select number to be implemented, and then assessing the impact of these.

55. However, we are of the view that our recommendations are not divisible in a coherent way. Guided by our three primary aims, our recommendations carry out these aims in different ways, addressing problems across the breadth of wills law. We think the exercise of choosing which recommendations to put forward would be difficult to carry out in practice and fundamentally arbitrary.

56. We also considered whether our recommendations could be achieved through secondary, rather than primary, legislation. However, wills law is governed by common law (judge-made law) and primary legislation, largely the Wills Act 1837. It is therefore not possible to make changes to the law without primary legislation.

57. Therefore, under Option 1, all 31 of the Law Commission's recommendations would be implemented in respect of England and Wales via primary legislation. This option would address the various issues described above. Below, we describe in more detail the recommendations that are of the greatest public interest or carry the most significant economic costs or benefits. The numbers used for each recommendation are those used in the main Law Commission report.

Recommendation 12: Dispensing power

58. Recommendation 12 proposes that a power to dispense with the formality requirements necessary for a valid will should be introduced. Therefore, where a person's testamentary intentions are clear, there will be a mechanism making it possible to give effect to those intentions. The court will have the power to make an order that a document is (or multiple documents are) treated as a formally valid will and will be able to look at any record where the testator has expressed their testamentary intentions.

59. Recommendation 12 will support testamentary freedom by making sure that the law gives effect, as much as possible, to the wishes of those that have died. It will particularly assist testators who make wills without the benefit of professional advice from having their intentions defeated due to inadvertent mistakes.

Recommendations 23 and 24: Children making wills

60. In Recommendation 23, we recommend that the age of testamentary capacity should be lowered from 18 to 16 years of age. The MCA, which governs questions of mental capacity for those aged 16 or over, assumes that people of this age have capacity, unless it is established that they do not. We conclude that the age at which a person can make a valid will should align with the law on mental capacity generally.

61. In Recommendation 24 we also recommend that, in appropriate and exceptional circumstances, the court should have the power to authorise a child under 16 years old to make a will, with the assessment made by the Family Court incorporating questions of whether it is in the child's best interests to do so.

62. Recommendation 24 will help to ameliorate the inherent arbitrariness of a strict and, to a degree, arbitrary rule for the eligibility age of testamentary capacity. It will enable a child to exercise testamentary freedom – including in tragic cases where they are facing death at a very young age – when the court determines that they have the understanding necessary to make the decision.

Recommendation 26: Rectification

63. In Recommendation 26, we recommend that the court should be able to rectify a will where it is satisfied that the will does not give effect to the testator's intentions because of a failure to understand the meaning or direct effect of the language used in the will. This will mean that where a testator or drafter intentionally but mistakenly chose language which did not have the meaning or legal effect they intended, the will can be rectified to give effect to the testator's intentions instead of resulting in an outcome the testator did not intend.

Recommendation 20: Establishing undue influence

64. In Recommendation 20, we recommend that it should be possible for the courts to infer that a will was brought about by undue influence, where there is evidence which provides reasonable grounds to suspect it. Therefore, when undue influence is alleged, if there is evidence to provide reasonable grounds to suspect it, the court will be able to infer that the undue influence took place. As a result, the evidential burden will shift to the person seeking to prove that the will did in fact reflect the testator's own freely formed intentions.

65. Recommendation 20 will mean that the person who is most able to speak to the circumstances in which the testator made their will (that is, the person who is alleged to have unduly influenced the testator) will have to provide an explanation of their involvement that satisfies the court in order for the will to be valid. If they cannot, the gift in the will or the will which was made as a result of the undue influence – likely comprising a significant gift, if not

a gift of the entire estate, to the person who unduly influenced the testator – will be invalid. The result – whether the person's previous will, or, where they did not already have a will in place, the intestacy provisions – is more likely to reflect what the testator themselves wanted.

Recommendation 30: Automatic revocation of wills

66. In Recommendation 30, we recommend that the rule that marriage or civil partnership revokes a will should be abolished. Accordingly, if a person marries or forms a civil partnership, and does not make a new will before dying, the person's existing will will govern the distribution of their estate, rather than the intestacy rules.

