



Ministry
of Justice

Storage and retention of original will documents

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of Justice

Storage and retention of original will documents

Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

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Introduction and contact details

This document is the post-consultation report for the consultation paper, *Storage and retention of original will documents*.

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the policy team at the address below:

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<https://assets.publishing.service.gov.uk/media/5f75ab7cd3bf7f243eb60908/mandating-response-to-consultation.pdf>

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from will.storage@justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. The consultation paper *Storage and retention of original will documents* was published on 15 December 2023. It invited comments on the Government's proposals to introduce a system for preserving will documents in digital form, as opposed to the current system of keeping all the original paper documents submitted in applications for probate (the legal authority for administering a deceased person's estate).
2. The context for this consultation was the size and cost of the current will storage service, with an annual estimated cost of £4.5 million and some 110 million documents stored, a number increasing every year. It also sought views on the related questions of whether the right to inspect wills that are stored should be changed, and on whether any exceptions should be made to keep original paper documents for notable public figures if records were digitised.
3. The consultation paper invited responses on the principle of moving to digital-only preservation of will documents and, in that event, whether there should still be any retention period for the original paper will documents.
4. It also sought views on whether for famous and historic figures such a principle should not apply, and the original paper will documents should be preserved in perpetuity.
5. The consultation paper also asked consultees how the legislation should be amended if a decision was made to move to digital-only preservation of wills, with the two options being a change made via the Electronic Communications Act 2000 (using secondary legislation) or pursuing primary legislative reform in a Bill before Parliament.
6. The consultation period closed on 23 February 2024 and this report summarises the responses, including how the consultation process influenced any further development of the matters consulted upon for the Government to consider and reflect on.
7. A Welsh language summary of this response paper can be found at <https://www.gov.uk/government/consultations/storage-and-retention-of-original-will-documents>.
8. A list of respondents is at Annex A, although with some 1600 responses received, we have recorded the organisations who responded rather than all of the individual

respondents. All responses were read and analysed in the production of this response document, and the Government is grateful for all the responses received.

Summary of responses

9. A total of almost 1600 responses to the consultation paper were received. Of these, a large majority were from individual members of the public, with a number of these stating that they were family historians or genealogists. There were representative responses from a number of organisations; particularly legal professional bodies, archive and records management professional bodies, historical associations and family history societies.
10. It was very clear that the consultation had generated considerable interest and concern for many people who were concerned about the preservation of original documents with historic and emotional value. The large majority of responses vehemently opposed any destruction of original wills. Respondents pointed to a number of factors, that included the intrinsic link to the past that wills represent but also the provenance of an original document as legal proof of a testator's wishes.
11. A majority of respondents supported the digitisation of wills, but almost all in terms of this being a copy in addition to the original document. This was in part to guard against any possible loss of originals but also to make them more accessible for public inspection and access.
12. A large number of respondents expressed concerns about digitisation as a means of offering the permanent record of a will or other document. The concerns related to a wide range of aspects, with the most common themes being:
 - Durability – whether digital copies would be robust, whether changes in technology would make records obsolete or inaccessible over time;
 - Security – the threat of digital records being damaged or misappropriated through cyber-attack;
 - Reliability – whether errors would occur in taking digital copies, with details/pages missed off or blurred;
 - Economy – the costs of digital copying and storage were cited, as was the additional costs of the more elaborate 'posterity digital' copies being made;
 - Authenticity – for a number of respondents there was nothing to compare to an original document with a wet ink signature in terms of a historic record.
13. The consultation paper's proposal that – in the event of original wills being destroyed after digitisation – the wills of notable public figures should be exempt

and preserved also received a large response, with respondents largely opposing the principle of the reform. This was most commonly on the grounds that all original wills should be preserved. However, a significant number of respondents also referred to this as being what was termed an elitist approach, and pointed to the fact that some of those who became important public figures were not recognised as such in their own lifetime. Concerns were also raised on the equality aspects of such an approach and that any such group would not fully reflect the diversity of society.

