Guidance

For use in England, Wales and Northern Ireland only

Comprehensive will for an unmarried person

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References to marriage include a same-sex marriage.

This will can be used by someone who:

- is not currently married or in a civil partnership because their spouse or civil partner has died;
- is not currently married or in a civil partnership because their marriage or civil partnership ended in divorce or dissolution; or

- has never been married or in a civil partnership.

In any of these cases, you can use this will whether or not you have a current partner that you are not married to or in a civil partnership with, and whether or not you have any children.

It allows you to make as many gifts of money or specific items you like. You will be able to leave the remainder of your estate after making gifts (i.e. the residuary estate) to as many people as you like, either in equal shares or in varying percentages. You can also decide how you want to leave your residuary estate and, where appropriate, make provisions for the care of pets and appoint guardians for your children.

This will incorporates the standard administrative provisions developed by the Society of Trust and Estate Practitioners (STEP).

Glossary of terms

Beneficiary

A person or organisation who inherits something as a result of your will.

Domicile

A legal term, connecting an individual to a territory that has a distinct system of law. A person will always have a domicile. Usually, a person is domiciled in the country in which they have their permanent home or intend to settle, but if a person has no permanent home or more than one permanent home, the law will determine where that person's domicile is. A person cannot be without a domicile or have more than one at a time.

Every person receives a 'domicile of origin' at birth. The domicile of origin is determined by the domicile, at the time of a child's birth, of one or both of the child's parents.

A person may change their existing domicile and acquire for themselves a 'domicile of choice', as long as they are 16 or over, by living in a new country with the intention of making it their sole or principal permanent home.

The domicile of a child under 16 may, in certain circumstances, change if there is a change in the domicile of one of the child's parents. If that happens, the new domicile that the child acquires is called a domicile of dependence.

The domicile of origin cannot be taken away, but it can go into suspension if a domicile of dependence or choice is acquired. The domicile of origin will revive if their domicile of dependence ceases or if they abandon their domicile of choice.

Estate

The property, assets, possessions and wealth of a person who is making the will.

Execution (of the will)

Getting the will properly signed by the person making the will in the presence of two witnesses.

Executor

A person or organisation that establishes the authenticity of a will, and then manages and administers the estate. This involves, for example, closing bank accounts, cashing life policies and transferring assets.

Habitual residence

This is not always determined by a simple calculation of the time spent in a particular place. Nor does it necessarily mean your permanent home. Very broadly, it means the place to which you have the closest and most stable connection at the time the question of your habitual residence is being decided.

It may be necessary to determine your habitual residence at the time of your death for the purposes of the EU Succession Regulation. This is a question of fact. To determine habitual residence, an overall assessment will be made of the circumstances of your life during the years preceding your death and at the time of your death, taking into account all relevant facts. In particular, the assessment will take into account the duration and regularity of your presence in a particular place, and the conditions and reasons for that presence.

Determining habitual residence may be complex, for example:

- Where the deceased had moved abroad to work, for professional or economic reasons, sometimes for a long time, but had maintained a close and stable connection with his state of origin. In such cases the deceased could, depending on the circumstances of the case, be considered still to be habitually resident in his state of origin in which the centre of interests of his family and his social life was located.
- Where the deceased lived in several states alternately or travelled from one state to another without settling permanently in either of them. If the deceased was a national of one of those states, or had all his main assets there, his nationality or the location of those assets could be a special factor in the overall assessment of the facts.

Intestate

Intestate means dying without making a will. It is also possible to have a partial intestacy, where the will disposes of some, but not all, of the deceased's assets.

Intestacy rules

When there is an intestacy, the assets of the deceased are distributed according to intestacy rules. These rules set out who is entitled to inherit from your estate if you don't leave a valid will, the order in which they

are entitled to inherit and also how much they are entitled to inherit. In the case of a partial intestacy, any assets of the deceased that are not disposed of by the will will be distributed in accordance with the intestacy rules.

For example, if you die without a will leaving a spouse or civil partner but no children or grandchildren, your estate will pass to your partner. However, if you die without a will leaving a spouse or civil partner **and** children or grandchildren, your estate would be divided up as follows:

- Your partner would receive 'personal chattels' (all personal items except money, securities for money, property used solely or mainly for business purposes and property held solely as an investment).
- Your partner would also receive a fixed sum of up to £250,000, depending on the size of the estate.
- Your partner would then receive half of any remaining part of your estate.
- Your children/grandchildren would receive the other half on trust.

Legacies

Gifts of money or specific items (e.g. car, stamp collection, shares in Barclays Bank, diamond necklace) made in a will.

Residuary estate

The remainder of a person’s estate after any gifts of money or specific items they have already listed in their will, are made.

Revoking (a will)

Cancelling a will. This is often done by creating a new will in its place with a revocation clause. If there are any wills made in foreign countries, it should also be mentioned whether or not these are also revoked.

Testator

The person making the will.

Trust corporation

A company or organisation that specialises in administering estates under, or trusts created by, wills.

Trustee

A person who is appointed to manage any trusts created in your will. In this will, your trustees will be whomever you appoint as your executors. For more information, see below under Trusts.

Property ownership

In this will you will be asked whether you own any land or property built on land, and if you do, how this land or property is owned. Ownership in this context is not necessarily the same as being named on the title deeds. You will be an owner of a house or flat if you have the right to a share in the proceeds of any sale of the house/flat or to a share of any income (e.g. rental income) from it.

It is important to know how your property is owned to determine what percentage of this land or property can be included as part of your estate. Your options are:

- Jointly
- Tenants in common
- Solely owned

Further information about these options is provided below under the heading 'Types of ownership', but, in summary, if the property is owned jointly then it is not included in your estate as, upon your death, it will automatically pass to the other joint owner. If you own the property with another person as tenants in common, your share of the property will form part of your estate. If you own a property solely, then the whole value of that property will form part of your estate.

Determining how a property is owned is not always straightforward. The notes below represent only a simplified introduction to the subject, so if you are unsure about the position in your particular case, you should seek legal advice.

Types of ownership

A person who has the right to receive all the sale proceeds of, or income from, a property will be the sole owner of that property.

If you own a property jointly with another person, both of you have the right to receive all the sale proceeds of, or income from, that property. Neither of you has a distinct share; each of you owns the whole of the property. On your death, the property does not form part of your estate and is not dealt with by your will because the other joint owner is already regarded as owning the whole of the property.

If you own a property with another person as tenants in common, each of you owns a defined share of the property. The other owner has no rights to your share in the property, and you have no rights to their share. Since the other owner is not regarded as already owning your share, your share does form part of your estate and can be dealt with by your will.

How to determine how your property is owned

Determining how your property is owned is considerably easier if the ownership position has been agreed and recorded in writing, for example if you and the other joint owner sign an express declaration of trust. This document is evidence of the share of the property that each of you and the other joint owner owns (presuming it is valid and has not been varied by any subsequent document).

Also, in England and Wales, it is possible to convert property owned jointly to property owned as tenants in common by serving a notice of severance. In Northern Ireland, it is necessary to register a title change in the Land Registry of Northern Ireland or the Registry of Deeds.

In the absence of any written record of how the property is owned, the law makes the following presumptions:

If the property is in your sole name, you will be presumed to be the sole owner of the property. If another person (e.g. your partner if you have one) thinks that presumption is incorrect, it will be up to him or her to prove, first that he/she owns any share of the property at all, and if that is proved, what the nature and extent of that ownership is.