Recommendations 1, 2, 4 and 5: Mental capacity

67. We recommend, in Recommendation 1, that the MCA test of capacity should apply to govern the assessment of when a testator has capacity to make a will for themselves, rather than the existing common law test formulated in the case *Banks v Goodfellow*.[21]

68. However, we also recommend that the MCA Code of Practice should be updated to explain the four elements of the *Banks v Goodfellow* test, which will provide detailed guidance, based on the significant amount of existing case law, on the information relevant to the capacity to make a will. In Recommendation 2, we recommend that the presumption of capacity in the MCA should apply to will-making, so that testators are presumed to have capacity.

69. In Recommendations 4 and 5, we recommend that the MCA Code of Practice should be updated to provide guidance on testamentary capacity. We recommend that guidance should cover when capacity must be formally assessed, and, where an assessment is required, who should assess capacity, how capacity should be assessed, how solicitors and will writers should instruct assessors, the records that should be kept, and how long a formal capacity assessment should take to prepare. We also recommend that the guidance should cover the presumption of capacity, when a testator is required to have capacity, and how testators should be supported to have capacity.

Recommendations 16 to 19: Electronic wills

70. We recommend that provision should be made for electronic wills. Specifically, we recommend that electronic wills should be capable of being valid, in the same way as paper wills, provided that they meet the additional formality requirement that a reliable system is used to ensure the security of the electronic will.

E. Cost and Benefit Analysis

71. This IA follows the procedures and criteria set out in the IA guidance and is consistent with the HM Treasury Green Book.

72. This IA identifies monetised and non-monetised impacts on individuals, groups and businesses with the aim of understanding what the overall impact to society might be from implementing these options. To do this, the costs and benefits of the proposed options are compared to the baseline "do nothing" or "business as usual" option.

73. IAs place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are

[21] (1870) LR 5 QB 549.

important aspects that cannot sensibly be monetised – which might include whether the policy impacts differently on particular groups of society or changes in equity and fairness.

74. Only qualitative estimates are provided in the following analysis because there is currently a lack of reliable data to support robust numerical estimates. It is also important to highlight that many of the expected impacts involve resource transfers – where value is moved between individuals or organisations rather than created or consumed. As such, these transfers are not usually included in calculations of Net Present Social Value.

Option 1: Full implementation of the Law Commission's recommendations via enacting the draft Bill for a new Wills Act.

Costs of Option 1

Transitional Costs

Training

75. The reform of will-making law will mean that judges and legal professionals, including probate registrars working in this area, will need to update their knowledge to understand and apply the new legal requirements. The reforms are technical, and the overall scale of change for practitioners will not be significant. It is anticipated that familiarisation can be accommodated through continuing professional development (or "CPD") provision.

76. Specialist training is likely to be required for both the judiciary and legal practitioners – particularly judges and probate registrars responsible for issuing grants of probate or administration with the will annexed based on their assessment of the validity of wills in non-contentious cases – to ensure they are confident in interpreting and applying the new rules governing electronic wills.

77. Members of the public will also need to familiarise themselves with requirements set out in publicly available websites.

78. The introduction of electronic will-making represents a significant development to the formality requirements for making a valid will and will result in the emergence of a new market of electronic execution and will storage providers. Recommendations 16 to 19 will therefore require clear guidance on how to make a legally valid will using digital platforms.

Rule making

79. Rules of practice and procedure will need to be updated as a consequence of Option 1. In the paragraphs that follow, we describe the rules of practice and procedure most affected.

80. The Non-Contentious Probate Rules 1987[22] will have to be reviewed and updated. Amendments will be necessary to reflect the replacement of the Wills Act 1837 with the new Wills Act created by the draft Bill and the consolidation of the provisions governing wills in other legislation. More significantly, as a result of Recommendations 16 to 19, the rules will need to be updated to make provision for the proving of electronic wills in common form, that is, in non-contentious cases. For example, rules will need to be provided about when affidavit evidence about the due execution, alteration, revocation or revival of an electronic will is required.

