

Making Death Digital

The Law Commission Report on Modernising Wills

(16 May 2025)



At midnight on 16 May 2025, the Law Commission (“LC”) released its long-anticipated report on reforming the law in relation to wills in England and Wales (“the Report”). For almost two centuries, the validity of testamentary documents has been governed by the Wills Act 1837. The proposals and draft bill (“the Bill”) accompanying the Report are an overdue update, which appears at first glance to have gone significantly further than many legal observers had anticipated.

This note covers only the headlines of the Report and the Bill, which together run to over 500 pages.

Digitisation

Electronic Wills: For decades, there has been a debate as to whether purely digital wills should be held to be valid in appropriate circumstances. This issue came into sharp focus during the Coronavirus Pandemic and has continued to be hotly debated. The LC’s proposal would allow digital wills, including digital signatures. Save for the use of a physical or ‘wet’ signature, the normal formalities would continue to be required. The widespread use of digital signatures in banking transactions and other formal documents should mean that the adopting of a reliable mechanism for ensuring that documents are not altered and that signatures are properly attributed to individuals will be possible. The Bill makes provision for a statutory instrument to cover these issues, but does not make these parts of the Bill conditional upon the SI being enacted.

Similarly, the Report proposes that the Court will have a wide-ranging power to dispense with (or at least work-around the lack of) formalities, provided that it can be shown that the will-maker’s continuing intentions are properly reflected in the document. This power is not limited to digital wills, but would apply to traditional, physical documents as well.

Banks v Goodfellow

Those familiar with property litigation (and many other fields) will be no strangers to the Mental Capacity Act 2005, which the Report endorses as the proper test for capacity to make a will. As the law currently stands, this statutory test is not used by the Courts when determining whether a testator was of sufficiently sound mind to dispose of their assets. The Court applies the BvG test, which is almost as old as the current Wills Act itself. The move towards a common statutory test for capacity can only be a good thing for consistency of approach with the Courts and for the ability of laypersons to understand the issues that they may need to address.

Family matters

In an apparent attempt to address the (tabloid-tempting) issue of ‘predatory’ marriages (where a person marries a wealthy individual who is either elderly or infirm), the Report proposes to remove the automatic revocation of wills by marriage. Limiting the scope for wills to be rendered invalid to the making of a new will, destruction (now presumably including deleting) or express revocation is likely to result in far fewer wills being unintentionally sidelined by persons without knowledge of the law. Additionally, the proposal is a nod towards the changing view of marriage in England and Wales in 2025, with fewer couples opting to be formally contracted to one another and choosing to cohabit or commit in a more informal manner.

The Bill makes provision for children (16 and 17 year-olds) to pass their property in a will and to permit the Court to expressly allow even younger children to make a will, if the Court is satisfied that the individual is competent to make an informed decision. A gift for those tween influencers who are making millions or for anyone who has wisely invested their paper round money.

Improper Gifting

The Bill also indicates that the Court will have the power to permit a will to make a gift to a witness thereto. As the law currently stands, any gift in a will made to a person who attests to the signing of the will, is invalid. The Report suggests that the Court should, if it considers it just to do so, be able to permit such a gift. This provision is likely to be of concern to some commentators and will have to be subject to strict judicial scrutiny to avoid abuse, but it should also provide comfort to those who live a sheltered life and/or have a close circle of trusted friends, who may not be able to find a willing attester outside of the group of people they wish to benefit from their estate.

The Report also sets out proposals for a reversal of the normal rules in relation to undue influence, providing that a presumption of undue influence (ie. overpowering the volition, without convincing the judgment of a testator) may be applied. The presumption may be engaged in circumstances where there is *evidence which provides reasonable grounds to suspect* undue influence.

Broader Powers of Rectification

The Bill sets out a the Court's power to allow the rectification of a will in circumstances where there has been an improper (but intentional) use of terminology or language, in circumstances where there is evidence from which the proper intention can be inferred. Again, this is likely to be a power that is only used in limited circumstances, but one which will give the Court greater scope to make provision for the wishes of testators to be properly reflected.

It is likely that the House of Lords will have a significant role to play in the moulding of the statute in its process to becoming law. It is hard to say whether all of the above changes will be adopted in the same or similar forms, but the Report appears to show a clear intention of the part of the LC to take bold steps towards the modernisation of the way that people can pass property after death, which should be applauded.

A copy of the Report and Bill can be found at <https://lawcom.gov.uk/project/wills/>

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