Where a property is held in the names of both you and another person, it is presumed that you own the property jointly. If you think that presumption is incorrect but you do not take any steps during your lifetime to clarify the position, your executors may be left with the responsibility of proving this and establishing what the correct position is.

Shared ownership arrangements

Shared ownership schemes are a way for you to own a share of a property and then rent the part you don't own at a reduced rate.

Under a shared ownership arrangement, you will have a long lease of a property (generally, at least 99 years). The lease will be in your name, but the terms of the lease will state the share that you own and the share that you rent. You have to buy a minimum 25% share in the property. You have the option to buy a bigger share in the property at a later date.

In this document, if you have a shared ownership lease, you should answer 'yes' when you are asked if you own land or property built on land. When calculating the value of your estate, the starting value of what you own will be the value of your share, rather than the value of the whole property. You will then deduct the value of any mortgage that you took out to purchase your share to find the true (net) value of what you own.

There are a number of other government-backed schemes to help homeowners including Help to Buy, NewBuy, shared equity and Right to Buy. These are different from a shared ownership lease in that you are given financial assistance to help you to buy the property, for example in the form of a loan or equity loan that

you have to repay when you sell the property, but you have full ownership of the property. In other words, with shared ownership, you only own a part of the property with an option to buy more. With other schemes, you own all of the property from the start but have to repay a debt or a proportion of its value when you sell it.

In this document, if you bought your property with the assistance of one of these government-backed schemes, you should answer 'yes' when you are asked if you own land or property built on land. When calculating the value of your estate, the starting value of what you own will be the value of the whole property. You will then deduct the value of any mortgage that you took out to purchase the property and the amounts that will have to be repaid on sale under the terms of the government-backed scheme to find the true (net) value of what you own.

Pensions and life assurance policies

Although you can use a will to gift the proceeds of a life assurance policy or pension plan, this is not possible if you have already created a trust of the proceeds in favour of someone else.

For pensions, what we are concerned with here is any amount that is payable to your estate on your death. We are not concerned with any lump sum or pension income that might be payable on retirement. Nor are we concerned with the value of the pension fund. Only the death benefit (if any) is relevant.

You may have created a trust of the proceeds on the suggestion of the person who arranged the policy for you. They may have referred to this as writing the policy in trust for another person. The effect is that the proceeds or other benefits payable under the policy do not form part of your estate on death and are, therefore, not dealt with by your will. Instead, they will be paid direct by the insurer or pension company to the person for whose benefit you created the trust. If you are in any doubt as to who is to receive the proceeds from these items (or, in the case of pensions, whether a sum is payable at all in the event of your death), you should check with the insurer, pension company or broker who arranged the policy.

'Death in service' benefits

Contributory pension schemes often provide that if an employee, who would have received a pension on retirement, dies before reaching retirement age, the pension fund’s trustees will make a lump sum payment (a ‘death in service’ payment). This is a form of insurance. The pension scheme’s rules will indicate to whom the payment is to be made. There is usually provision in the scheme’s rules for the employee to nominate the person or persons to whom he or she would like the payment to be made. Depending upon the pension scheme rules, the employee may or may not ‘own’ the death in service payment. If you are in this position, you should check the position with the pension scheme trustees. If you do own the payment, a nomination may not be effective if it does not comply with the formal requirements for making a will. In these circumstances, it would be preferable not to make a nomination, but, instead, to deal with the matter in this will. If you do not own the payment, what you will usually have instead is the power to direct that the payment (which belongs to the pension scheme) be made to a particular person. The nomination does not have to comply with the formalities for making a will for this purpose.

EU Succession Regulation

This refers to Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

The main purpose of the EU Succession Regulation is to ensure that 'succession' to an estate is dealt with coherently. The intention is that, ideally, the law of only one country or state will apply to the whole estate, wherever it is located.

Succession is not a term that is usually used in the UK. For the purposes of your will, it is concerned with who inherits under it. It doesn't apply to jointly owned property that passes automatically to the other joint owner outside of your will. And it doesn't apply to gifts that you may have made in your lifetime.

The general rule under the EU Succession Regulation is that succession to an estate is governed by the law of the state in which the deceased was habitually resident at the time of death unless, exceptionally, they were manifestly more closely connected with another state. However, a person can override this default position by choosing the law of any state whose nationality they possess, at the time of making the choice or at the time of their death, to govern succession to their estate as a whole.

The law that applies, whether by choice or by default, can be the law of a state that is not a state that is not a party to the EU Succession Regulation.

Note that a choice of law has to relate to succession to the deceased's estate as a whole. This makes it difficult to follow the previously common practice of having separate wills in different jurisdictions dealing with different assets. If you have made, or intend to make, different wills for assets in different jurisdictions, you should make sure that each will includes an express choice of the same law, to avoid conflict and uncertainty.

A choice of law allows a testator to achieve certainty if, for example, there is doubt (or may be doubt in the future) about:

- The testator's habitual residence.
- Whether the testator is manifestly more closely connected with another state.

The EU Succession Regulation applies to all EU member states except the UK, the Republic of Ireland and Denmark, who all opted out. However, the EU Succession Regulation cannot be ignored in these opted-out states if there are assets in a participating EU member state. For example, a French resident and UK national can choose that UK* law applies to their Luxembourg bank account.

* There is no such thing as UK law. The applicable law is the law of the country within the UK to which the deceased had the closest connection.

There is an option in this will for a UK national, habitually resident in a participating EU member state, to choose that UK law shall apply.

Similarly, there is an option in this will for a national of a participating EU member state, habitually resident in the UK, to choose to apply the law of their nationality. Note that the chosen law governs the 'substantive validity' of the act by which the choice is made. Substantive validity concerns whether a testator understood and consented to what he or she was doing, and includes issues such as testamentary capacity, undue influence and fraud. If you choose, e.g. French law, in this will, you will need to be satisfied, and take advice from an appropriately qualified legal professional if necessary, that this will is substantively valid under French law.

Another example raises a different issue. In this case, the deceased is a UK national, who died habitually resident in the UK. Within the UK, the deceased was most closely connected to England. They owned a holiday home in France. The deceased chose to apply English law.

French domestic law would normally apply forced heirship rules (i.e. rules that specify that certain people must benefit from an estate, and to what extent they must benefit, whatever the deceased's wishes may be), but the deceased's choice of law means that English domestic law determines who is entitled to the French property on their death. Therefore, the French court will apply English domestic law and not the forced heirship rules in French domestic law.

But, as the UK is not bound by the EU Succession Regulation, the English court will continue to apply their normal rules. Under those rules, succession to the property is governed by French law. It is not certain, but in this particular situation, the English court is likely to follow what the French court would do and apply English domestic law.

There is an option in this will for a UK national, habitually resident in the UK, to choose that UK shall apply.

This will does not provide options to choose to apply the law of a particular country or state in any other circumstances. There are too many possible scenarios to make a helpful summary of the relevant considerations when making a choice to be provided. Advice should be sought from an appropriately qualified legal professional.

A choice of law may be an express choice, or an implied choice that is demonstrated by the terms of a will. For example, a choice may be implied if the will refers to specific provisions of the law of the state of the testator's nationality, or otherwise mentions that law. In this will, if a choice of law is available but you do not make that choice, a clause will be inserted in this will to prevent any choice of law being implied.

A choice of law under the EU Succession Regulation does not determine which tax law applies, but tax consequences will flow from the distribution of the estate in accordance with the chosen law. For example, a foreign jurisdiction may tax assets that pass to the testator's children at a lower rate than assets that pass to other relatives or to non-relatives. This may lead to a higher tax burden if forced heirship provisions are displaced by the chosen law.