14. There was similar opposition and unease about any loss of other original documents (besides wills) submitted in support of applications for probate. While legal respondents were much less likely to press for retaining these, genealogical/archival respondents regarded them as having the same sort of intrinsic historical value as wills.
15. More detailed comments on the various reform proposals can be found below in the section on the responses to individual questions.
16. In addition to the specific responses to the issues covered by the consultation, respondents also provided comments on broader policy, operational and legislative issues. One such issue was the accessibility of original will document, and there were a range of views on the principles of wills being available for public inspection. While most respondents wanted wills to be open for inspection – either in terms of legal claims or challenge, or for family history research – there were some concerns about sensitive personal data being made available. The Government will be reviewing the law of wills in the light of the final report from the Law Commission's current law reform project (due in early 2025), and this will provide an opportunity to consider such issues.
17. In the light of the responses to the consultation and the concerns raised, the Government has decided that it will not pursue any reform that involves the destruction of original will documents and will look at other means to offset the costs of storing this vast archive (see Conclusion and Next Steps section).

Responses to specific questions

Question 1: Should the current law providing for the inspection of wills be preserved?

18. The overwhelming majority of respondents to this question supported the current law allowing for wills to be preserved and open for inspection. Although this conclusion was shared by most respondents, the reasons given varied, particularly between the different interest groups.
19. For legal professional bodies and practitioners, the existing law ‘served a useful purpose’¹ and the rationale expressed in the consultation paper was generally supported. As such, respondents felt that enabling wills to be inspected offered an opportunity for wills to be accessed by beneficiaries, not least as this helped hold executors to account in the administration of the deceased person’s estate.
20. Legal respondents pointed to more complicated modern families and the potential for the validity of wills to be contested, or for family provision claims to be brought by close family or dependants who felt that they had not been sufficiently provided for from an estate.
21. Legal respondents were, however, less likely to see that an original will was essential as long as a digital copy was of equivalent quality. Some practitioners also pointed to future developments in the law as technology evolved, and referred to the current law of wills review being undertaken by the Law Commission which is assessing whether fully electronic wills should be allowed in the future.
22. For genealogical, historical and archival respondents, the existing law offered a protection to the safe storage and preservation of wills that recognised their value as a public, historic record. These respondents were universal in stating that it was critical that the original documents were preserved.
23. For many historical respondents one potential area for reform was the current statutory arrangement whereby all wills and probate documents since 1858 are held under the authority of the High Court. A number of these respondents said that after a suitable period wills and other original documents should be transferred to The National Archives or local history record centres.

¹ Chancery Bar Association

24. One area where there were conflicting views on a need for reform was on whether there should be more safeguards built into the information that could be accessed with wills open to inspection. While historical respondents felt that free access was important in terms of the preservation of all the material as all could have historical value (and provide appropriate context), some respondents felt that open access jarred with protection of personal data and privacy – especially for recent wills. Legal respondents tended to take a balanced view to this issue – that the current legal framework already provided for applications to be made for wills to be sealed or sensitive details redacted when copies were made.

Government response

25. The Government is grateful for the many responses on this issue, and notes that there remains strong, broad support for the existing law. The general principle that wills and other probate documents should normally be open for inspection – whether in terms of current legal challenges or historic reference purposes – was firmly endorsed.

26. This chimes with the Government's view that the underlying legal framework should not be reformed to any major degree, although some modernisation reforms will inevitably need to be considered in the light of the Law Commission's final report's recommendations and at a future date as society and technology changes if the way wills are made changes.

Question 2: Are there any reforms you would suggest to the current law enabling wills to be inspected?

27. To a large extent respondents restated the position they had adopted in answers to Question 1 on the current legal framework, reflecting the board support for the law as it stands on wills being available for inspection and preserved.

28. However, respondents set out in more detail a wide range of suggested reforms to aspects of the current system. There were some key differences between legal respondents and historical respondents. Legal responses set out some views on ways of modernising the current wills and probate process while ensuring the need,

as one respondent² put it, to “finely balance the interests of the testator with those of any beneficiary, executor and third party”.

