



Ministry
of Justice

Government response to the Law Commission report Making a Will

Statement by Sarah Sackman KC MP, Minister for Courts and Legal Services

The Government welcomes the Law Commission's comprehensive report on the law of making a will, published today. I am very grateful to the Commission for the detailed consideration it has given to this important topic.

This is the first major review of the law on making wills since the Wills Act 1837 was passed. That legislation established certain important principles in English and Welsh law that have stood the test of time, such as people being free to make a will to set out how they wish their assets to be distributed after their death. Another important principle it established was putting in place formalities to making a will so that safeguards are built into the process.

However, society has changed enormously since the early 19th Century and technology has transformed our lives.

The report's 31 recommendations cover important issues, which deserve detailed consideration, including:

- Allowing electronic wills to be legally valid on the same basis as paper will documents, with regulations to be introduced on the arrangements and safeguards for this to work in practice – for example signing and witnessing of documents.
- Marriage should no longer automatically revoke a will – this recommendation is designed to address the problem of 'predatory marriages' where vulnerable people are befriended, and the effect of their being married is to disinherit families and others from any will they have made.
- A new statutory authority enabling courts to rule on cases where they believe testators have been subject to undue influence, complementing common law safeguards for vulnerable people.
- Improving safeguards around the mental capacity of people making wills, including a new Code of Practice for Testamentary Capacity to assist in assessing whether someone is of sound mind to make a will.
- The introduction of a new dispensing power for courts, to enable judges to validate wills where the testator's intentions are clear, even if all the formalities of making a will have not been observed.
- Whether the age for being able to make a will should be reduced from 18 to 16.

As these recommendations illustrate, the reforms proposed by the Law Commission are significant and wide ranging. They deserve detailed consideration. The Government recognises that the current law is outdated, and we must embrace change, but the guiding principle in doing so will be to ensure that reform does not compromise existing freedoms or protecting the elderly and vulnerable in society from undue influence.

The Government will make further announcements in due course, once it has given the report the detailed consideration it deserves.

Sarah Sackman KC MP