

1978 No. 1724

SUPREME COURT OF JUDICATURE, ENGLAND
PROCEDURE

The Wills (Deposit for Safe Custody) Regulations 1978

Made - - - - 13th November 1978

Coming into Operation 1st February 1979

The President of the Family Division, in exercise of the power conferred on him by section 172 of the Supreme Court of Judicature (Consolidation) Act 1925(a) hereby makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Wills (Deposit for Safe Custody) Regulations 1978 and shall come into operation on 1st February 1979.

(2) These Regulations shall apply to wills whether deposited before or after the coming into operation of these Regulations.

Interpretation

2.—(1) The Interpretation Act 1978(b) shall apply to these Regulations as it applies to subordinate legislation made after the commencement of that Act.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Supreme Court of Judicature (Consolidation) Act 1925;

“prescribed” means prescribed by the Supreme Court (Non-Contentious Probate) Fees Order 1975(c);

“the principal registry” means the Principal Registry of the Family Division;

“registrar” means a registrar of the principal registry and includes the registrar of a district probate registry;

“registry” means the principal registry or a district probate registry, including a sub-registry;

“the Senior Registrar” means the Senior Registrar of the principal registry;

“will” includes a codicil to a will.

(3) In these Regulations a form referred to by numbers means the form so numbered in the Schedule to these Regulations, or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(a) 1925 c. 49.
 (c) S.I. 1975/1344.

(b) 1978 c. 30.

Place and mode of deposit

3.—(1) The place of deposit for the wills of living persons pursuant to section 172 of the Act shall be the principal registry and a testator may deposit his will there subject to, and in accordance with, these Regulations and on payment of the prescribed fee.

(2) A will may be deposited for safe custody on personal attendance by the testator, or by an agent authorised in writing by the testator to do so, at any registry or may be sent by post for deposit by the testator, or any agent so authorised, to the principal registry.

(3) A will deposited for safe custody shall be enclosed in a sealed envelope bearing an endorsement in Form 1.

Deposit on personal attendance by testator

4. Where the testator attends at a registry to deposit his will he shall sign the endorsement on the envelope containing the will in the presence of an officer of the registry who shall append his signature to the endorsement and shall give the testator a certificate of deposit in Form 2 and shall file a copy of the certificate with the will.

Deposit by post or by agent

5.—(1) A will presented for deposit at a registry by an agent, or sent by post to the principal registry for deposit, shall be accepted if the endorsement on the envelope containing the will purports to be signed by the testator and, in the case of deposit by an agent, the registrar is satisfied that the agent is authorised by the testator to deposit the will.

(2) On accepting a will for deposit, the registrar shall send to the testator by post a certificate of such deposit in Form 2 and, in the case of deposit by an agent shall also give or send to the agent a copy of the certificate, and shall in every case file a copy of the certificate with the will.

Transmission of will to principal registry

6. On the lodgment at a registry (other than at the principal registry) of a will for deposit, the district registrar shall forward the sealed envelope containing the will and a copy of the certificate of deposit by registered post to the principal registry and shall retain in his registry a further copy of the certificate.

Entry in records

7. On the deposit of a will at the principal registry, the Senior Registrar shall make such entries in the records as are requisite to enable the fact of the deposit to be known on any application for a grant of representation in the estate of the testator.

Withdrawal of deposited will

8.—(1) A testator whose will is deposited under section 172 of the Act may make written request to the principal registry for the return of the will to him, and the request shall be accompanied by the certificate of deposit given or sent to him.

(2) Where, on receipt of a request under paragraph (1) above, a registrar of the principal registry is satisfied—

(a) as to the identity of the testator, and

(b) that it would be proper to return the said will to him, the registrar may authorise the return of the deposited will to the testator, and the Senior Registrar shall cause the record of deposit of the will to be noted accordingly.

(3) The Senior Registrar shall retain the record of the deposit and return of a will for so long as he considers it necessary to do so.

(4) Subject to paragraph (2) above, a will deposited under section 172 of the Act shall not be released from the custody of the principal registry until the death of the testator is established to the satisfaction of a registrar of the principal registry.

Procedure on death of testator

9.—(1) On production of—

(a) a certificate of the death of a testator who has deposited his will in the principal registry or such other evidence of death as may satisfy a registrar of the principal registry, and

(b) unless otherwise directed by the registrar, the certificate of deposit of the will,

a registrar of the principal registry may open the envelope containing the will and, subject to such precautions as he may think necessary (including the lodgment in the registry of a copy of the will), may—

(i) deliver the will to the executor or to any other person who satisfies the registrar that he intends to prove the will, or

(ii) where the will has been effectively revoked or a grant of representation in the estate of the testator is not required, deliver the will to any person who is entitled to possession of the will.

Provided that the registrar may, if he thinks fit, require the person intending to prove the will to attend at a registry for that purpose.

(2) Where a registrar releases a deposited will from the custody of the principal registry under this regulation, the person to whom the will is delivered shall give a receipt for it together with a written undertaking to lodge the will on any application for a grant of representation to the estate of the testator.

(3) The Senior Registrar shall retain the record of the deposit and return of the will and of any copy of a will as is required to be lodged pursuant to this regulation.

Dated 13th November 1978.

George Baker, P.
President of the Family Division.

SCHEDULE

FORM 1

ENDORSEMENT OF ENVELOPE CONTAINING WILL

This sealed packet contains the last Will and Testament [with a codicil thereto][*or* codicil to the last Will and Testament: *or as the case may be*] bearing date [respectively] (*state date of all testamentary documents enclosed*) of me (*full name*) of (*full postal address*)

in which _____ of _____ and _____ of _____ are appointed Executors, which I hereby lodge for deposit in the Principal Registry of the Family Division for safe custody.

I undertake to notify the above named Executors of their appointment and of the deposit of the will [and] [codicil].

I certify that the date of my birth was the _____ 19 _____
Dated this _____ day of _____ 19 _____
Testator

Signed in the presence of

FORM 2

CERTIFICATE OF DEPOSIT OF WILL

In the High Court of Justice
Family Division (Probate)

It is hereby certified that the will [codicil]

of _____
of _____
bearing date [respectively] _____
in which _____
of _____
[and] _____
of _____

are appointed executors has been [deposited in the Principal Registry] [lodged at the Registry for deposit in the Principal Registry] of the Family Division, Somerset House, Strand London WC2R 1LP for safe custody pursuant to section 172 of the Supreme Court of Judicature (Consolidation) Act 1925.

Except by leave of a registrar of the Principal Registry the will may not be given out during the lifetime of the testator.

Dated this _____ day of _____ 19 _____

Senior Registrar

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations provide, pursuant to section 172 of the Supreme Court of Judicature (Consolidation) Act 1925, that the Principal Registry of the Family Division shall be the depository for the safe custody of testamentary documents of living persons under the control of the High Court, and regulate the procedure for the lodgment and withdrawal of such documents.

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