29. Historical and genealogical respondents by contrast concentrated on two aspects – the legislation covering will storage and preservation, and the practical question of where such records should be stored.
30. In terms of reforms suggested by legal respondents the most recurring one was modernisation of the Non-Contentious Probate Rules. This is the legislation that sets the rules of court followed for probate applications to the High Court where there is no dispute about who is entitled to the grant and whether the will is valid (so the probate business is "non-contentious").
31. One such example was the Bar Council’s view that the rules on ‘sealing’ wills should be reviewed – the grounds for withholding wills for inspection in part or in whole, with the presumption being that wills should be open. Some legal respondents suggested more guidance and the development of criteria to allow some data privacy concerns to be addressed through the use of discretion by Probate Registrars when applications are made to withhold certain details. The Society of Trusts and Estates Practitioners (STEP) recommended the Government commission formal research into this issue.
32. W Legal suggested that a cover sheet be prepared for all will records with basic details to provide a separate download, and that blockchain technology be used so that each will could have a unique digital entity represented by a Non-Fungible Token (NFT) to provide authenticity.
33. CILEx provided survey responses from their members which included a suggestion that a national Will Register be introduced to confirm the existence of a will to reduce probate disputes or the risk of intestacy.
34. In relation to responses from historical/genealogical respondents, a number made points that the consultation had failed to have sufficient regard for the family history sector, and for the increased public interest and academic focus which had led to more demand for, and interest in, wills as primary sources of data. The main concerns expressed related to access to original documents and their preservation.
35. Some of these respondents pressed for amendment or clarification of the law in terms of the Public Records Act 1958 which complicated the legal position with the Lord Chancellor being responsible for storage of wills but the Secretary of State for Culture having a wider responsibility for public records and the Keeper of Public Records for material held in Places of Deposit. A number of such respondents

² CILEx – The Chartered Institute of Legal Executives

pressed for wills and other probate documents to be stored in The National Archives or local places of deposit for permanent storage.

36. A number of historical respondents also sought improved access to original documents rather than receiving digital copies, particularly as some features were missing or blurred when requests are made (although respondents said that requests for further copies rectified faults).

Government response

37. The Government is grateful for the many constructive comments received which will help to inform future policy, operational and legislative work. The Law Commission's forthcoming final report on its law of wills project will provide an opportunity to review a number of the topics raised, as will the letter of the Justice Select Committee on the conclusion of its inquiry into the probate service.

38. More broadly the effect of this consultation has been to raise the level of consciousness and public debate on issues relating to storage and preservation of wills and other probate documents. That will also inform the Government's future work in this area.
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Question 3: Are there any reasons why the High Court should store original paper will documents on a permanent basis, as opposed to just retaining a digitised copy of that material?

39. There were a large number of responses to this question, and the overwhelming tone of the responses was for the High Court (or some other public body) to continue to store original paper documents.

40. The historical and genealogical respondents felt most strongly about this issue and setting out reasons for the retention of original paper documents. A large majority highlighted flaws with digitisation and digital copies in comparison with paper ones.

41. A common point was that the digitisation process often led to flaws so that it was not equivalent to the original. This might involve material being omitted or blurred. Respondents gave examples of this having occurred with existing digital copies taken from original wills. The point was made that if wills are destroyed after digital copies are taken there is no further opportunity to rectify mistakes.

42. Another frequently made point was that technology is evolving fast and that any digital storage, even higher specification 'legacy' digital preservation may be obsolete in a few decades. It was argued that the digital records may be inaccessible or only accessible at greater cost as relying on what would be by then antiquated readers.
43. Many respondents expressed doubts about the durability of the digital record and whether irreplaceable material would be eroded or lost over the passage of time if not subject to rigorous and costly maintenance and supervision.
44. A large number of respondents were very concerned about the security of digital records and gave examples of high-profile cyber-attacks on digital storage resources. There were concerns about the security of digital records in terms of their being damaged, made inaccessible or compromised in some other way.
45. Another very commonly cited issue with digital records was the costs of this form of storage. A number of respondents stressed the high costs involved in making more forensic preservation digital records, rather than the normal lighter touch scanning of copies. Costs would be raised by the degree of oversight and verification required. The costs of maintaining and preserving the digital infrastructure were raised, especially as over time the form of records may not be the mainstream form of digitised archives.
46. In addition to highlighting perceived problems with digital records, respondents also made some strong points in favour of the benefits of preserving original paper documents. The value of wills as a rich source of primary historical material was stressed – those wills opened up details of how people lived in the past. One respondent said that wills gave people a 'voice' from the past in the way that other records such as births, deaths and marriage records only did fleetingly. Wills afforded a view on styles of writing, types of property, family and business relationships and much more.
47. Those advancing these arguments were very clear that wills and other probate documents had an intrinsic value in their original form as a national, historic record that went far beyond the more immediate legal utility of a will as proof for probate and the administration of the deceased person's estate in accordance with their wishes. Wills were seen as repositories of social and cultural insights and data. Glamorgan Archives epitomised this view in commenting that a digital record was seen only as 'a surrogate access copy for the original'.
48. These arguments were not confined to historical and genealogical respondents but were made by legal respondents too. The latter also pressed the case for original documents being preferable in terms of proof for contentious probate and legal challenge (for example claims a will or signature was forged). The point was made

that the paper documents can be subjected to forensic analysis that would not be possible with a digital copy.