This is a very complicated subject, and this guidance provides merely a very brief overview.

In summary:

No issue arises if you have no assets outside the UK.

If you have assets in a participating EU member state, you can use this will to deal with your UK assets. You may also be able to use it to deal with your EU assets. This will depend on your nationality and on where you are habitually resident. These will determine which law will apply to control who will inherit your estate. You may not always have a choice, but if you are a UK national or a national of an EU member state (excluding the Republic of Ireland and Denmark), you will be able to use this will to choose the law of your nationality. However, we recommend that you get legal advice on what choice to make (if any). If you have a different nationality, you will not be able to use this will to choose the law of that nationality; in this case, even though you can use this will to deal with just your UK assets, you should get advice about whether you should use this will at all, particularly if you also have assets outside the EU.

If you have non-UK assets outside a participating EU member state, you can use this will to deal with your UK assets. However, we recommend that you get legal advice about whether it would be possible, and if so preferable, for this will to deal with all your assets, including your non-UK assets or to make a separate will in the country where your non-UK assets are located to deal with those assets or one will in that country to deal with all your assets, including your UK assets.

Executors and trustees

In this will, your executors will also (where applicable) be your initial trustees.

Broadly speaking, the function of an executor is to wind up a deceased’s estate - i.e. to collect in and sell (or otherwise deal with) the deceased’s property, pay off the debts and liabilities of the deceased and the expenses of the estate (including tax) and to distribute the remainder of the estate in accordance with the terms of the will. An executor's duty is to the interests of the estate as a whole.

The function of trustee is to hold property on trust and their duty is to the beneficiaries of the trust. Trustees are obliged to invest a trust fund so as to produce both a reasonable amount of income and to protect the capital values of the trust fund. In most cases, this is a sensible rule - it would generally be wrong, for example, to invest the entire trust fund in a non-income producing asset (such as an insurance policy) or in a wasting asset (such as a short lease).

However, there are exceptions to this rule. A beneficiary entitled to income may, for example, be in a nursing home so that any income he/she received would be taken to pay the cost of the care. In this case, it might be useful for the trustees to be able to ignore the need to generate income and to focus on capital growth. Equally, a beneficiary entitled to income may have a very great need of income for his/her living expenses, and so it may be more appropriate for the focus to be on income generation than on protecting the capital value of the fund. In your will, the trustees are not required to hold the balance evenly between income

generation and capital protection/growth. If you are not sure that you wish to take this approach, you should seek legal advice.

The circumstances in which a trust may be created by this will are described below (see Trusts).

Appointing executors

You can appoint any of the following as executors and trustees:

- Your partner (if you have one) on their own
- Your partner with a firm of solicitors
- Your partner with a trust corporation
- Your partner with other chosen people
- Your partner with a firm of solicitors and other chosen people
- Your partner with a trust corporation and other chosen people
- Chosen people only
- Chosen people with a firm of solicitors
- Chosen people with a trust corporation
- A firm of solicitors only
- A trust corporation only

While it is possible to appoint your partner or another named individual to act on their own, it is important to bear in mind that, even where the estate is not financially complex, the administration of an estate brings with it a significant responsibility. It is often sensible to ensure that that responsibility is shared. The appointment of a partner with a professional executor/trustee, such as a firm of solicitors or a trust corporation, is a commonly preferred option and, if your financial affairs are complex, such a course is strongly recommended.

The maximum number of executors that you can appoint at any one time is four. The appointment of executors who are domiciled or resident abroad is not recommended.

In some cases, you may need to appoint at least two executors. If, for example, you use this will to give your partner a life interest in your residuary estate, this will create a trust and your executors will be the trustees of that trust. As trustees, this will provides that they can only exercise certain important powers if there are at least two of them (In Northern Ireland, you must have a minimum of two executors/trustees if any trust is created by will). Or, if you own land or property built on land, your executors will also be trustees of the land and there must be at least two trustees (or a trust corporation) in order for such property to be sold effectively after your death.

Substitute executors

You can also appoint substitute executors, in case any of your original executors later become unable or unwilling to act (e.g. because they have died). This is a sensible precaution to safeguard against there being nobody, or an insufficient number of people, to act as an executor.

There is generally less need to appoint a substitute executor if you have appointed a professional executor (e.g. a firm of solicitors or a trust corporation), as they are able to act effectively on their own if necessary. However, it is not impossible for such firms or organisations to go out of business or to be unwilling to accept an appointment.

Claims against an estate

Under inheritance legislation, it is possible for certain individuals to make a claim for provision out of a deceased's estate where reasonable financial provision has not been made for them in the will.

Who may make a claim?

- The spouse or civil partner of the deceased
- The former spouse or civil partner of the deceased, but not if they have remarried or entered into a new civil partnership
- A child of the deceased
- Any person who was treated by the deceased as a child of the family in relation to any marriage or civil partnership of the deceased
- Any person who was treated by the deceased as a child of the family in relation to any family in which the deceased stood in the role of a parent (this includes a family where the deceased and the claimant were the only members)
- Any person who lived in the same household as the deceased for the two years up to the death of the deceased as if they were the deceased's spouse or civil partner
- Any other person who, immediately before the death of the deceased, was being maintained, either wholly or partly, by the deceased. 'Maintained' means if the deceased made a substantial contribution to that person's reasonable needs (but not as part of a commercial arrangement).

Basis of a claim

A claim for provision cannot succeed unless the court is satisfied that the will does not make reasonable financial provision for the person making the claim. What financial provision is reasonable depends upon who is making the claim.

There are two standards:

1 A spouse or civil partner may seek financial provision that is reasonable in all the circumstances, whether or not it is needed for his or her maintenance

2 Other persons making a claim may seek financial provision that is reasonable in all the circumstances for their maintenance

The court does not have to decide whether the deceased acted reasonably or unreasonably. It is only concerned with whether the will makes reasonable financial provision when measured against the relevant one of the two standards above.

The court’s discretion

Even if the court is of the opinion that the will does not make reasonable financial provision for the person making the claim, that does not mean that the claim will succeed. The court has a discretion as to whether or not, and if so how, to order provision to be made, taking into account a range of factors.

The court will often be required to weigh up competing interests, for example, of the person or persons making the claim and of those that are provided for in the will. For further information, seek legal advice.

Inheritance Tax (IHT)

Below is a brief introduction to this topic - if your financial affairs are complex, you should seek legal advice for more detailed information that is applicable to your individual circumstances.

Inheritance Tax – what is it?

Inheritance Tax (IHT) is the tax that is payable on your estate, less any outstanding liabilities when you die. The current rate is 40%.

The extent to which an individual is charged to IHT depends on their domicile status:

- An individual who is domiciled in the UK is subject to IHT on their worldwide estate.
- An individual who is not domiciled in the UK is subject to IHT only on their UK estate.

When is IHT not payable?

Broadly, assets that pass to a qualifying charity/UK national body are exempt from IHT.

A qualifying charity is one that is established in the European Union (or other specified country) which:

- Would qualify as a charity under the law of England and Wales
- Is regulated as a charity in the country of establishment (if appropriate) and
- Has managers who are fit and proper persons to be managers of the charity

A reduced rate of IHT applies where 10% or more of a deceased’s net estate (after deducting IHT exemptions, reliefs and the nil rate band) is left to charity. In those cases the current 40% rate is reduced to 36%. This rate applies where death occurred on or after 6 April 2012.

Other qualifying bodies include UK national organisations such as the National Trust and National Gallery, political parties, housing associations, maintenance funds for historic buildings, and employee trusts.

