

# Wills Act 1837 (UK)

Imperial Act 26  
Date of assent 3 July 1837

## Contents

	Page
Title	2
1 Interpretation	2
3 All property may be disposed of by will	3
6 Devolution of estates <i>pur autre vie</i> not disposed of by will	4
9 Formal requirements of will	5
10 Execution and validity of appointments by will	5
13 Publication of will not requisite	6
14 Will not to be void on account of incompetency of attesting witness	6
15 Gifts to an attesting witness, or his or her wife, husband, civil union partner, or de facto partner, to be void	6
16 Creditor attesting a will charging estate with debts to be admitted a witness	7
17 Executor to be admitted a witness	7
18 Revocation of wills by marriage	7
19 No will to be revoked by presumption from altered circumstances	8
20 Manner of revocation of will	8
21 Alteration in a will after execution, except in certain cases, to have no effect unless executed as a will	8
22 Revoked will not to be revived otherwise than by re-execution or a codicil	8
23 Subsequent conveyance or other act not to prevent operation of will	9
24 Wills to be construed to speak from death of testator	9
25 Residuary devises to include estates comprised in lapsed and void devises	9
26 General devise of land to include copyhold and leasehold as well as freehold land	9
27 General gift of realty or personalty to include property over which testator has a general power of appointment	10

---

### Note

This Act is administered as to New Zealand by the Ministry of Justice

28	Devise of real estate without any words of limitation to pass the fee	10
29	Construction of words “die without issue” or “die without leaving issue”, etc	10
30	Devise of realty to trustees or executors to pass the fee, etc	11
31	Trustees under an unlimited devise to take the fee in certain cases	11
33	Gifts to children or other issue who leave issue living at the testator’s death not to lapse	12
35	Act not to extend to Scotland	12

## An Act for the amendment of the laws with respect to wills

### 1 Interpretation

The words and expressions hereinafter 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, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of the Tenures Abolition Act 1660, or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled “An Act for taking away the Court of Wards and Liveries, and tenures *in capite* and by knight’s service”, and to any other testamentary disposition; and

The words **real estate** shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, 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.

Will: The reference to the Tenures Abolition Act 1660, being the Short Title given by section 5 Statute Law Revision Act 1948 (UK), has been substituted for a reference to an Act passed in the twelfth year of the reign of King Charles the Second, intituled “An Act for taking away the Court of Wards and Liveries, and tenures *in capite* and by knight’s service, and purveyance, and for settling a revenue upon His Majesty in lieu thereof”.

The Short Title of the Irish Act of 14 and 15 Charles II is the Tenures Abolition Act (Ireland) 1662.

The Tenures Abolition Act 1660 was repealed as part of the law of New Zealand by section 35(2) of the Guardianship Act 1968.

As to the power of the mother and father of a child to appoint testamentary guardians, see section 7 Guardianship Act 1968.

2

Section 2 was repealed as part of the law of New Zealand by section 15 Wills Amendment Act 1955.

### 3 **All property may be disposed of by will**

It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter 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 upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in

consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made; and also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also 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.

4

Section 4 was repealed as part of the law of New Zealand by section 15 Wills Amendment Act 1955.

5

Section 5 was repealed as part of the law of New Zealand by section 15 Wills Amendment Act 1955.

- 6 Devolution of estates *pur autre vie* not disposed of by will**  
If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary

freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

7

*Declared not to be in force in New Zealand as from 1 January 1970 by s 4 of the Wills Amendment Act 1969.*

8

Section 8 was repealed as part of the law of New Zealand by section 15 Wills Amendment Act 1955.

**9 Formal requirements of will**

No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; (that is to say), it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

**10 Execution and validity of appointments by will**

No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore 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

Section 11 was repealed as part of the law of New Zealand by section 11(1) Wills Amendment Act 1955.

**12**

*Declared not to be in force in New Zealand by s 11(2) of the Wills Amendment Act 1955.*

**13 Publication of will not requisite**

Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

**14 Will not to be void on account of incompetency of attesting witness**

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, or his or her wife, husband, civil union partner, or de facto partner, to be void**

If any person shall attest the execution of any will to whom or to whose wife, husband, civil union partner, or de facto partner 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, husband, civil union partner, or de facto partner of such person, or any person claiming under such person or wife, husband, civil union partner, or de facto partner, 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.

See section 3(a) Wills Amendment Act 2005 (2005 No 25), which states that, as from 26 April 2005, for the purposes of the law of New Zealand, the heading of section 15 of this Act must be read as if, instead of the words “wife or husband”, there were the words “wife, husband, civil union partner, or de facto partner”. The current text of the heading of section 15 has been editorially amended as if it had actually been amended by section 3(a) of that Act, see above. See section 8 of that Act as to the savings provision.

See section 3(b) Wills Amendment Act 2005 (2005 No 25), which states that, as from 26 April 2005, for the purposes of the law of New Zealand, section 15 of this Act must be read as if, instead of the words “wife or husband”, wherever they appear, there were the words “wife, husband, civil union partner, or de facto partner”. The current text of section 15 has been editorially amended as if it had actually been amended by section 3(b) of that Act, see above. *See* section 8 of that Act as to the savings provision.

**16 Creditor attesting a will charging estate with debts to be admitted a witness**

In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife, husband, civil union partner, or de facto 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.

See section 4 Wills Amendment Act 2005 (2005 No 25), which states that, as from 26 April 2005, for the purposes of the law of New Zealand, section 16 of this Act must be read as if, instead of the words “wife or husband”, there were the words “wife, husband, civil union partner, or de facto partner”. The current text of section 16 has been editorially amended as if it had actually been amended by section 4 of that Act, see above. *See* section 8 of that Act as to the savings provision.

**17 Executor to be admitted a witness**

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.

**18 Revocation of wills by marriage**

Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).

The Statute of Distributions (22 and 23 Chas II, ch 10) was repealed as part of the law of New Zealand by section 12(2) Administration Amendment Act 1944.

**19 No will to be revoked by presumption from altered circumstances**

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

**20 Manner of revocation of will**

No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore 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 Alteration in a will after execution, except in certain cases, to have no effect unless executed as a will**

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 hereinbefore 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 Revoked will not to be revived otherwise than by re-execution or a codicil**

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 hereinbefore 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 Subsequent conveyance or other act not to prevent operation of will**

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 of 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 Wills to be construed to speak from death of testator**

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.

**25 Residuary devises to include estates comprised in lapsed and void devises**

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 General devise of land to include copyhold and leasehold as well as freehold land**

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 customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and 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.

**27 General gift of realty or personalty to include property over which testator has a general power of appointment**

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 Devise of real estate without any words of limitation to pass the fee**

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 Construction of words “die without issue” or “die without leaving issue”, etc**

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 Devise of realty to trustees or executors to pass the fee, etc**

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 to take the fee in certain cases**

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.

32

Section 32 was repealed as part of the law of New Zealand by section 15 of the Wills Amendment Act 1955.

**33 Gifts to children or other issue who leave issue living at the testator's death not to lapse**

Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

34

**35 Act not to extend to Scotland**

This Act shall not extend to Scotland.

36

Section 36 was repealed as part of the law of New Zealand by section 15 of the Wills Amendment Act 1955.