49. While legal respondents were much more likely to say that – after a lengthy period to allow for any challenges – digital copies would provide a permanent record, the point was also made that there is no statutory time limit for a contentious probate claim where that claim is based on an alleged fraud. While exceptional, such claims after a 25-year period were not unknown.

Government response

50. The responses on this issue have been very helpful and provided a very compelling set of arguments in favour of original wills being retained.

51. The Government accepts that original will documents do represent a historic record which has a value in excess of the formal requirements of the process of proving or challenging documents for the purposes of establishing a testator's wishes and the administration of their estate.

52. There is no doubt that the cost and size of the stored archive, at some 110 million documents (which increases annually), represents a challenge, and it is right that Government reviews any area of significant public expenditure to assess whether reforms might be pursued which would modernise the process and offer greater value for money.

53. However, it is also right that Government takes account of a full range of issues and views before reaching a decision, and that it reviews the costs and risks as well as the anticipated benefits of any reforms. As such, we will not be proceeding with a reform that would involve any destruction of original will documents, but we will look at other options for reform to help offset the large costs of storage, such as fees for inspection of wills.

Question 4: Do you agree that after a certain time original paper documents (from 1858 onwards) may be destroyed (other than for famous individuals)? Are there any alternatives, involving the public or private sector, you can suggest to their being destroyed?

54. The vast majority of respondents were fundamentally opposed to the destruction of any original wills or other documents. The proposal that only the wills and

documents of famous public figures should be preserved was also strongly opposed by a majority of respondents.

55. Many of these respondents set out the same sorts of reasons as those summarised in paragraphs 27-36 above (in response to Question 2), in terms of the historic value of original documents, that such a step would be irreversible, the flaws and risks associated with just having a digital record and the costs involved.

56. Legal respondents were more likely to be supportive of the proposition that paper documents might not need to be kept indefinitely, but this was not a universal view. For example, some legal respondents argued that original documents offered a higher standard for provenance of a will, such as for assessing wet ink signatures.

57. The Bar Council in its response made the point that many wills established trusts which would exist for lengthy periods beyond the granting of probate, and this meant that wills could cast a long shadow in terms of their being used to trace beneficiaries and family relationships.

58. A few respondents suggested longer retention periods than the 25 years proposed in the consultation paper, with 50, 100 and 150 being put forward. However, a large majority opposed any destruction of original documents.

59. Very few responses made suggestions of alternatives involving either the public or private sector. There was unease expressed by some respondents to any suggestion of outsourcing control of the probate archive being contracted outside of a public body's oversight and control. Some responses suggested that commercial partnerships be explored as a way to retain the archive or offset costs. The most common suggestion in terms of other public sector involvement was the transfer of original documents to The National Archives or locally based places of deposit for public records.

60. More detailed comments on the proposal to preserve the documents of famous people are summarised in the responses to Question 9 (see paragraphs 89-93 below). The reasons put forward included opposition both in principle (as all wills had value as a primary historical resource) and in practice (as fame was highly subjective, and some notable public figures were not recognised in their lifetime or for some years afterwards).

Government response

61. The Government has reflected on this issue and concluded that it should not proceed with any reform at this stage that involves the destruction of original wills or other critical probate documents.

62. It is important that in all areas of public services the Government should review the operation and cost of those services to ensure that they are necessary, they are provided as efficiently as possible and as economically as possible.
63. However, it is recognised that for a variety of reasons – argued in a very compelling series of points by respondents - any reforms must also be assessed against certain fundamental principles that sit alongside the function and cost of services. These include recognising that original wills and other probate documents do form a unique historic record, in addition to the legal and court factors relating to validity of wills and challenges to them.
64. There are no plans at present to seek other public or private sector will storage options.
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Question 5: Do you agree that there is equivalence between paper and digital copies of wills so that the ECA 2000 can be used?

