Wills Act 1837

1837 CHAPTER 26 7 Will 4 and 1 Vict

E+W+N.I.

An Act for the amendment of the laws with respect to Wills. [3rd July 1837]

Textual Amendments

F1 Act (except s. 1 in part and s. 11) repealed (N.I.) (1.1.1995) by S.I. 1994/1899 (N.I. 13), art. 38, **Sch. 3** (with art. 36, Sch. 2 para. 15(1)-(3)); S.R. 1994/372, **art. 2**

Modifications etc. (not altering text)

C1 Short Title "The Wills Act 1837" given by Short Titles Act 1896 (c. 14)

C2 Act amended by Law of Property (Amendment) Act 1924 (15 & 16 Geo. 5 c. 5), s. 9, **Sch. 9**

C3 Words of enactment and other words repealed by Statute Law Revision (No. 2) Act 1888 (c. 57) and Statute Law Revision Act 1893 (c. 14)

C4 This Act is not necessarily in the form in which it has effect in Northern Ireland

C5 Act modified by Mental Health Act 1983 (c. 20, SIF 85), ss. 97(2), 148, **Sch. 5 para. 43(2)**

C6 Act amended by the Children Act 1989 (c. 41, SIF 20), s. 108(6), **Sch. 14 para. 14**; S.I.1991/828, **art. 3(2)** (with Sch. 14 para. 1(1))

C7 Act modified (E.W.) (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 2 para. 4** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

[F2 1.] Meaning of certain words in this Act: "Will": "Real estate": "Personal estate": Number: Gender. E+W+N.I.

The words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, **[**F3 and also to an appointment by will of a guardian of a child,**][**F2 and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004**][**F4 or section 8 of the Human Transplantation (Wales) Act 2013**]**, . . . F5 and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, . . .

[F5] whether corporeal, incorporeal, or personal, **[**[F6]and to any undivided share thereof,**]** and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Textual Amendments

F2 Words in s. 1 inserted (20.10.2005 for specified purposes, 1.9.2006 in so far as not already in force) by Human Tissue Act 2004 (c. 30), s. 60(2), **Sch. 6 para. 1** (with s. 58); S.I. 2005/2792, art. 2(2)(j); S.I. 2006/1997, art. 3(2) (with arts. 478) (as amended (5.8.2006) by S.I. 2006/2169, art. 2)

F3 Words substituted by Children Act 1989 (c. 41, SIF 20), s. 108(5)(6), **Sch. 13 para. 1**: S.I. 1991/828, **art. 3(2)** (with Sch. 14 para. 1(1))

F4 Words in s. 1 inserted (1.12.2015) by Human Transplantation (Wales) Act 2013 (anaw 5), **ss. 17**, 21(1) (with s. 14); S.I. 2015/1679, art. 3(e)

F5 Words repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

F6 Words in s. 1 repealed (E.W.) (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**

2 . . . . . [F7] **E+W+N.I.**

Textual Amendments

F7 S. 2 repealed by Statute Law Revision Act 1874 (c. 35)

3 **All property may be disposed of by will; Contingent Interests; Rights of Entry; and property acquired after the execution of the will.** **E+W+N.I.**

It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner herein-after required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve . . . [F8] upon his executor or administrator; and the power hereby given shall extend . . . [F8] to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Textual Amendments

F8 Words repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

4—6 . . . . . [F9] **E+W+N.I.**

Textual Amendments

F9 Ss. 4–6, 8 repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

7 No will of a person under age valid. E+W+N.I.

No will made by any person under the age of **[**[F10]eighteen years**]** shall be valid.

Textual Amendments

F10 Words substituted by Family Law Reform Act 1969 (c. 46), **s. 3(1)**

8 . . . . . [F11] **E+W+N.I.**

Textual Amendments

F11 Ss. 4–6, 8 repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

[[F12]**9 Signing and attestation of wills E+W+N.I.**

[F13]**[** No will shall be valid unless—(1)**]**

(a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

(b) it appears that the testator intended by his signature to give effect to the will; and

(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d) each witness either—

(i) attests and signs the will; or

(ii) acknowledges his signature,

in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary.