[22] SI 1987 No 2024.

81. Amendments will also be necessary to the Civil Procedure Rules 1998.[23] For example, amendments will be required to make rules to govern claims for the application of the dispensing power in Recommendation 12.

82. Amendments will be necessary to the Family Procedure Rules 2010, to reflect our recommendation that a child should be able to apply to the Family Court to be authorised to make a will, in Recommendation 24. We specifically recommend that the rules should be amended to enable the child applicant to conduct proceedings without a children's guardian if the existing conditions are established.[24]

83. Under Recommendation 18, the Secretary of State will have the power to make detailed regulations that set out how electronic wills may or must fulfil the formality requirements and must consult before exercising this power. There would be a cost associated with the formulation of further rules governing electronic wills.

Probate registry and portal and storage

84. The probate registry and probate portal will need technological developments to permit electronic wills to be deposited in electronic form.

85. Technological developments will also be necessary to allow electronic wills to be stored by the testator with HMCTS. Developments will also be necessary for HMCTS to retain electronic wills (rather than digitised paper wills), after electronic wills are proved.

Technology start-ups and will writers

86. Technology providers, solicitors and other providers of will writing services would generally be expected to adopt changes – such as offering electronic wills – only if they believe doing so will be profitable. This means it is reasonable to assume that any uptake of such services reflects a commercial decision aligned with their business interests.

87. It is possible that providers who choose not to offer electronic wills may lose customers to those that do. In such cases, we would normally expect these providers to shift their focus towards alternative services that offer broadly similar levels of profitability. It is therefore important to note that any losses may be offset by adjustments in their service offerings.

88. Technology providers and other providers of will writing services will need to ensure that any systems or processes comply fully with the law. In addition, accessible and user-friendly guidance must be provided to the public.

Code of Practice

89. The MCA Code of Practice will need to be updated as a consequence of Recommendations 1, 2, 4 and 5.

<u>Ongoing Costs</u>

The cost of court applications for underage children to apply to make a will.

90. There will be only a small demand among children under 16 years of age to make a will. As a result, the costs to HMCTS are expected to be negligible.

Increased litigation on the formal validity of a will

[23] SI 1998 No 3132.

[24] See Family Procedure Rules 2010 (SI 2010 No 2955), rr 16.4, 16.6, and 16.23 to 16.26.

91. Recommendation 12, to introduce a dispensing power, will introduce some uncertainty into the law governing the formal validity of wills. It will also enable litigation to arise where it could not before: applications will be able to be made for a document to be deemed to be a person's valid will, under the dispensing power.

92. The costs of this, however, are expected to be low or negligible. This is because our understanding is that the introduction of dispensing powers in other jurisdictions has not led to a disproportionate increase in litigation. We understand that often applications under the dispensing power are non-contentious, being agreed by all affected parties.

Increased litigation under the Inheritance (Provision for Family and Dependants) Act 1975

93. Recommendation 30, to abolish the rule that marrying or forming a civil partnership revokes a person's pre-existing will, may mean that surviving spouses and civil partners in legitimate marriages may be left without reasonable provision in the light of a will which pre-existed the marriage or civil partnership. Accordingly, they may need to rely on a claim under the Inheritance (Provision for Family and Dependants) Act 1975 (the "1975 Act") to obtain reasonable financial provision from the estate of their spouse or civil partner. However, we expect the costs of this to be low or negligible. First, this issue will only arise if the person does not make a new will after marrying or forming a civil partnership. Moreover, where it does arise, (as we understand) claims by surviving spouses and civil partners are likely to settle and be agreed by all affected parties.

Increased litigation about the meaning of testamentary capacity under the Mental Capacity Act 2005

94. In Recommendation 1, we recommend that the statutory test in the Mental Capacity Act 2005 should apply to govern testamentary capacity, to replace the existing common law test. Adopting the MCA test could result in different results compared to the common law test, in situations where the testator is on the margins of capacity. This change may result in an increase in litigation about capacity during an initial period when the exact requirements of testamentary capacity under the MCA 2005 are tested and clarified in court. However, as we explain below, we expect the overall result of our recommendations on capacity to result in a decrease in contentious probate disputes on capacity, due to the law being more clear and better guidance being provided to those assessing testamentary capacity.