65. The majority of the respondents to this question disagreed with the proposition that there was equivalence between paper and digital wills, although some respondents (mainly legal) considered there was parity in legal terms.
66. Part of the concerns related to whether the digital copy could fully capture all the features of the original paper document, in terms of paperclipped notes, margin comments, alterations and the original signatures. Some respondents suggested forensic analysis of the material would be prevented by a digital copy which meant true equivalence could not be achieved.
67. Other respondents felt that the highest possible specifications and quality control would be required for an equivalence test to be met, and concerns were expressed on whether that would always be achieved and funded sufficiently.
68. The majority of respondents felt that primary legislation should be used to make any change to the current law on storage of wills rather than secondary legislation under section 8 of the Electronic Communications Act 2000. The latter gives the appropriate Minister the power to modify legislation for the purpose of ‘authorising or facilitating the use of electronic communications or electronic storage’ by way of secondary legislation. This provision was used for temporary legislation in 2020 and 2022 to permit video-witnessing of wills during the Covid pandemic. Views varied on whether primary legislation should be used because the test in the Electronic

Communications Act was not met (in their view) or simply as the higher level of Parliamentary scrutiny a Bill involved was more appropriate for a change of this nature.

Government response

69. The Government retains an open mind on the wider legal principle of whether there would be equivalence between paper and digital copies of wills, although as the decision is to retain all original wills deposited with the High Court that has no effect on historic wills.

70. We recognise the Law Commission's review of the law of wills (final report due early 2025) may make recommendations on electronic wills, and so the principle is likely to be considered in the future.

Question 6: Are there any other matters directly related to the retention of digital or paper wills that are not covered by the proposed exercise of the powers in the ECA 2000 that you consider are necessary?

71. This was a more open-ended question designed to give respondents an opportunity to broaden out their comments and suggestions on potential reforms to legislation on will storage and records management for the probate process.

72. Many of the responses to this question reiterated various points made in reply to other questions, primarily in relation to setting out reasons for retaining paper wills and expressing reservations about digital wills in terms of their durability and reliability.

73. Some respondents felt that there would need to be more detail provided on the strategy for digitisation before they could comment in any detail – for example on the specification for scanning documents. Respondents also wanted more clarification on the projected expenditure on digitising older wills for comparison with the existing costs of storing and preserving original documents.

74. Some historical and genealogical respondents considered that any reform proposals should be reassessed in the context of the Public Records Act 1958 as the archive related to public as much as court records. Legal respondents also commented on whether the Senior Courts Act 1981's requirements on storage of wills could be interpreted to extend to the destruction of original wills.

75. Another issue raised was addressing the risks associated with paper records in terms of fire, flooding or other damage, and the role digitisation could play - not as a substitute for paper wills but as a back-up.

Government response

76. The Government fully acknowledges that much more work in a number of respects would be required to progress any of the reforms proposed in the consultation paper. However, the first stage of the consultation has been exploring reform options and which (if any) of these should be pursued.

Question 7: If the Government pursues preserving permanently only a digital copy of a will document, should it seek to reform the primary legislation by introducing a Bill or do so under the ECA 2000?

77. The majority of those responding to this question voiced their opposition to any replacement of original wills documents with digital copies (and to any destruction of paper originals), rather than replying to the specific question.

78. Of those who replied specifically, there was a clear preference for reform to be by primary legislation, rather than using the secondary legislation powers in the Electronic Communications Act 2000. These enable reforms that replace paper-based methods with electronic forms to be pursued through secondary legislation, with electronic storage one of the forms.

79. Those arguing for reform by a Bill pointed to the greater scrutiny Parliament would be able to undertake, enabling a full discussion of what were felt to be important considerations. These included Parliament being able to fully discuss the principle of replacing original documents of historic record.

80. Legal respondents who set out concerns about the validity of wills being challenged also felt that Parliament should fully discuss the implications for challenges should original documents be destroyed as part of the move to digitisation. A concern cited was in relation to time limits for claims and that Parliament should consider the implications in full.

81. A number of respondents suggested the Electronic Communications Act could not be used as Section 8(3) states that Ministers should not exercise the powers (to make secondary legislation for electronic alternatives) unless they consider records “will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases.” These respondents considered digital wills were less satisfactory than the original paper documents as they could not be subjected to forensic testing and material may be omitted or blurred in the digitisation process.

