



Do-it-yourself Legal Kit

Last Will & Testament



Important facts

This Lawpack Kit contains the information, instructions and forms necessary to make your own Will in England, Wales, Northern Ireland or Scotland. It is important that you read and follow the instructions in 'How to use this Kit' on page 4.

There is an infinite number of provisions a person may make in a Will. The Will Forms included in this Lawpack Kit cover the most common ones, but we do not cater for all circumstances.

The information this Kit contains has been carefully compiled from reliable sources, but its accuracy is not guaranteed, as laws and regulations may change or be subject to differing interpretations. This is particularly true for any figures given which are liable to change in the next Budget. The law is stated as at 1 February 2012.

Neither this nor any other publication can take the place of a solicitor on important legal matters. This Lawpack Kit is sold with the understanding that the publisher, authors and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack Kit. We strongly urge you to consult a solicitor if:

- substantial amounts of money or property are involved;
- you do not understand the instructions or are uncertain how to complete and use a Will form correctly;
- what you want to do is not precisely covered by the forms provided;
- you and your spouse have different domiciles;
- you own or have an interest in property abroad, or have written a Will abroad.

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Loose-leaf:

- Choice of three ready-to-complete Will Forms for use according to your circumstances

Downloads:

- List of Important Document Locations
- Funeral Wishes Form
- Letter to Executor
- Property Inventory

This is an excerpt from Lawpack's *Last Will and Testament (DIY Will) Kit*.

To find out more about writing a Will quickly and inexpensively, [click here](#).

Why a Will is important

Without a valid Will you cannot control who will inherit your property after your death. Should you die intestate (without a Will), your property will be distributed according to law, which is likely to be inconsistent with your personal wishes. In some cases your estate may go to the Crown instead of the people you want to benefit. By making a Will you can determine precisely who will inherit your property and let your loved ones know that you have considered their needs.

Equally important, you can determine who will administer your estate and who will act as guardian for any minor children you have if they are left without a surviving parent. You can also use your Will to express your preferences for burial or cremation. In addition, making a Will gives you the opportunity of reducing your Inheritance Tax liability. This is particularly important if you have substantial assets.

When you die leaving a valid Will that appoints one or two executors who are still living at the time of your death, legal ownership of all of your property passes automatically to those executors. In order to prove that they have the right to deal with your property, they must apply for a legal document confirming their right to do so from the Probate Registry. This process is called 'obtaining probate'.

In Scotland, executors are appointed either by you in your Will (called 'executors nominate'), or by the Sheriff Court ('executors dative'). Before your executors can 'uplift' (secure the release of) and deal with your assets they must normally obtain 'confirmation'. Confirmation is granted by the Sheriff, and gives your executors authority to administer the estate.

For more information on the probate process, go to www.lawpack.co.uk/probate.

What is intestacy?

If you die without making a Will, or if your Will is invalid, you die 'intestate'. The management of your estate is then placed in the hands of administrators who are appointed by the court and who are likely to be close members of your family. The administrators distribute your estate according to the rules of intestacy. In Scotland, administrators appointed by the court in intestacies are still referred to as executors.

The rules are complex, but broadly speaking the bulk of your estate will go to your spouse (including a registered civil partner) or, if none, to your children (whether or not they are adults) and, if none, to other blood relatives. The effect of the rules depends partly on the size of your estate. If your estate is large (for England and Wales currently more than £250,000 where there are children – even if they are adults – and £450,000 where there are none), less than you expect may go to your spouse. So it is always prudent to have a valid Will rather than rely on the intestacy rules. In Scotland if there is no Will, the spouse is entitled to the house up to the value of £300,000 and contents up to £24,000. If there are no children, then the spouse can take £75,000 of the moveable estate and if there are children, then £42,000 of the moveable estate.

It is also possible to die partially intestate. This occurs if you fail to deal with all of your property in your Will or if a particular beneficiary dies before you.

You should avoid intestacy if you make a valid Will in accordance with the instructions in this Lawpack Kit.

Who should make a Will?

Every adult can and should make a Will. Minors (i.e. those under 18) generally cannot make a Will as they are not deemed competent. In Scotland, the minimum age for making a Will is 12. In Northern Ireland, a married minor or a minor who has been married may also make a valid Will. ‘Testator’ is the word for someone who written a Will.