[F14]**[** For the purposes of paragraphs (c) and (d) of subsection (1), in relation to wills made (2) on or after 31 January 2020 and on or before 31 January **[**[F15]2024**]**, "presence" includes presence by means of videoconference or other visual transmission.**]]**

Textual Amendments

F12 S. 9 substituted by Administration of Justice Act 1982 (c. 53, SIF 116:5), **ss. 17**, 73(6)

F13 S. 9 renumbered as s. 9(1) (28.9.2020) by virtue of The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 (S.I. 2020/952), arts. 1, **2(2)** (with art. 3)

F14 S. 9(2) inserted (28.9.2020) by The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 (S.I. 2020/952), arts. 1, **2(3)** (with art. 3)

F15 Word in s. 9(2) substituted (1.2.2022) by The Wills Act 1837 (Electronic Communications) (Amendment) Order 2022 (S.I. 2022/18), arts. 1, **2(2)**

10 Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed. E+W+N.I.

No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner herein-before required; and every will executed in manner herein-before required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

11 Soldiers and mariners wills excepted. E+W+N.I.

Provided always, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Modifications etc. (not altering text)

C8 S. 11 explained and extended by Wills (Soldiers and Sailors) Act 1918 (7 & 8 Geo. 5 c. 58)

12 . . . . . F16 E+W+N.I.

Textual Amendments

F16 S. 12 repealed by Admiralty, &c. Acts Repeal Act 1865 (c. 112), **Sch.**

13 Publication of will not be requisite. E+W+N.I.

Every will executed in manner herein-before required shall be valid without any other publication thereof.

14 Will not to be void on account of incompetency of attesting witness. E+W+N.I.

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

15 Gifts to an attesting witness to be void. E+W+N.I.

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Modifications etc. (not altering text)

C9 S. 15 amended by Wills Act 1968 (c. 28), **s. 1**
S. 15 amended (E.W.) (1.2.2001) by 2000 c. 29, **ss. 28(4)(a)**, 33, (with s. 35); S.I. 2001/49, **art. 2**

C10 S. 15 applied (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 3**; S.I. 2005/3175, Sch. 1

16 Creditor attesting to be admitted a witness. E+W+N.I.

In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband**[**[F17]or civil partner**]** of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Textual Amendments

F17 Words in s. 16 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 4**; S.I. 2005/3175, Sch. 1

17 Executor shall be admitted a witness. E+W+N.I.

No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

[[F18]18 Wills to be revoked by marriage, except in certain cases. E+W+N.I.

(1) Subject to subsections (2) to **[**[F19](5)**]** below, a will shall be revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator's subsequent marriage unless the property so appointed would in default of appointment pass to his personal representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person,—

(a) that disposition shall take effect notwithstanding the marriage; and

(b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.

[F20(5) **[** Nothing in this section applies in the case of a marriage which results from—

(a) the conversion of a civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section;

[F21(aa) **[** the conversion of a civil partnership into a marriage under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020;

(ab) the conversion of a civil partnership into a marriage under Part 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 where the civil partnership is a convertible Northern Ireland civil partnership as defined by regulation 2 of those Regulations;**]** or

(b) the changing of a civil partnership formed under Part 3 of the Civil Partnership Act 2004 into a marriage under—

(i) the Marriage (Scotland) Act 1977;

(ii) the Marriage and Civil Partnership (Scotland) Act 2014; or

(iii) any order made under section 104 of the Scotland Act 1998 in consequence of the Marriage and Civil Partnership (Scotland) Act 2014.**]]**

Textual Amendments

F18 S. 18 substituted by Administration of Justice Act 1982 (c. 53, SIF 116:5), **s. 18(1)**

F19 Figure in s. 18(1) substituted (10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), **Sch. para. 1(2)(a)**

F20 S. 18(5) inserted (10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), **Sch. para. 1(2)(b)**

F21 S. 18(5)(aa)(ab) inserted (E.W.) (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **32(2)**

[F22 18A Effect of dissolution or annulment of marriage on wills. E+W+N.I.