Assets that pass to a qualifying charity/body are exempt from IHT if the legacy passes directly and unconditionally to the organisation. It must not pass into a trust for the benefit of that organisation.

Nil-rate bands

General nil-rate band

In addition to the situations above where gifts are tax-free, in your will you are allowed to make gifts up to a certain value to anyone you wish, free of tax. The allowed value, known as the general nil-rate band, is currently (2018/19 tax year) £325,000 and will remain frozen at this level until the end of 2020/21 tax year.

This general nil-rate band is not applied to your estate until after any gifts to UK charities, UK political parties and your burial expenses, together with other allowable deductions e.g. mortgages, have been deducted from the value of your estate.

If the deceased had made any relevant gifts (or other transfers of assets) during their lifetime, these may use up (and, therefore, reduce) the deceased's available general nil-rate band.

A lifetime gift or transfer will be relevant for IHT if, having made the gift or transfer, the value of the deceased's estate has gone down. So this will include straightforward cash gifts or a gift of a particular asset. Other transactions such as the sale of a house for less than its full market value, or a gift of part of a shareholding that results in the deceased losing control of a company will also be relevant. However, some lifetime gifts can be ignored for IHT purposes if they were made more than 7 years before the death or covered by an exemption (see Valuation of estates).

How do I use the general nil-rate band?

If your estate is valued at more than the general nil-rate band, you need to think about whether you wish to arrange your affairs so that your estate is not liable for IHT on the excess and, if you do, how you might achieve this. This involves disposing of part of your estate without reducing your available general nil-rate band.

The options here are to make exempt gifts or to make non-exempt gifts 'subject to tax' (where the recipients will be responsible for paying the IHT on their gift, leaving your general nil-rate band intact), as opposed to 'free of tax' (where your estate is responsible for paying the IHT on the gift) or both.

In either case, if your primary goal is to provide for your partner (if you have one), the result may be to reduce the amount that is available to your partner and leave him or her inadequately provided for. If this is a concern, you might wish to provide for gifts that are made only in the event that your partner dies before you.

The point is that tax-planning is never the only consideration. The most important issue is to decide what you want to do in terms of the provision you wish to make and for whom. Then you can think what the tax and other implications of your plan are likely to be and decide whether these are acceptable to you or whether you wish to adjust your plan at all.

If you make a gift 'subject to tax', you will also have to think about how the person receiving the gift will be able to pay the tax on it. With gifts of money which are subject to tax, the recipient would simply have the tax of 40% deducted from their payment, but specific items could present more of a problem. If you made a gift subject to tax of, for example, your diamond ring, then the recipient would have to find cash to pay the tax on the gift. If your ring was valued at £2,000 and your general nil-rate band had been fully utilised by other gifts, the tax at 40% would be £800. If the recipient cannot afford to pay the tax bill, then the gift would have to be sold, which may defeat the purpose of leaving it.

What if I don’t use the general nil-rate band?

While the transfer of general nil-rate bands between spouses and civil partners is permitted, this is not the case between unmarried couples. Unfortunately, therefore, if you do not use any part of your general nil-rate band, the benefit of the unused part will be lost.

Estates worth less than the general nil-rate band

People with estates valued at less than the general nil-rate band will not have to give much consideration to IHT issues, although if you think your estate is close to the £325,000 threshold, or will soon exceed it, it is best to proceed as if it was over and plan your tax position accordingly.

People who have life policies that will be paid to their estate when they die should take into account how these funds would alter their tax position – for example, if it will put them over the general nil-rate band.

Residence nil-rate band

The residence nil-rate band ('RNRB') is in addition to the general nil-rate band. It applies so that less IHT may be paid on an estate when the estate includes a 'qualifying residential interest' and that qualifying residential interest is inherited by a qualifying beneficiary.

What is a qualifying residential interest?

A qualifying residential interest is a house or a flat (or share of a house or flat) owned by the deceased that forms part of their estate, which they lived in at some stage before their death. They did not have to be living in the house or flat when they died.

If the estate includes more than one house or flat that the deceased has lived in, the executors will have to nominate which will be the qualifying residential interest.

If the deceased was domiciled in the UK, it doesn't matter where the house or flat is located.

Where the deceased has sold their qualifying residential interest and downsized to a less valuable property, or even if they no longer own a qualifying residential interest (or any share in one), their estate may be entitled to an additional amount of RNRB (a 'downsizing addition') if the deceased had a qualifying residential interest which they sold on or after 8 July 2015 and at least part of their estate is inherited by a qualifying beneficiary. Only one disposal can be taken into account for the downsizing addition; if there has been more than one, the deceased's executors can choose which one to use.

The amount of the downsizing addition will generally be equal to the RNRB that's been lost because the former qualifying residential interest is no longer in the deceased's estate, but it can't exceed the maximum amount of RNRB that would have been available if the disposal or downsizing hadn't happened. See How is the downsizing addition calculated? for an example of how this works.

A claim has to be made for a downsizing addition by the deceased's executors. This has to be done within 2 years of the end of the month in which the deceased died.

Who is a qualifying beneficiary?

For the RNRB to be available, the qualifying residential interest must be inherited by any one or more of the following:

- a 'lineal descendant';
- someone who is a spouse or civil partner of a living lineal descendant at the time of the deceased's death; or
- the lineal descendant's surviving spouse or civil partner, if the lineal descendant dies before the deceased. (But only if the survivor doesn't remarry or form another civil partnership before the deceased's death.)

A lineal descendant is a child, grandchild, their child and so on. For RNRB purposes, lineal descendants also include anyone who was, at any time:

- a step-child of the deceased;
- an adopted child of the deceased;
- a foster child of the deceased;

- a child for whom the deceased was a guardian or special guardian provided that the appointment took effect when the child was under 18; or
- a lineal descendant of any of the above.

What does inherited mean?

The qualifying residential interest must become part of the qualifying beneficiary's estate for IHT purposes as a result of the deceased's death. The RNRB is not available for gifts by the deceased while they were alive. The general nil-rate band is, in contrast, available for such lifetime gifts.

Therefore, a qualifying beneficiary inherits the qualifying residential interest if it is given to them outright on the deceased's death as it is then part of the beneficiary's estate for all purposes or if it is given on the deceased's death to a kind of trust for their benefit under which it is then treated as part of the beneficiary's estate for IHT purposes (e.g. an IPDI trust) even though it is not part of the beneficiary's estate for other purposes.

A qualifying beneficiary will not inherit the qualifying residential interest for RNRB purposes if your will has a condition that they have to reach a certain age before inheriting.

A gift of the qualifying residential interest to a discretionary trust is not effective for RNRB purposes.

How is the RNRB calculated?

The table below shows the basic RNRB levels that the government has announced (which can be added to the general nil-rate band to increase the amount of assets in the deceased's estate that will be taxed at 0%).

Tax year	**RNRB**
2017/18	£100,000
2018/19	£125,000
2019/20	£150,000
2020/21	£175,000

For later years, these levels will increase in line with inflation (based on the Consumer Prices Index).

This 'default allowance' will be adjusted if the value of the deceased's estate (total assets minus liabilities, but not making any deduction for assets for which, e.g., the spouse/civil partner exemption or business property relief/agricultural property relief are available) is more than £2 million. For every £2 by which the value of the deceased's estate exceeds £2 million, the default allowance is reduced by £1. The resulting amount is the 'adjusted allowance'. If the deceased dies in the tax year 2018/19 and their estate is worth more than £2.25 million, the default allowance of £125,000 is withdrawn completely and, therefore, there will be no available RNRB.