Benefits of Option 1

Transitional benefits

95. None identified.

Ongoing benefits

Better evidence of mental capacity

96. Our recommendations in relation to mental capacity – in Recommendations 1, 2, 4 and 5 – may help to reduce the number of contentious probate disputes on the basis of testamentary capacity.

97. The reported case law shows that disputes about capacity are a major source of contentious probate litigation. Capacity disputes are almost invariably disputes about the facts, so law reform cannot eliminate them. Litigation about testamentary capacity frequently involves expert testimony about the testator's capacity, from consultant old age psychiatrists, entailing costs. Under our recommendations, detailed guidance will be provided to solicitors and will writers about testamentary capacity, and when and how it should be assessed,

which will help to ensure that testators do have capacity when they make a will, and that good evidence about the testator's capacity will be available in the solicitor's or will writer's attendance notes and other records if a dispute arises. This in turn will make it less likely for a dispute to arise about the testator's capacity after they die.

Increased clarity in the law

98. Recommendations 16 to 19, by enabling people to make wills in electronic form, will clarify the current law on that point. It will also provide legal certainty for businesses who want to provide electronic will platforms.

Efficiency savings

99. Recommendations 16 to 19, to enable electronic wills, may encourage more people to make a will, meaning that more people will die with a valid will in place.

100. Moving towards digital solutions may also support environmental sustainability by reducing paper use and the associated waste, so contributing to the government's wider environmental and net zero commitments.

Better reflecting testators' intentions

101. Recommendations 12, 20, 26 and 30 will result in the testator's intended beneficiaries receiving gifts from their estate, rather than others whom the testator may not have intended to benefit. The latter group will include –

- those who would have received a benefit under the intestacy rules or an earlier will where an attempt to create a will failed due to non-compliance with the formalities,
- those who would have received a benefit under the intestacy rules where a will has been unintentionally revoked,
- a beneficiary who benefitted from a mistake in the drafting of the will, or
- a beneficiary who unduly influenced the testator into making a new will for their own benefit.

102. These recommendations may particularly benefit charities, which cannot benefit from the estate of a person who dies intestate.

Promoting and improving legal autonomy for testators and protection / safeguarding of testators

103. Under Recommendation 12, the court will have the power to make an order that a document is (or multiple documents are) treated as a formally valid will, and will be able to look at any record in which the testator has expressed their testamentary intentions. This power will prevent failures in the formalities of execution, including very minor ones, from resulting in the testator's clear intentions being defeated (by the disposition of their estate being governed by the intestacy rules or a previously made will).

104. Recommendation 26, in expanding the types of mistakes in a will that can be rectified by the court after the testator dies, will support the testamentary freedom of testators, by ensuring their wishes are successfully carried out after their death. Specifically, where their intention is clear, a mistake in the drafting of the will about the legal meaning or effect of it will not prevent their intention from being given effect, as the court will be able to rectify the will so that it has the meaning or effect intended by the testator.

105. Recommendation 20, allowing the court to infer that a will made as a result of undue influence where there are grounds to suspect it, will enable the court more closely to scrutinise the possibility of undue influence where there are suspicious circumstances in relation to how the will was made and the involvement of a beneficiary in its making. It will enable undue influence to be addressed by the court more often, by making the will (or gift in the will) procured by undue influence invalid. It will therefore protect testators and ensure this type of financial abuse does not go unaddressed. In so doing, it will ensure that a testator's testamentary wishes govern the distribution of their estate.

106. Recommendation 30, abolishing the rule that marriage or civil partnership revokes a will, will prevent unintentional intestacies, ensuring that a testator's settled testamentary intentions are not defeated by their will being revoked without their knowledge. It will also add a layer of protection for vulnerable people at risk of predatory marriages. We think it will disincentivise, and so prevent, predatory marriages where the victim already has a valid will in place. It will therefore help to protect vulnerable people from predatory marriage.