Government response

82. The Government is grateful for the points made, and in particular the comments on the importance of greater Parliamentary scrutiny and providing an opportunity for a full debate of the issues when reforms with wider ramifications (such as engaging matters of national historic records) are being pursued. The responses will help inform any future approach on the form of legislation to be used for this area of the law.

Question 8: If the Government moves to digital only copies of original will documents, what do you think the retention period for the original paper wills should be? Please give reasons and state what you believe the minimum retention period should be and whether you consider the Government’s suggestion of 25 years to be reasonable.

83. The Responses to this question were divided, with historical and genealogical respondents tending to oppose the setting of any minimum retention period at all, while legal respondents tended to put forward suggestions.

84. The Society of Trusts and Estates Practitioners (STEP) recommended that the Government commission research into the issue, but also do a full cost-benefit analysis ahead of any reform programme.

85. Amongst the legal respondents, views differed on the length of a suitable minimum retention period, from 12 to 125 years, with some feeling the proposed 25 years was appropriate and others feeling 50 years would be more prudent. Most legal respondents focused on the realistic period for challenges to a will’s validity as being the key factor, so that the paper/ink could be subjected to forensic testing.

86. The Chancery Bar Association suggested 125 years to align with an existing statutory perpetuity period for trusts (in the Perpetuities and Accumulations Act 2009).

87. A large majority of the overall responses opposed the principle of a minimum retention period, and argued against any destruction of original will documents. These respondents believed that such documents formed part of a national historic resource which should be permanently preserved, although some considered that after a set period they may be transferred from the court's control to national or local archival facilities.

Government response

88. The setting of a minimum retention period falls away with the decision not to proceed with the destruction of original wills and other documents. However, the responses provided have been helpful in setting out the issues which should be considered in exercises of this nature.

Question 9: Do you agree with the principle that wills of famous people should be preserved in the original paper form for historic interest?

89. A high proportion of respondents addressed this question, with the vast majority opposing the principle that the wills of notable public figures should be preserved in isolation. Nearly all respondents wanted to see all original will documents preserved, although this was for a variety of reasons.

90. First and foremost, the case was made that all wills are a national historic record, and that they are of intrinsic value for preserving in their own right. A large number of those responding felt that all wills reflected the rich spectrum of humanity and there was a value to preserving all, and that they had equal value.

91. A number of respondents also commented on the difficulties of attempting to draw up criteria for establishing who would qualify as a famous person or notable public figure for such an approach. Most respondents argued that it would inevitably be a very subjective and that fame was a flimsy exercise to try and distinguish some people from others for this purpose.

92. The point was frequently made that figures would be important and well known in certain fields of achievement or in certain parts of the country or communities but

may not be universally well known or recognised as a notable public figure. It was also argued that fame was an ephemeral concept and could be short lived.

93. A large number of respondents also highlighted cases of people such as Mary Seacole or Alan Turing, who were only fully recognised for their achievements and contribution at a much later date after their death. The point was made that destroying original wills after 25 years would be irreversible and someone being famous enough to fit the criteria for preservation of documents may only come after destruction.

Government response

94. The Government has accepted that all original wills and other documents should be retained, and that a different decision might be contested from the viewpoint of the principles of equality and non-discrimination. The responses to this question illustrated the difficulties in any attempt to distinguish between people, and some strong points were made on recognising the historic record of all wills that the Government acknowledges.

Question 10: Do you have any initial suggestions on the criteria which should be adopted for identifying famous/historic figures whose original paper will document should be preserved permanently?

95. Responses to this question came in the context of broad opposition to the general proposition (that the original wills of historic figures should be preserved), particularly historical and genealogical respondents who declined to engage with it on that basis.

96. Where respondents made suggestions, various categories of eligible groups of people were suggested – such as those making a significant contribution to society (honours' recipients), people with details recorded in various reference resources (for example Who's Who, Wikipedia) and biographical dictionaries.

97. Some respondents suggested setting up a consultative panel of experts to provide guidance and draw up criteria, although difficulties were foreseen in making this a broad and representative enough group. The comment was also made a few times that the criteria may need to change over time, as perceptions of fame and recognition of public contribution evolved.

98. Some respondents felt that further consultation, or discussion during any reform Bill's passage would help to inform the development of suitable criteria.
99. Other respondents felt that adopting any criteria would run the risk of unconscious bias or discriminatory factors being adopted, particularly with people with protected characteristics having been under-represented in traditional historical records.