The only qualifications necessary are that you are of legal age and of sound mind. If there is a history of mental disorder or if an illness may be affecting your judgement in any way, you should consult a qualified doctor just before preparing your Will. This will help establish your competence and will be useful should your Will be contested later on the grounds of mental incapacity.

If you are married, both you and your spouse should prepare Wills. This is true even if marital assets are primarily in the name of one spouse. Usually you will wish to name your spouse as your main beneficiary and include an alternative gift to take effect if he or she predeceases you. The same applies to registered civil partners.

If you are not married but are living with someone and you want that person to benefit from your estate, it is particularly important to make a Will. This is because the rules of intestacy make no provision for unmarried partners (other than registered civil partners). If you were to die intestate, your partner would receive nothing from your estate.

In Scotland, the Family Law (Scotland) Act 2006 allows the cohabitant partner of a person who dies intestate to apply to the court for payment out of the deceased's net estate of a capital sum, or for the transfer to the surviving cohabitant of the deceased's property, which can include a house. The court has to take into account the size and nature of the deceased's net intestate estate, any benefit being received by the surviving cohabitant on, or as a consequence of, the deceased's death (e.g. being paid out from a life policy), any benefits received other than from the deceased's net intestate estate and the nature and extent of any other claims on the deceased's estate, for example, from children. The maximum the court can award is the same as the cohabitant would have received if he had been married to or was a civil partner of the deceased. Any award made by the court is at its discretion; so if you want to ensure that your unmarried partner is provided for, it would be best to make a Will.

How long is a Will valid?

Once prepared, your Will is valid until revoked, which may occur in one of five ways:

1. By destruction, combined with the intention to revoke.
2. By making a new Will that revokes the old Will. The Lawpack Will Forms all contain the phrase 'I revoke all previous wills and codicils' in order to do this and will revoke any previous Will you have made.
3. By marriage or remarriage, unless your Will expressly states that it is made in contemplation of that forthcoming marriage. Note the important difference in Scotland, where marriage or remarriage does *not* revoke a Will.
4. By entering into a registered civil partnership, unless your Will expressly states that it is made in contemplation of that forthcoming registered civil partnership.
5. In Scotland only, there is a legal presumption that your Will is revoked if you have a child after having made your Will, where the Will makes no provision for that child. The law presumes that you would wish to provide for your child in your Will, and therefore if no mention of the child is made in your Will, the law presumes (a presumption difficult to argue against) that because the child is disadvantaged by not being provided for, the Will is revoked. The presumption will not apply if even the smallest provision is made in the Will for children yet to be born. The presumption can only be

overturned if there is sufficient evidence that the testator, in fact, intended to exclude children not yet born.

Except in one of the above circumstances, your Will remains valid for an unlimited period of time. Note that a divorce does not revoke a Will – but see below.

When is it necessary to prepare a new Will?

You may need to revise your Will for any number of reasons. Common occasions for reviewing a Will include:

- **Changes in the family** – a baby is born; a child becomes 18 (or perhaps some significant later age); or there is a death.
- **Marriage** – in England & Wales and Northern Ireland, marriage automatically revokes a previous Will, unless your Will expressly states that it is made in contemplation of that forthcoming marriage. It is always safer to prepare a new Will upon marrying. In Scotland, marriage or civil partnership does *not* revoke a Will, but you may well wish to make a new Will to provide for your new family.
- **Civil partnership** – registering a civil partnership has the same effect as marriage.
- **Divorce** – unlike marriage, a divorce does *not* revoke a previous Will. But if your former spouse is named as a beneficiary, then upon divorce he or she will cease to be a beneficiary or receive a gift unless your Will expressly provides that the gift should still take effect if you divorce. If your former spouse is named executor, then upon divorce he or she will no longer be allowed to act as executor or obtain probate of your Will. It is best to make a new Will whenever you get divorced.