107. In such a case, or even where a predatory marriage does take place, this recommendation will prevent the testator's will from being subverted absent the testator actively wanting to, and having the capacity to, revoke or change their will. It will therefore prevent the intestacy rules from applying on their death, giving the predatory spouse the majority of (or the entirety) of the testator's estate and decision-making authority over what happens to the testator's remains. It will allow the testator's existing wishes to govern – including in respect of who they want to receive their estate on their death (such as their adult children, their grandchildren, their friends or charities) and who they want to have the authority to make decisions about their funeral and the internment of their remains.

108. Preventing predatory marriage will have well-being benefits to victims of predatory marriage and their families.

Fewer applications to appoint administrator

109. Recommendation 23, enabling 16- and 17-year-olds to make a will, will prevent a child from needing to apply for the court to make an order appointing an administrator of their estate on their behalf, under section 116 of the Senior Courts Act 1981 or under the court's inherent jurisdiction. That is because the child will be able to make a will appointing as executor the person who will carry out their wishes for what happens with their remains after they die.

110. However, there are very few such applications, so the savings to the HMCTS will be negligible. But these recommendations may have well-being benefits to young people and their families.

Fewer claims by surviving parents for family provision

111. Recommendations 23 and 24 may also prevent the need for a caregiving parent who survives their child from needing to make a claim under the Inheritance (Provisions for Family and Dependants) Act 1975 for reasonable financial provision from the child's estate.

112. Again, there are very few such applications, so the savings to HMCTS will be negligible. But these recommendations may have well-being benefits to the surviving parents of such children.

Fewer statutory wills applications

113. Recommendation 30, abolishing the rule that a marriage or civil partnership revokes a person's pre-existing will, will prevent a statutory will from being required where a person

marries or forms a civil partnership when they lack capacity to make a new will for themselves, and the intestacy rules would not represent their wishes or be in their best interests. This is particularly likely to arise where the testator is the victim of a predatory marriage, but the abuse is identified during the victim's life. HMCTS may benefit from the reduction in the number of applications for statutory wills.

Increased charitable donations

114. Expanding the ways in which people can make a will – by including electronic options alongside traditional paper methods, as we recommend in Recommendations 16 to 19 – is likely to increase the number of individuals who make a valid will.

115. With more people making a will, more people may leave a charitable legacy. Charities do not benefit under the estates of people who die intestate but they are frequently left legacies in people's wills. As a result, there could be broader benefits to society, with more funding available to charities. This enables them to support a wider range of causes, including people, animals, and the environment.

Less adversarial solution to professional negligence through expanding the scope of rectification

116. Recommendation 26, expanding the scope of rectification, will prevent the need for disappointed beneficiaries – who would have inherited under the will were it not for the will drafter's mistake – to make a claim of professional negligence against the will drafter. If the mistake can be rectified, the will drafter is likely to cooperate with the claim for rectification, and will be expected by the court to cover the costs of the action. This will be a less expensive way to address the issue than a negligence claim, which are more likely to be contentious disputes with the solicitor or their insurers.

117. Rectification claims are less adversarial, and so generally less expensive, than negligence claims against the solicitor, therefore saving litigation costs and the ongoing costs of professional indemnity insurance.

Creation of new markets

118. Permitting electronic wills under Recommendations 16 to 19 is likely to result in the introduction of online will-making services, which will create a new market. The entry of new businesses can drive competition, increase consumer choice, and stimulate innovation. This helps to modernise legal services and improve accessibility for the public.

119. In turn, the growth of this emerging market creates opportunities for new jobs and supports economic development, particularly in the legal technology sector. It will also strengthen the UK's position as a global leader in digital innovation. By embracing online legal services, the UK can demonstrate its commitment to modern, responsive regulation that supports both consumers and enterprise.