The amount of the RNRB that is available to the deceased's estate is either the adjusted allowance or, if this is lower, the value of the qualifying residential interest that is inherited by qualifying beneficiaries.

The amount of the available RNRB is usually deducted from the value of the deceased's estate on death before the amount of the general nil-rate band. Except that, if the deceased made lifetime gifts on which IHT would otherwise be payable, the general nil-rate band is applied against those first, then the RNRB applied against the deceased's estate on death and then finally, if there is any balance remaining of the general nil-rate band that is applied against the value of the estate on death as reduced by the RNRB.

How is the downsizing addition calculated?

There are 5 steps:

1. Work out the maximum RNRB available when the disposal took place. Use the figures in the above table or, if the disposal occurred before 6 April 2017, the figure is £100,000.
2. Divide the value of the former qualifying residential interest at the date of disposal by the figure in step 1 and multiply by 100 to get a percentage. If the result is a percentage higher than 100%, limit the percentage you use to 100% (this will happen if the value of the former qualifying residential interest is more than the figure in step 1).
3. If the deceased downsized to a less valuable property, so that there is a current qualifying residential interest in the estate on death, work out the percentage of the value of that qualifying residential interest to the deceased's default or adjusted allowance (again, limit to 100% if it would otherwise be higher). If the deceased disposed of their former qualifying residential interest and there is no current qualifying residential interest in the estate on death, the percentage to use is 0%.
4. Deduct the percentage in step 3 from the percentage in step 2. If this results in zero or a negative figure, there's no loss of RNRB and no downsizing addition will be available.
5. Multiply the deceased's default or adjusted allowance by the percentage from step 4 to give the amount of the lost RNRB. This represents the maximum possible downsizing addition, but the actual downsizing addition that is available will depend on the value of the assets other than any current qualifying residential interest that are left to qualifying beneficiaries.

Transfer of unused RNRB

Unused RNRB is transferable to a spouse/civil partner in much the same way as the general nil-rate band is, but, as with the transfer of general nil-rate bands, the transfer of unused RNRB is not permitted between unmarried couples.

HMRC guidance and case studies

For further information, see RNRB guidance and RNRB case studies.

The RNRB and this document

You will not be able to take advantage of the RNRB if:

- the value of your estate is less than the general nil-rate band, as there will be no IHT to pay on your estate in any case. If, after you have made your will, the value of your estate increases, you should review your will;
- the value of your estate is £2.25 million or more, as the RNRB will have been fully withdrawn at this level (if the value of your estate is between £2 million and £2.25 million, the RNRB will be reduced). If you are in this position, you should seek advice about whether it would be appropriate to make any arrangements in your lifetime to ensure that, on death, your estate is not too large to qualify for the full RNRB. Subject to that, if, after you have made your will, the value of your estate decreases, you should review your will;
- you do not have a qualifying residential interest or a former qualifying residential interest for which a downsizing addition may be available; or
- you do not have any qualifying beneficiaries.

In this document, you will be able to make gifts of your residuary estate that are intended to benefit from the RNRB. Any outright gift of a share of your residuary estate that includes a qualifying residential interest and which is made to a qualifying beneficiary can benefit from the RNRB (e.g. a gift of your residuary estate to your children).

If the RNRB is potentially available in relation to your estate, you will have to choose whether to make any gift at all that is intended to benefit from the RNRB. The following is to help you to answer this question:

- If you leave everything to your partner rather than choosing to take advantage of the RNRB, there may be more IHT payable on your estate and the benefit of the RNRB will be lost as it cannot be transferred. However, these tax considerations should not be the only consideration. You should not be put off doing what you want to do as long as you are aware of, and are prepared to accept, any tax consequences.
- If your estate would not be chargeable to IHT because of other exemptions or reliefs (e.g. charity exemption), there is no advantage to be gained from trying to use the RNRB.

Valuation of estates

The valuation of your estate is important for Inheritance Tax (IHT) purposes. The actual amount of tax that will be payable (if any) will be based on the current market value of the assets at the date of your death. Obviously, this cannot be known at the time you prepare your will. However, in this will, you can calculate whether tax would be payable based on the present value of your assets. Note, however, that your assets and other circumstances are very likely to change as time passes, which is why it is very important to review your will from time to time. In particular, an increase in the size of your estate may mean that any Residence nil-rate band (RNRB) that might otherwise have been available might be reduced or withdrawn; conversely, any reduction in the size of your estate may mean that RNRB becomes available, whereas previously it was not.

Assets are anything that has a value, such as:

- Money in bank, building society or savings accounts
- Houses and land, including farmland
- Businesses, or business assets, owned by you (or a business partnership of which you were a member)
- Investments such as stocks and shares, including family shares
- Personal belongings, including jewellery, antiques and other collectibles

- Furniture, fixtures and fittings in a house
- Motor vehicles
- Pensions that include a lump sum payment on death (as opposed to an ongoing annuity to a surviving partner)
- Assets in a trust from which you benefited
- Payouts from life insurance policies
- Foreign assets held abroad including foreign bank accounts, property or shares

Although property owned jointly does not form part of your estate (see Property ownership), for tax purposes you are treated as having a share in the property, which must be valued.

Any assets that you gave away in the seven years before you died may also need to be included in the valuation of your estate.

However, you can ignore gifts and transfers that were made more than seven years before the death, except where the deceased kept back some benefit or interest in the assets given away or was entitled to use the assets given away.

You can also ignore gifts that are covered by certain allowable exemptions, as follows:

Small gift exemption

Gifts to the same person in one tax year which do not exceed £250 in total are exempt. This exemption covers gifts at birthdays and other festive occasions.

You cannot use the small gift exemption in conjunction with any other exemption.

Annual exemption

Gifts not exceeding £3,000 in any one tax year are exempt. This can apply to one gift or the total of a number of gifts to which the small gift exemption does not apply. If the gifts made in one year fall short of £3,000, any surplus can be carried forward to the next year (but no further) and can be used once the exemption for that year has been used up in full. But the exemption cannot be carried back to earlier years.

Gifts made out of income

Gifts that are made as part of the deceased's normal expenditure are exempt from Inheritance Tax, provided you can show that they:

- formed part of the deceased's normal expenditure;
- were made out of income; and
- left the deceased with sufficient income to maintain their normal standard of living.

Normal expenditure means that the payments were a regular part of the deceased's expenditure. An example would be where the deceased was making a monthly or other regular payment to someone else. A one-off payment, even if it was out of income, will not be exempt.

Gifts on marriage or civil partnership

If the gift was made

- On or shortly before the marriage or civil partnership ceremony,
- To one or both parties to the marriage or civil partnership, and
- To become fully effective on the marriage or civil partnership taking place

it will be exempt up to the following limits:

- £5,000 if the deceased was a parent or step-parent of one of the parties to the marriage or civil partnership
- £2,500 if the deceased was a grandparent or more remote ancestor of one of the parties to the marriage or civil partnership, or
- £1,000 in any other case.

Other exemptions

The exemptions for transfers to qualifying charities/bodies cannot be deducted for the purpose of determining the chargeable value of gifts to be added to the estate.

In most cases, the value that needs to be included is the value of the gift at the time it was made.

However, if your assets were worth more combined than they were split, and before you died you gave part of them away as a gift, there will be a loss of value from your estate that is more than the simple value of the gift. IHT applies to the loss of value from a person's estate.

In these situations, the value that should be used is the total value of the combined assets minus the value of the asset retained.