In Scotland, if your former spouse is named as a beneficiary or as an executor he or she will continue to be a beneficiary/executor after divorce, unless the Will makes it clear that he or she is only to benefit/act as executor in his or her capacity as spouse, in which case if he or she ceases to be a spouse he or she would cease to be executor/beneficiary. For this reason, great care must be taken when using the words ‘husband’ or ‘wife’ in a Will, because when used alone, the word will ‘speak from your death’, which means the gift will go to whomever is your husband or wife at the time of

your death. In this case, an earlier spouse would lose his or her gift to a later spouse, possibly contrary to your intention. For the avoidance of doubt, always identify your spouse by name when making your Will, e.g. 'my wife, Gillian', and draw up a new Will on separation or divorce. Divorce is a complex issue and we recommend you consult a solicitor if in doubt.

- **Dissolution of a civil partnership** – the dissolution of a civil partnership has the same effect as a divorce.
- **Separation** – does not have the effect on a Will which a divorce has, so it is best to review the Will as soon as separation occurs.
- **Change in financial circumstances** – you may have recently acquired assets which you would like to give to particular beneficiaries, or perhaps due to hard times your estate may have become insufficient to provide for the legacies you have made.
- **Changes in taxation** – if your estate is large enough (or becomes large enough) to attract tax, new taxes or reliefs or changes in the rates may call for changes in your Will.
- **Going to live abroad** – it is normally desirable to make a Will in the country where you reside to simplify the administration of your estate. It may also be helpful if you need to establish a change of domicile. Local advice should be sought.

In any case, it is a good idea to review your Will at least every year, so that it is always up to date.

Preparing to make your Will

Before making your Will, consider carefully what you wish it to contain. The two principal decisions are: first, who should manage your property and distribute your property according to the terms of your Will (your executor) and second, how you wish your property (i.e. everything you own) to be distributed after your death.

Before you make your Will:

- List the assets you own.
- Decide who is to receive those assets.

Make an inventory of everything you own, whether in your name alone or owned jointly with others. You can download a template Property Inventory form to help you (see page 3 for information on how to download the form).

Then decide how you wish that property to be distributed. You can make gifts of specific property to particular people, as well as gifts of sums of money to particular people. Items or money that you do not specifically allocate will form the 'residue' of your estate and you must decide who is to receive this.

If you make no provision in your Will for someone who is financially dependent on you, that person may have a claim against your estate as the law can protect those people from inheriting nothing from you. That can also apply to a person you are living with including, but not limited to, civil partners, spouses and children. Where this risk exists, you should always consult a solicitor to assist you in drafting your Will.

In Scotland, whether or not you make a Will, your spouse, and issue are entitled to claim 'legal rights' which enable your surviving spouse and surviving children (and surviving issue of predeceasing children) to claim part of your estate at death as an alternative to (but not in addition to) the benefits that you might have provided for them in your Will. In effect, these legal rights protect your spouse and issue against getting little or nothing from your estate. Such legal rights cannot be overruled by a Will. These legal rights are (a) in the case of a surviving spouse where your children (or remoter issue) survive, one third of your 'moveable estate' (i.e. all your estate other than land and buildings), and where you leave no surviving children (or surviving remoter issue), one half of your moveable estate and (b) in the case of surviving children (and surviving issue of predeceasing children) where there is a surviving spouse, one third of your moveable estate and where there is no surviving spouse or civil partner, one half of your moveable estate.

It is always best to draft your Will as simply as possible in plain English. Avoid the use of legal words and phrases if you do not understand precisely what they mean.

Executors and trustees

An executor is a person named in your Will as having the responsibility of managing your property after your death and distributing that property according to the terms of your Will. That person will have to collect in and preserve your assets, pay all relevant taxes and liabilities, obtain a grant of

probate, or grant of confirmation in Scotland, sell those assets that need to be sold, and finally distribute your assets to your beneficiaries.

In some instances, money may not be paid directly to all your beneficiaries and may be held for their benefit. This is most common where the gift is to minor children or to someone pending their fulfilment of a condition, such as reaching a certain age. If this happens, the money will be paid to the person or persons you appoint as trustee. We recommend that you appoint the same person or persons as both executor and trustee and the Will Forms in this Kit have been drafted to this effect.

Trustees are then responsible for holding the monies and looking after them for the benefit of the beneficiaries. They are entrusted with investing the monies and generally safeguarding them. In some instances, they have the ability to distribute all or part of the monies to the beneficiaries or use them for their benefit if they think this is in the interest of the beneficiaries.