(1) Where, after a testator has made a will, F23... a court **[**F24 of civil jurisdiction in England and Wales **]** dissolves or annuls his marriage **[**F25 or his marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in England and Wales by virtue of Part II of the M1 Family Law Act 1986 **]**,—

[F26(a) **[** provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former spouse, shall take effect as if the former spouse had died on the date on which the marriage is dissolved or annulled, and

(b) any property which, or an interest in which, is devised or bequeathed to the former spouse shall pass as if the former spouse had died on that date,**]**

except in so far as a contrary intention appears by the will.

(2) Subsection (1)(b) above is without prejudice to any right of the former spouse to apply for financial provision under the [M2] Inheritance (Provision for Family and Dependants) Act 1975.

[F27](3) . . . . . .]

Textual Amendments

F22 S. 18A inserted by Administration of Justice Act 1982 (c. 53, SIF 116:5), **ss. 18(2)**, 73(6)

F23 Words in s. 18A(1) omitted (6.4.2022) by virtue of Divorce, Dissolution and Separation Act 2020 (c. 11), s. 8(1)(8), **Sch. para. 43**; S.I. 2022/283, reg. 2

F24 Words inserted (E.W.) by Family Law Act 1986 (c. 55, SIF 49:3), **s. 53**

F25 Words in s. 18A substituted (E.W.) by Family Law Act 1986 (c. 55, SIF 49:3), **s. 53**

F26 S. 18A(1)(a)(b) substituted (8.11.1995 with effect as respects a will made by a person dying on or after 1.1.1996) by 1995 c. 41, **s. 3(1)(2)**

F27 S. 18A(3) repealed (8.11.1995 with effect as specified in the note to the Schedule of the amending Act) by 1995 c. 41, s. 5, **Sch.**

Marginal Citations

M1 1986 c. 55 (49:3).

M2 1975 c. 63 (116:1).

[[F28]18B Will to be revoked by civil partnership E+W+N.I.

(1) Subject to subsections (2) to [[F29](6)][[F29](7)] , a will is revoked by the formation of a civil partnership between the testator and another person.

(2) A disposition in a will in exercise of a power of appointment takes effect despite the formation of a subsequent civil partnership between the testator and another person unless the property so appointed would in default of appointment pass to the testator's personal representatives.

(3) If it appears from a will—

(a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and

(b) that he intended that the will should not be revoked by the formation of the civil partnership,

the will is not revoked by its formation.

(4) Subsections (5) and (6) apply if it appears from a will—

(a) that at the time it was made the testator was expecting to form a civil partnership with a particular person, and

(b) that he intended that a disposition in the will should not be revoked by the formation of the civil partnership.

(5) The disposition takes effect despite the formation of the civil partnership.

(6) Any other disposition in the will also takes effect, unless it appears from the will that the testator intended the disposition to be revoked by the formation of the civil partnership.]

[[F30](7) Nothing in this section applies in the case of a civil partnership which results from the conversion of a marriage into a civil partnership under Part 3, 4 or 5 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020.**]**

Textual Amendments

F28 Ss. 18B, 18C inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 2**; S.I. 2005/3175, Sch. 1

F29 Word in s. 18B(1) substituted (E.W.) (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **32(3)(a)**

F30 S. 18B(7) inserted (E.W.) (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **32(3)(b)**

Modifications etc. (not altering text)

C11 S. 18B modified (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 2 para. 5**

[[F28]18C Effect of dissolution or annulment of civil partnership on wills E+W+N.I.

(1) This section applies if, after a testator has made a will—

(a) a court of civil jurisdiction in England and Wales dissolves his civil partnership or makes a nullity order in respect of it, or

(b) his civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in England and Wales by virtue of Chapter 3 of Part 5 of the Civil Partnership Act 2004.

(2) Except in so far as a contrary intention appears by the will—

(a) provisions of the will appointing executors or trustees or conferring a power of appointment, if they appoint or confer the power on the former civil partner, take effect as if the former civil partner had died on the date on which the civil partnership is dissolved or annulled, and

(b) any property which, or an interest in which, is devised or bequeathed to the former civil partner shall pass as if the former civil partner had died on that date.

(3) Subsection (2)(b) does not affect any right of the former civil partner to apply for financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.**]**

Textual Amendments

F28 Ss. 18B, 18C inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 2**; S.I. 2005/3175, Sch. 1

[[F31]18D Effect on subsisting will of conversion of civil partnership into marriage E+W+N.I.