If the total value of the lifetime gifts that you made is more than the general nil-rate band, tax will be due on all of those gifts that brought the total over the threshold. Lifetime gifts always use up the general nil-rate band first before the value of any other assets or property that the deceased left on death.

IHT is charged at 40%, but if you die between three and seven years after making a gift, Taper Relief can be applied to the amount of IHT due to reduce the amount payable.

Time between the date the gift was made and the date of death	**Taper relief percentage applied to the tax due**
3 to 4 years	20%
4 to 5 years	40%
5 to 6 years	60%
6 to 7 years	80%

Example

John made a gift of £350,000 on 15 January 2006. He died on 15 April 2009. The general nil-rate band for the year he died was £325,000.

To work out the IHT due:

1 Take away the general nil-rate band from the value of the gift: £350,000 - £325,000 = £25,000. So IHT is due on £25,000.

2 Work out the IHT at the full rate of 40%: £25,000 × 40% = £10,000.

3 The gift was made within three to four years of death. So Taper Relief at 20% is allowed: £10,000 × 20% = £2,000.

4 Take away the Taper Relief from the full tax charge: £10,000 - £2,000 = £8,000.

In this example, Taper Relief reduces the amount of tax payable from £10,000 to £8,000.

When your estate is valued, your debts and liabilities can be deducted from the total value. This refers to any legally enforceable debts you had when you died, such as household bills and loans. Funeral expenses can also be deducted.

Children and wills

Parents

If a will makes a gift to 'my children', and the will does not name or otherwise identify who those children are, the question arises as to whom the law will treat as being those children. Or, to put it another way, who are the children's parents?

In a will, a step-parent is not automatically a 'parent' of their step-children. A will should make specific provision for step-children in order to be certain that they will be covered by it. A step-child is, however, a qualifying beneficiary for Residence nil-rate band (RNRB) purposes.

But otherwise, it is an over-simplification, and not always accurate, to suggest that a child's parents are its birth parents. This ignores the impact of adoptions, assisted reproduction techniques and surrogacy arrangements.

For example, an adopted child is treated as the child of its adoptive parent or parents, rather than of its natural parents (although, for RNRB purposes, an adopted child can be a qualifying beneficiary in relation to both their adoptive and natural parents). However, if a child is entitled to a contingent interest under the will of a parent (Parent A) who dies and the child is adopted by someone else after the death of Parent A, that child will not lose their interest under the will of Parent A because of the later adoption.

A civil partner or same-sex spouse can generally only become the second parent of their partner or spouse's child by adopting the child, but where children are born as a result of fertility treatment or surrogacy, special rules apply (see Fertility treatment and Surrogacy). Where these rules about fertility treatment and surrogacy apply, the child is not treated as the child of any other parent.

Where these rules do not apply:

- The woman who carried the child is generally treated as the child's mother (the position is not clear if another woman donated the egg).
- The only individual who can be treated as the child's second parent is the genetic father of the child.

The rules about fertility treatment and surrogacy do not apply if the child has been adopted.

Fertility treatment

The following rules apply if the fertility treatment is or was received on or after 6 April 2009. If the treatment was received before this date, different rules apply and legal advice should be sought.

The rules apply:

- to fertility treatment consisting of the placing in a woman of embryos or of sperm and eggs, or her artificial insemination; and
- where a potential 'father' mentioned below is not the child's genetic father.

The woman who carries the child is treated as the child's mother.

If, at the time of the treatment, the mother is married to a man, her husband is treated as the child's father unless he did not consent to the treatment.

If, at the time of the treatment, the mother is a civil partner or married to a woman, her civil partner or wife is treated as the child's second parent unless the civil partner or wife did not consent to the treatment.

If, at the time of the treatment, the mother is unmarried and not a civil partner (or, if married or in a civil partnership, her spouse or civil partner is not treated as the second parent), her partner must meet agreed fatherhood conditions (in the case of a male partner) or agreed female parenthood conditions (in the case of a female partner) to be treated as the child's second parent. The essential requirements are that:

- the mother and her partner must both consent in writing; and
- the partners must not be within prohibited degrees of relationship, which exclude close relatives.

Surrogacy

The rules in cases of surrogacy allow specified couples to apply for parental orders, which have largely the same effect as if the couple had adopted the child.

The following rules apply if the parental order is or was made on or after 6 April 2010. If the order was made before this date, different rules apply and legal advice should be sought.

Where a child is born to a surrogate mother, the following individuals can apply for a court order (a parental order) providing for the child to be treated as theirs if they meet certain conditions:

- A married couple, including parties to a same-sex marriage
- Civil partners (male and female)
- Couples who are neither married nor civil partners, provided that they are living as partners in an enduring family relationship and are not within the prohibited degrees of relationship

The conditions that the couple must meet are that:

- At least one of them is the child's genetic parent
- They apply within six months of the birth

- At the time of the application and the making of the order, the child's home is with the applicants and either or both of the applicants is domiciled in the UK, the Channel Islands or the Isle of Man
- At the time of the making of the order, they are both 18 or over
- The surrogate mother and any other person who is a parent of the child (if not one of the individuals making the application) consent freely, unconditionally and with a full understanding of what is involved. The surrogate mother cannot consent within six weeks of the child's birth
- The couple have not given or received any payment except for reasonable expenses

Gifts to minors

If you have given a gift of property to a person under the age of 18, then your executors/trustees may give the property to their parent/guardian.

This creates a risk that the parent/guardian will not apply the property properly for the benefit of the minor or that they will misappropriate the property for their own benefit. The law imposes a duty upon trustees to take reasonable care against this risk.

In your will, this duty is excluded except where your executors/trustees are aware of circumstances that should put them on enquiry. If you are unsure whether this is the approach you wish to take, seek legal advice. Bear in mind that even if you have not left property to a minor in your will, there is a possibility that property you have left will be given to a minor. This is because if one of the persons you have left the property to dies, their entitlement to that property may pass to their children, if you have selected that option in your will.

You will be asked whether you want to give your executors/trustees a discretion to transfer property to a minor when they reach the age of 16.

Guardians

This will allows you to specify up to two guardians (and up to two substitutes) in the event that you die, leaving a child under the age of 18, and the child's other parent is not alive. It is important that you consult with any proposed guardian and obtain their agreement. The appointment of guardians is subject to control by the court, which has the power in specified circumstances to bring any appointment to an end. For this reason, we do not recommend that you appoint any guardian who is domiciled or resident abroad.

Parental responsibility

For birth parents:

A child’s mother automatically has parental responsibility for her child.

A child’s father automatically has parental responsibility where he and the child’s mother were married to each other at the time of the child's birth, or subsequently marry each other.

Where the parents are not married, the father will only have parental responsibility if:

- He was registered as the child’s father on or after 1st December 2003 (15 April 2002 in Northern Ireland)
- He and the child’s mother have entered into a parental responsibility agreement
- The court makes an order conferring parental responsibility

In other cases:

A step-parent (including a civil partner of the parent) may acquire parental responsibility by agreement or court order.

Any person in whose favour a residence order has been made in respect of a child has parental responsibility for that child as long as the order remains in force.

An individual other than a birth parent can acquire parental responsibility for a child if they:

- Adopt the child
- Have a parental order made in their favour
- Become the child's guardian

Parental responsibility may also be conferred or acquired in the case of a child born following assisted reproduction.

Where a child is born by fertility treatment given on or after 6 April 2009, he or she may have two female 'parents'.

The woman who carried the child is treated as the child's mother and has parental responsibility in the same way as any other mother.

The other woman will have parental responsibility automatically if she qualifies as a 'second female parent' (see Fertility treatment).