Government response

100. The Government is no longer intending to proceed with the destruction of original will documents and thus the safeguarding provision of preserving the original wills of major public figures falls away. The responses to the consultation provided a number of points illustrating the difficulty of the task of drawing up suitable and representative criteria.
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Question 11: Do you agree that the Probate Registries should only permanently retain wills and codicils from the documents submitted in support of a probate application? Please explain, if setting out the case for retention of any other documents.

101. The majority of respondents, particularly historical and genealogical groups and individuals, were firmly in favour of the retention of all supporting documents submitted with wills as part of applications for grants of probate or letters of administration.
102. These respondents argued that such documents were as much a part of individual and national historical records as wills, and for some – such as deed polls of name changes - the record may be the only copy and irreplaceable.
103. Legal respondents also reiterated the necessity of keeping original documents in the event of allegations of forgery or challenging the validity of a will or someone's fitness to act as a personal representative to administer an estate. They may also provide insights into a testator's state of mind, such as in letters of wishes.
104. For example, the Society of Scrivener Notaries highlighted the need to retain documents such as orders made by foreign courts (when the deceased dies abroad) which are required in the Non-Contentious Probate Rules as part of the proof for probate to be granted in respect of assets in England and Wales.

105. As previously outlined, a minority of respondents felt that after a suitable period – varying between 25-100 years – such documents could be disposed of.

Government response

106. The Government accepts the principle that as wills are to be retained as original documents and the same approach should apply as for other documents designated as being preserved permanently under the Ministry of Justice's Records and Retentions Schedule (the full list of which was set out in paragraph 53 of the consultation paper).

Question 12: Do you agree that we have correctly identified the range and extent of the equalities impacts under each of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

107. There were far fewer responses to this question than the others in the consultation, but some consistent themes were expounded by those respondents who did address it.
108. Most respondents focused on the proposal of retaining famous wills and set out concerns that the effect of such a reform would be to risk unconscious bias. This reflected a concern that people with protected characteristics were traditionally under-represented in historical records and in terms of public recognition.
109. A number of respondents also used this question to raise concerns about the digitisation of wills presenting problems with accessibility for people with visual impairments or people (especially the elderly) who would find it difficult to access electronic resources.
110. Many of those who did respond to this question did so to reiterate their opposition to the proposal to destroy original documents, in terms of the role that such resources played in the preservation of a full historical record, representing all sections of society.

Government response

111. The Government has noted the points made on the equality considerations of the proposed reforms and taken these into account in reaching the overall conclusion that original wills and other documents should continue to be preserved.

Equalities and Welsh Language

Equalities

112. The Ministry of Justice has not published an equality impact assessment at this stage as the reforms proposed will not be taken further following consultation. A full equalities statement would be prepared as part of any legislative reforms arising from the consultation paper's proposals, but that no longer arises.
113. The consultation paper sought comments on equalities impacts arising from the issues covered in the reform proposals, and a summary of the responses to that question (Question 12) can be accessed above from paragraph 107. The principal concerns related to the proposal that famous people's original wills be preserved and the fear that, as well as being subjective, this process and regime would be (or risk being) discriminatory in not recognising the achievements and contribution of individuals from historically under-represented groups and all sections of society.
114. That proposal is not being pursued, in the light of the consultation exercise and the Government's analysis of responses in deciding whether to reform the current law.

Welsh Language Impact Test

115. Some Welsh stakeholders made points in their responses about any reforms needing to be sensitive to wills and probate applications made in the Welsh language.
116. Wills can be written, and probate applications made in Welsh, and bilingual probate grants can be issued if an applicant requests one when making their application.
117. No Welsh language impact test was undertaken as no reforms to the storage and preservation of original will documents are being pursued, as a result of this response to consultation document.