(1) The conversion of a civil partnership into a marriage does not—

(a) revoke any will made by a party to the civil partnership before the conversion; or

(b) affect any disposition in such a will.

(2) The conversion of a civil partnership into a marriage does not affect any previous application of section 18B(2) to (6) to—

(a) a will made by a party to the civil partnership before the conversion; or

(b) a disposition in such a will.

(3) Subsections (1) and (2) are subject to subsection (4).

(4) Any reference in a will to a civil partnership or civil partners (howsoever expressed) is to be read in relation to any civil partnership that has been converted into a marriage, or civil partners who have converted their civil partnership into a marriage, as referring to that marriage or married couple, as appropriate.

(5) Subsection (4) is subject to any contrary intention appearing from the will.

(6) In this section "conversion" means—

(a) the conversion of a civil partnership into a marriage under section 9 of the Marriage (Same Sex Couples) Act 2013 and regulations made under that section;

[F32 (aa) the conversion of a civil partnership into a marriage under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020;

(ab) the conversion of a civil partnership into a marriage under Part 3 or 4 of the Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014 where the civil partnership is a convertible Northern Ireland civil partnership as defined by regulation 2 of those Regulations;**]**

(b) the changing of a civil partnership formed under Part 3 of the Civil Partnership Act 2004 into a marriage under—

(i) the Marriage (Scotland) Act 1977;

(ii) the Marriage and Civil Partnership (Scotland) Act 2014; or

(iii) any order made under section 104 of the Scotland Act 1998 in consequence of the Marriage and Civil Partnership (Scotland) Act 2014, and

"converted" is to be read accordingly.**]**

Textual Amendments

F31 S. 18D inserted (10.12.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) and Marriage and Civil Partnership (Scotland) Act 2014 (Consequential Provisions) Order 2014 (S.I. 2014/3168), art. 1(2)(3), **Sch. para. 1(3)**

F32 S. 18D(6)(aa)(ab) inserted (E.W.) (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **32(4)**

[F33 18E. Effect on subsisting will of conversion of marriage into civil partnership E+W

(1) The conversion of a marriage into a civil partnership does not—

(a) revoke any will made by a party to the marriage before the conversion; or

(b) affect any disposition in such a will.

(2) The conversion of a marriage into a civil partnership does not affect any previous application of section 18(2) to (4) to—

(a) a will made by a party to the marriage before the conversion; or
(b) a disposition in such a will.

(3) Subsections (1) and (2) are subject to subsection (4).

(4) Any reference in a will to a marriage or spouses (howsoever expressed) is to be read in relation to any marriage that has been converted into a civil partnership, or a married couple who have converted their marriage into a civil partnership, as referring to that civil partnership or the parties to it, as appropriate.

(5) Subsection (4) is subject to any contrary intention appearing from the will.

(6) In this section "conversion" means—
(a) the conversion of a marriage into a civil partnership under Part 3 of the Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020; or
(b) the conversion of a marriage into a civil partnership under Part 4 or 5 of those Regulations;

and "converted" is to be read accordingly.**]**

Textual Amendments

F33 S. 18E inserted (E.W.) (7.12.2020) by The Marriage and Civil Partnership (Northern Ireland) (No. 2) Regulations 2020 (S.I. 2020/1143), regs. 1(2), **32(5)**

19 No will to be revoked by presumption. E+W+N.I.

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

20 No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction. E+W+N.I.

No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

21 No alteration in a will shall have any effect unless executed as a will. E+W+N.I.

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as herein-before is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

22 No will revoked to be revived otherwise than by Re-execution or a Codicil to revive it. E+W+N.I.

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner herein-before required and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

23 A devise not to be rendered inoperative by any subsequent conveyance or act. E+W+N.I.

No conveyance or other Act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

24 A will shall be construed to speak from the death of the testator. E+W+N.I.

Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Modifications etc. (not altering text)

C12 S. 24 applied by Married Women's Property Act 1893 (c. 63), **s. 3**

25 Residuary devise shall include estates comprised in lapsed and void devises. E+W+N.I.

Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

26 A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands. E+W+N.I.

A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a . . . [F34] leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the . . . [F34] leasehold estates of the testator, or his . . . [F34] leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

Textual Amendments

F34 Words repealed by Statute Law (Repeals) Act 1969 (c. 52), **Sch. Pt. III**

27 A general gift shall include estates over which the testator has a general power of appointment. E+W+N.I.

A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

28 A devise without any words of limitation shall be construed to pass as free. E+W+N.I.

Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

29 The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death. E+W+N.I.

In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

30 No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest. E+W+N.I.

Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

31 Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, shall take the fee. E+W+N.I.

Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

[F35 32 ..... E+W+N.I.

Textual Amendments

F35 S. 32 repealed (1.1.1997) by 1996 c.47, s. 25(2), **Sch. 4** (with ss. 24(2),25(4)); S.I. 1996/2974, **art. 2**

[F36 33 Gifts to children or other issue who leave issue living at the testator's death shall not lapse. E+W+N.I.

(1) Where—

(a) a will contains a devise or bequest to a child or remoter descendant of the testator; and

(b) the intended beneficiary dies before the testator, leaving issue; and

(c) issue of the intended beneficiary are living at the testator's death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator's death.

(2) Where—

(a) a will contains a devise or bequest to a class of persons consisting of children or remoter descendants of the testator; and

(b) a member of the class dies before the testator, leaving issue; and

(c) issue of that member are living at the testator's death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as if the class included the issue of its deceased member living at the testator's death.

(3) Issue shall take under this section through all degrees, according to their stock, in equal shares if more than one, any gift or share which their parent would have taken and so that **[F37**(subject to section 33A)**]**no issue shall take whose parent is living at the testator's death and so capable of taking.

(4) For the purposes of this section—

(a) the illegitimacy of any person is to be disregarded; and

(b) a person conceived before the testator's death and born living thereafter is to be taken to have been living at the testator's death.**]**

Textual Amendments

F36 S. 33 substituted by Administration of Justice Act 1982 (c.53, SIF 116:5), **ss. 19**, 73(6)

F37 Words in s. 33(3) inserted (E.W.) (1.2.2012) by Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 (c. 7), **ss. 2(3)**, 4(2) (with s. 4(4)); S.I. 2011/2913, art. 2

Modifications etc. (not altering text)

C13 S. 33 excluded by Finance Act 1958 (c. 56), **s. 29(2)**, (which s. 29(2) is repealed in relation to deaths occurring after 13.4.1975 and, so far as regards certain duties in relation to any death, by Finance Act 1975 (c. 7, SIF 99:3), ss. 52(2), 59, **Sch. 13 Pt. I**, note (with a saving in s. 52(3) in relation to repayment or allowance in respect of certain sums paid before 13. 3. 1975 on account))

[F38 33A Disclaimer or forfeiture of gift E+W+N.I.

(1) This section applies where a will contains a devise or bequest to a person who—

(a) disclaims it, or

(b) has been precluded by the forfeiture rule from acquiring it.

(2) The person is, unless a contrary intention appears by the will, to be treated for the purposes of this Act as having died immediately before the testator.

(3) But in a case within subsection (1)(b), subsection (2) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify the forfeiture rule).

(4) In this section " forfeiture rule " has the same meaning as in the Forfeiture Act 1982.]

Textual Amendments

F38 S. 33A inserted (E.W.) (1.2.2012) by Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 (c. 7), **ss. 2(2)**, 4(2) (with s. 4(4)); S.I. 2011/2913, art. 2

34 Act not to extend to wills made before 1838, nor to estates pur autre vie of persons who die before 1838. E+W+N.I.

This Act shall not extend to any will made before the first day of January one thousand eight hundred and thirty-eight, and every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, republished or revived; and this Act shall not extend to any estate pur autre vie of any person who shall die before the first day of January one thousand eight hundred and thirty-eight.

35 Act not to extend to Scotland. E+W+N.I.

This Act shall not extend to Scotland.

36 . . . . . F39 E+W+N.I.

Textual Amendments

F39 S. 36 repealed by Statute Law Revision Act 1874 (c. 35)

Changes to legislation:
There are currently no known outstanding effects for the Wills Act 1837.