Contingent gifts

A contingent gift is one that the beneficiary only becomes entitled to if they meet a specified requirement. In this will, there are options to make gifts contingent on the beneficiary reaching a certain age. The gift is not theirs until they reach that age. If the they die before reaching the required age, the gift fails. So, if you make a gift to a child under 18, the gift is not contingent even though they cannot actually receive the gift until they are 18. The gift is theirs immediately, so that if they died before receiving the gift, it would nonetheless form part of their estate. However, if you made a gift to a child subject to them reaching the age of 18 and if they failed to reach that age, the gift would then be dealt with in accordance with the other provisions in your will and would not form part of the child's estate.

This affects the entitlement to interest.

Where a non-contingent (i.e. immediate) gift of a specific item generates interest, the beneficiary is entitled to the interest from the date of the testator's death.

Where a contingent gift of a specific item generates interest, the gift carries with it the right to the interest from the date of the testator's death. So if and when the beneficiary satisfies the contingency, they will also get the interest.

In the case of a non-contingent gift of money, interest is usually payable from the time that the gift is payable, which is deemed to be one year after the testator's death.

In the case of a contingent gift of money, the gift carries interest from the time that it becomes payable, i.e. when the contingency is satisfied.

In the case of a non-contingent residuary gift, the beneficiary is entitled to the interest accruing on the gift from the date of the testator's death.

In the case of a contingent residuary gift, the gift carries with it the right to the interest from the date of the testator's death, so that if and when the beneficiary satisfies the contingency, they will also get the interest.

Residuary estate

The residuary estate consists of everything else in your estate other than what you have previously specified to be given away (i.e. as gifts of money or specific items). In this will you can give your residuary estate to your partner (if you have one), your children and any other people you name (which may include UK charities or UK political parties).

If you are giving your residuary estate to your partner, you have two options:

- Making the gift absolutely enables your partner to deal with the capital and income as he or she wishes.

- Making the gift for their life (a life interest), will mean that a trust will be created, described further below under Trusts.

There may be good reasons why you may wish to give a surviving partner a life interest rather than an absolute interest. Your partner might marry or enter into a civil partnership, form attachments to stepchildren or have more children of his or her own with a new partner. In all of these cases, if your partner has an absolute interest, the overall result could be that your children would not benefit in the manner you intended. This is because your partner might use up the money, leaving nothing remaining for your children, or wish to distribute the gift to any new children or step-children they have.

Also, if you are worried about your partner needing to go into residential care, giving your residuary estate to your partner for their life may be a good option.

A person who goes into permanent residential care is normally required to pay all or part of the care home fees. The payment depends on the amount of capital he or she has. If this can be minimised, more capital will be preserved for the next generation. Trusts in wills may be used, in certain circumstances, to protect against the family home and/or other assets from becoming part of the assessable capital.

In this section, the person who may go into residential care is referred to as ‘the survivor’, and the testator and the survivor are together referred to as ‘a couple’.

For the purposes of assessing care home fees, a person's capital is the market value of his or her assets, but it does not include property in which he or she has a life interest.

If the couple own, for example, a house as joint tenants (see Property ownership) then, on the first death, the survivor will become entitled to the whole interest in the house by survivorship. The survivor's capital for the purposes of assessing care home fees will include the whole value of the house. The same result is achieved (albeit by a different legal mechanism) where the couple own the house as tenants in common (or the testator owns the entire beneficial interest) if the testator leaves his or her interest to the survivor absolutely.

The testator could leave his or her interest in the house to others, bypassing the survivor altogether, but that might leave the survivor insufficiently provided for. It would also have implications for Capital Gains Tax private residence relief.

If, instead, the testator leaves his or her interest in the house on trust for the survivor for life, then the deceased's interest will not become part of the capital of the survivor. (The survivor's own share in the house (if any) will form part of his or her capital. However, the value of that share will be less, usually much less, than 50% of the value of the whole).

If the house is owned under a joint tenancy, this must be severed while both parties are alive. This can be done by serving a notice of severance. This should be done at the same time as this will is created.

You have options to take care of gifts you may make to people who die before you do. The gift to any dead beneficiary may become, if you so choose, a gift to the dead beneficiary's children (in equal shares) who are alive at the time of your death. If the dead beneficiary has no living children, then the gift is shared proportionately ('pari passu') among the remaining residuary beneficiaries (if there are any).

Survivorship clauses

If you leave your estate to your partner absolutely, you can provide that they will have to survive you by 28 days before they will become entitled to it, otherwise it will go straight to the children, people or organisations that you have named in the event your partner does not survive you by 28 days. This is called a survivorship clause, which is often used in second marriage/partnership cases where there are separate children from the earlier relationship. The idea is to guard against the testator's estate passing under the will of their partner, because this may mean that the testator's children by the previous relationship are not provided for.

However, you should note the clause may not always effectively address the problem. Your partner may survive you for the required period of 28 days, but die on the following day, and the same problem still arises.

Alternate residuary beneficiaries

This applies if you have chosen to make outright gifts of your residuary estate. It doesn't apply if you have selected the trust option.

In case all your residuary beneficiaries and (if applicable) all their children die before you, this will gives you the opportunity to leave your residuary estate to alternate residuary beneficiaries. If, for example, you have decided to make your children and grandchildren your residuary beneficiaries, you could also choose to nominate more distant relatives, UK charities and/or friends as alternate residuary beneficiaries.

As for normal residuary beneficiaries, if a person you name dies before you, the gift may pass, if you so choose, to any children they may have, and if they have no children, their share is distributed among any remaining alternate residuary beneficiaries (if there are any).

In the unlikely event that all your original and alternate residuary beneficiaries and (if applicable) their children die before you, there is an option that enables your executors to give your residuary estate to a UK charity of their choice. This ensures that your estate cannot be partially intestate.

Trusts

Introduction and terminology

- 10-year charge - A regular charge to Inheritance Tax (IHT) on the value above the general nil-rate band (currently £325,000) of relevant property contained in a trust on every tenth anniversary of the date on which the trust was set up
- Exit charge - IHT is charged up to a maximum of 6% on relevant property that is transferred out of a trust. A transfer out of trust can occur when, for example, the trust comes to an end; some of the assets within the trust are distributed to beneficiaries; or a beneficiary becomes absolutely entitled to enjoy an asset.
- Discretionary trusts - A type of trust where trust income and capital may be paid to one or more of a class of beneficiaries, as the trustees think fit.
- Interest in possession trusts - A type of trust where a beneficiary is entitled to the income from the property held in the trust, or the use or enjoyment of such property, but is not entitled to the capital value of the property. These are sometimes referred to as life interest trusts because the beneficiary has the benefit of the property in the trust during their lifetime; after their death, the property remains available, perhaps to the next generation.

Will trusts can be divided into two classes.

1 Standard IHT trusts: These are trusts which do not qualify for any special IHT treatment, and so are taxed with 10-year and exit charges. This category includes ordinary interest in possession (IP) trusts

2 Special IHT trusts, which include Immediate post-death interest (IPDI) trusts

Special IHT trusts are not subject to 10-year and exit charges.

IPDI trusts are offered in this will (see below).

Partner for life (IPDI trust)

If you select that you want to leave your residuary estate to your partner in a trust, this document will create what is called an ‘Immediate Post Death Interest’ (IPDI) trust in favour of your partner. This means that your will confers upon him/her a life interest in your estate immediately on your death. A life interest is a right for your partner to receive the income from your estate during his or her lifetime. This does not mean, however, that your partner may not benefit from your estate in other ways – further information about how this works is set out below. For as long as your partner has this life interest after your death, the trust will qualify for special treatment for Inheritance Tax purposes (see Tax treatment).