You must appoint at least one executor to carry out the instructions in your Will and it is recommended to appoint two. Two executors should be appointed if the Will contains a gift to children, some of whom may be under 18 when you die. If you are providing in the Will that the bequest be held until the child reaches the age of 18, then it is recommended that you have at least two executors. It is possible to leave a bequest to a child and provide that the executor can make over the bequest to the guardian (normally the parent) of the child if the child is under 16. This might be done if it is a monetary bequest of say a few hundred pounds but if it is a large amount, the testator will usually provide that it is put in trust. You should also appoint a replacement executor in case one of the named executors is, for any reason, unable to act.

The primary concern in selecting executors is that they should be reliable and trustworthy in carrying out your wishes. It is also desirable that at least one executor should know the beneficiaries personally. Often the best way is to appoint the person who stands to benefit most from your Will as one executor, and another relative or close friend with no financial interest in the estate as the second executor to assist or to take over should the first be unable to act. In England, Wales and Northern Ireland a person cannot act as executor while under 18. In Scotland, the executor must be at least 16 years old.

The duties of an executor need not be difficult and your executor can use a solicitor to process the necessary probate forms. Although you do not need to check with your proposed executors in advance that they would be willing to act (you may always change your Will or you may not want to disclose to anyone

what provisions you are making in your Will), it might be prudent to do so. A template letter to an executor is available to download (see page 3 for information on how to download the letter). It would also be sensible to appoint an alternative executor in case your preferred executor declines to act.

Guardians

A guardian is someone appointed by you to act in your place as a parent and so is given both the responsibility of caring for and the powers to make decisions about your children (i.e. parental responsibility). Guardians are frequently appointed on the understanding that they will personally look after the children in the event of the parents' death. Nevertheless, this is not a requirement of being a guardian, as the guardian's task is to make the decisions about where the child lives, with whom, what school they go to and so on.

The guardian is often, but need not necessarily be, the same person as the executor and trustee (see above). Their responsibilities are different: an executor deals with and has responsibility for the financial arrangements, whereas a guardian makes decisions about the wellbeing of the children. If the guardian is not the same as the executor, he or she should be able to cooperate with the executor.

The appointment of a guardian is only effective if both parents (or all persons with parental responsibility) are no longer alive.

If you have minor children (i.e. under 18 in England, Wales & Northern Ireland and under 16 in Scotland), you should name a guardian to care for them in the event of them being left without any parents. Since a guardian takes the place of a parent, you should choose someone who can offer the best care for your children, such as a close relative who is willing to accept the responsibility. The guardian can be (but need not be) one of your executors. Always check with your proposed guardian in advance to be certain that he or she is willing to act.

In Scotland the appointment of a guardian must be in writing and signed by a parent. This rule is satisfied if you include the appointment in your Will by completing the relevant section in the Scotland Will Form. However, it should be noted that any appointment of a guardian is not binding on a court, if the matter is disputed.

In order to appoint a guardian, you yourself must have parental responsibility, which arises in the following circumstances:

- A mother automatically has parental responsibility for her child.
- A father automatically has parental responsibility if:
 - he was married to the mother when the child was born;
 - he later married the mother;
 - he was registered as the father on the birth certificate of a child born after 1 December 2003 (4 May 2006 in Scotland; 15 April 2002 in Northern Ireland);
 - he has made a 'parental responsibility agreement' (a 'parental responsibility and parental rights agreement' in Scotland) with the mother, or a court has ordered that he has parental responsibility.

So, a father who does not meet any of the above criteria does not automatically have parental responsibility over his children, should the mother die.

Step-parents do not have parental responsibility, unless conferred by a parental responsibility agreement or by a court. Adoptive parents have parental responsibility from the date of the adoption order.

If you need to make a parental responsibility agreement, one can be downloaded free of charge at www.lawpack.co.uk.

There are complications in the following circumstances, for which we advise you to see a solicitor:

- if you and the other parent have already been or become (after the making of the Will) divorced from each other; or
- if a court order already exists or is made in the future relating to where the child is to live, or to parental responsibility for the child.

Beneficiaries

Adults

There is no particular complexity in making a gift to an adult, whether a specific gift or a gift of residue. Will Form 1 provides a simple Will which would apply if all the beneficiaries are adult (i.e. over 18 in England, Wales & Northern Ireland and over 16 in Scotland). It would apply, for example, if you wished to give the whole of your estate to your children where all of them are adult.