Greater fairness

120. There will be only a small demand among children to make a will. But Recommendation 23, to lower the age of testamentary capacity to 16 years old, and Recommendation 24, to empower the court to authorise a child under 16 years old to make a will, will allow children to make a will where, due to their specific and tragic personal circumstances, they are forced to contemplate their own death at a young age, for example due to degenerative conditions or other significant health issues.

121. This reform will enable such children to appoint an executor to carry out their wishes about their funeral and remains. It will also enable children who have significant assets,

including assets received as compensation from a personal injury or other claim, to make a will in cases where the intestacy provisions would not reflect their wishes, for example because one of their parents has not played a part in their life.

122. Although these cases will be rare, enabling a child to make a will in these cases will promote fairness, by allowing them to set out their testamentary wishes before they die.

F. Assumptions, Risks and Sensitivity Analysis

123. There are no significant assumptions or risks associated with this IA.

G. Wider Impacts

Public Sector Equality Duty

124. This assessment considers the potential impact of the recommendations on persons with protected characteristics under the Equality Act 2010. The proposals are anticipated to have a broadly positive impact, particularly in relation to disability and age. Where specific impacts are identified, these are noted below.

Disability and Age

125. Recommendations 1, 2, 4 and 5, concerning the test for testamentary capacity, are expected to have a positive impact on people with intellectual disabilities and older individuals. These groups are more likely to have their capacity assessed or challenged. The proposed approach seeks to support testamentary autonomy by ensuring capacity is assessed fairly and not on the basis of assumptions or stereotypes. This may result in a small increase in the number of individuals empowered to make a valid will.

126. Recommendations 16 to 19, which provide for the making of electronic wills, are likely to benefit disabled people, including those who use assistive technology, are immunosuppressed, or have limited mobility. The introduction of an accessible digital option is expected to increase ease of use and independence for these groups.

127. Recommendation 30, to remove the rule that marriage or civil partnership revokes a will, may further benefit individuals, particularly those suffering from dementia. It prevents the unintended cancellation of prior wills made while a person had capacity, in cases where they are later unable to execute a new will. This promotes respect for previously expressed testamentary wishes.

128. Recommendation 20, to allow the court to infer that a will has been made a result of undue influences where there are reasonable grounds to support the suspicion, may be particularly likely to benefit elderly testators and those suffering from dementia, who might be especially vulnerable to this type of coercion. It will therefore promote respect for their own testamentary wishes.

129. Recommendations 23 and 24, which allow children aged 16 and over – and in limited cases under 16 – to make wills, may positively affect young people with life-limiting conditions or disabilities by supporting early decision-making about their estate.

Race

130. There is evidence that individuals from Black, Asian and Minority Ethnic (BAME) communities are less likely to have made a will.[25] Recommendation 12, which introduces a dispensing power allowing the court to recognise informal wills, may support greater access to testamentary freedom within communities who make wills at lower rates.

131. In addition, BAME groups are more likely than White British groups to access legal services online.[26] Recommendations 16 to 19 (electronic wills) may therefore have a further positive impact in relation to race by increasing accessibility and encouraging engagement with will-making processes.

Conclusion

132. Overall, the proposals are considered to support equality of opportunity and reduce disadvantage for persons with relevant protected characteristics. The potential impacts identified are expected to be positive. No adverse impacts have been identified at this stage and therefore a full equalities impact assessment has not been required.

Additional considerations

133. The Humans Rights Act, Data Protection Act, Freedom of Information Act, market competition, international trade, economic growth, environment, rural issues, family, health and safety, consumer focus, regional perspectives, design quality, and sustainable development have been considered and found no impact.

---

[25] Legal Servies Consumer Panel, *Briefing note: Experiences of Black Asian and Minority Ethnic groups using legal services* (2021) pp 10 to 11, https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2021/01/2021-01-13_BAME-user-experiences_FINAL.pdf.

[26] Legal Servies Consumer Panel, *Briefing note: Experiences of Black Asian and Minority Ethnic groups using legal services* (2021) pp 5 and 8, https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2021/01/2021-01-13_BAME-user-experiences_FINAL.pdf.