Conclusion and next steps

118. The Government is very grateful to everyone who responded to the consultation. It was very clear from the large number of responses and the very heartfelt nature of those responses that the issue was one which engaged high levels of public interest and concern.
119. There was strong opposition to any destruction of original wills or other documents. This was for a variety of reasons in terms of both a national historical resource and also for individual legal challenges. There was also a strong emotional response to the consultation, typified in the comments received on the unique nature of wills as a record of a living person's wishes for the distribution of their assets.
120. The Government accepts the compelling case that has been made by respondents and recognises the equality aspects and has therefore determined not to proceed with any reforms that involve the destruction of original wills and supporting documents currently designated for permanent preservation.
121. There are, however, some consequences of this decision in terms of the ability to systematically digitise the archive collection of some 110 million paper documents and meeting the ongoing costs of the paper archive.
122. At present digitisation is confined to wills submitted with new probate applications (since 2021), and where requests are received to make inspect a will or grant of probate. This will continue to be the practice, but any systematic programme of digitising older wills would have to be considered alongside other calls and priorities on the Ministry's resources.
123. Similarly, the decision to preserve original wills does not address the concerns about the large and increasing costs of preserving the very extensive original will archive (which dates back to 1858). The current cost of obtaining a copy of a will is £1.50 which does not cover the costs of providing this service and does not represent full cost recovery. It is also significantly cheaper than copies of obtaining comparable public records (for example, the fee for birth or death certificates is £12.50).
124. The Government will therefore be giving further consideration to the fees charged for copies of wills and grants of probate.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

The following organisations responded to the consultation – there were so many individual respondents we have elected to list below only those organisations who responded, although **all contributions (individual and organisational) were read, analysed and we are grateful to all those who responded**. Where individuals wrote expressly on behalf of an organisation, the organisation has been listed, but otherwise not (including a number of academics, archivists and librarians where it was not clear if they were writing in a personal capacity or on behalf of their organisations in an official capacity).

Advisory Council on National Records and Archives
Ancestral Enquiries
Anglia Research Services
Archives and Records Association
Archives for London
Ardingly History Society
Association for Manuscripts and Archives in Research Collections
Association of Genealogists and Researchers in Archives
Association of Lifetime Lawyers
Association of Professional Genealogists
Balloon Barrage Company
Bar Council
Bodleian Libraries, University of Oxford
Bibliographical Society
Bradford Family History Society
British Archive for Contemporary Writing
British Association for Local History
British Library
Buckinghamshire Family History Society
CBGenealogy
Chancery Bar Association
Chartered Institute of Legal Executives
Chris Sayer Solicitors LLP
College of Arms
Coventry Family History Society
Custodily
Devon Heritage Centre
Digikive
Dorset History Centre
Drakon Heritage and Conservation
East Surrey Family History Society
Essex County Council
Family History Federation
Family Tree
Farningham and Eynsford Local History Society

Folkstone and District Family History Society
Friends of Carnegie Library
Fry Group
GenealCymru
Glamorgan Archives
Glasgow & West of Scotland Family History Society
Group 5 Training Limited
Gwynedd Family History Society/Cymdeithas Hanes Teuluoedd Gwynedd
Halsted Trust
Hampshire County Council
Holt's Family History Research
Huddersfield and District Family History Society
Information and Records Management Society
Jewish Genealogical Society of Great Britain Council
Kent Family History Society
Lambeth Local History Forum
Lancashire and Cheshire Antiquarian Society
Lancaster & District Family History Group
Leicestershire Victoria County History Trust
Libraries Connected
Lifelines Research
Liverpool Law Society
LostCousins
Lubenham Heritage Group
MASSOLIT
Moxon Society
National Library of Scotland
New Zealand Society of Genealogists
Northamptonshire Family History Society
Northleo Writing Inc.
Northumberland Archives
North West Kent Family History Society
Notaries Society of England and Wales
Nucleus Legal Advice
Nuneaton and North Warwickshire Family History Society
Oxfordshire Family History Society
Pharos Tutors
Quaker Family History Society
Records Office for Leicestershire, Leicester & Rutland
Records Preservation and Access Coalition
Register of Qualified Genealogists
Royal Berkshire Archives
Royal Historical Society
Royal Society for Asian Affairs
Ryde District Historical Society
Shropshire Family History Society
Society of Antiquaries
Society of Australian Genealogists
Society for the Social History of Medicine

Society for the Study of Labour History
Society of Genealogists
Society of Scrivener Notaries
Solicitors for the Elderly
Staffordshire Record Office
STEP
Strathclyde Institute for Genealogical Studies
Sunshine Coast Genealogy Club
Thoresby Society: Leeds History Society
Thurrock Local History Society
UCL Centre for Digital Humanities
Warwickshire County Council
Winston Economics Ltd
Wiltshire Family History Society
W Legal
Worcestershire County Council
Wyre Forest Historical Research Group

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