Nature of a trust

As you cannot predict the future, creating a trust allows you to provide for your beneficiaries in the most appropriate way. You 'trust' others (your trustees) to decide how best to benefit them, taking into account all the circumstances at that time. They need sufficiently wide and flexible powers to achieve your intention (which this will provides), but the consequence is that you do not control exactly how your estate is dealt with after your death. You may not be comfortable with this loss of control, and the perceived risk associated with it, in which case this IPDI trust will not be suitable for you. However, you can take steps to manage that risk and there are legal obligations imposed upon trustees that are designed to do likewise. If in doubt, seek legal advice.

Guidance and control of trustees

Trustees have a duty to take reasonable care when exercising any of their functions and may not use trust property to make a profit for their personal benefit.

In addition to the protection that the law provides, you can minimise the risk by ensuring that you choose your trustees carefully. Managing a trust requires technical knowledge and experience. It is important also that the trustees understand the needs of your beneficiaries. A combination of professional (e.g. solicitors or trust corporations) and family trustees is often the best way to achieve this balance. An added advantage of appointing professional trustees is that they will carry professional indemnity insurance to meet any claims made against them if they fail to comply with their duties or are negligent in the way that they exercise their powers.

You should also prepare a document, often known as a Letter of wishes, which records your wishes as to how your trustees should exercise their powers. These wishes are not binding, but the trustees will have to consider and be guided by them.

How the IPDI trust created by your will works

The will identifies a group or class of persons/organisations (known as your beneficiaries) that may benefit under your will. Your beneficiaries include, by default, your partner and your children/grandchildren (and their partners) and any charitable organisation. You can select additional beneficiaries, such as remoter family (nephews, nieces, etc.). There is also the power for your trustees to add additional beneficiaries if at least two of your existing beneficiaries agree.

On your death, your partner has the right to receive the income from your estate during his/her lifetime. On your partner's death, your estate will be held on trust for the other beneficiaries, but whether or not an individual beneficiary benefits at all and, if so, to what extent is a matter that your trustees decide using their discretion and considering any wishes you have expressed. The same applies if your partner dies before you.

However, your will gives your trustees 'overriding powers' to allow them the flexibility to achieve your intentions. Using the overriding powers, your trustees can, for example, transfer your estate, or part of it, to another beneficiary or other beneficiaries at such later time as is in accordance with the wishes that you have expressed; or allow your partner or another beneficiary to live in a house or flat that forms part of your estate; or pay part of the income from your estate to another beneficiary.

Tax treatment

Ordinarily, a trust that creates a life interest suffers a charge to Inheritance Tax (IHT) whenever property leaves the trust (exit charge) and at each 10-year anniversary of the trust. An IPDI trust, however, for as long as it remains an IPDI trust, is subject to special treatment for IHT purposes, so the 10-year and exit charges do not apply.

On your death, your estate is treated as if it belongs to your partner. The estate will be subject to IHT on your partner's death unless the value of the estate is within the tax-free allowance available to him/her, or an exemption applies.

There is a tax-free uplift on your partner's death for Capital Gains Tax purposes. This means that there is no Capital Gains Tax payable on your partner's death and that any future gain on which tax might be payable is calculated by reference to the market value of the estate at the time of your partner's death.

Letter of wishes

A letter of wishes does not have to be in the form of a letter. It is a confidential document for the use and guidance of your executors/trustees. Unlike your will, the letter of wishes does not become a publicly available document on death.

A letter of wishes might be along the following lines:

> *John Smith Will Trust: Statement of Wishes*
>
> *This note sets out my wishes for my will trust. I express these wishes only for the guidance of the trustees. It is not intended to bind them. They must use their own discretion. They should also have regard to any change in circumstances of my family and of course to any wishes which I may record for their guidance in the future.*
>
> *My wishes are as follows:*
>
> *1. My trustees should ensure that my [partner] is reasonably provided for.*
>
> *2. Subject to that, I would like my trustees to regard my children (and if the fund is not distributed, their families in due course) as the principal beneficiaries of the residuary estate.*
>
> *3. Subject to that I would like my trustees to regard my nephews and nieces as the principal beneficiaries.*

The letter of wishes must not direct your trustees to act in a particular way but can, if appropriate, be strongly worded. Some examples are:

> *I wish to express my firm desire (without binding the trustees) that they should transfer the Trust Fund to my son Peter absolutely, on attaining the age of 25, unless there are overpowering reasons for not doing so.*
>
> *I have accepted the advice of my solicitors that the most tax efficient form of will is a discretionary will trust, but (tax apart) I would rather have made an absolute gift to my son Peter. I request the trustees (without binding them) to give weight to Peter's wishes accordingly.*

I wish to express my desire (without binding the trustees) that the trustees should regard my son Peter as the principal beneficiary of the Trust Fund.

A letter of wishes can also be useful for:

- Explaining why you have or have not made any provision for a particular person (see Claims against an estate)
- Listing your main assets, including bank accounts, life insurance policies, valuable items, shares etc. and their location. This can greatly assist your executors in administering your estate.
- Information to help your executors identify specific items you are gifting in your will. This can include attaching photos or a detailed description, and can make it easier than describing the items in the will itself.
- Special instructions on burial or cremation. Some people like to be buried or have their ashes sprinkled somewhere specific, or with a certain ceremony. By describing this in your letter of wishes, if you choose to change your instructions, it is much easier.
- Requests concerning, for example, organ donation and medical research. Note, however, that these may be time critical, so you ought to make sure that you make your executors aware of your wishes during your lifetime and not only rely on a letter of wishes, which may not be seen until too late.
- If you have children and you wish to give a guardian some guidance about particular aspects of guardianship that might concern you (e.g. religion or schooling) you should do so in a letter of wishes

Will execution & witnessing

Note: the last page of this will contains detailed notes on how to sign it, customised for your circumstances. Below is a general summary.

In the place provided, you must date and sign your will in ink and in the presence of two people over the age of 18. Each of your witnesses should then sign and give details of their respective names, addresses and occupations in the place provided. The golden rule is for you and your two witnesses to all be in the room at the same time when signing your respective parts of the will.

Great care should be taken to choose independent witnesses. You must **not** select:

- Someone receiving a gift (a beneficiary) in your will (including remoter family members who might benefit under a partial intestacy)
- Someone who is married to (including a party to a same-sex marriage) or a civil partner of a beneficiary in your will
- Someone who is blind or partially sighted
- Someone who lacks mental capacity.

Note that if a beneficiary or the spouse/civil partner of a beneficiary acts as a witness, they will automatically lose their right to the gift made to them by your will.

A will is a permanent record of your last wishes for your estate. You are advised to print it on durable (acid-free) paper and have it securely bound, to protect against the risk that your will may be fraudulently altered. There is no prescribed method of doing this - ideally you should have it bound using a binding machine (these can be found in copy shops or in some libraries), but using staples would be acceptable. Note however that problems can arise at the Probate Registry (or, in Northern Ireland, the Probate Office) if it appears that the staples have been tampered with, since this can raise doubts as to whether part of the will has been removed or substituted. For the same reason, it is not sensible to use paperclips.

You should keep your will somewhere safe and tell a close friend or relative (preferably an executor) where you have put it. Alternatively, the Probate Registry can store your will for a fee. Click here (PDF) for more information (England & Wales only).

Capacity

To be able to make a valid will, you must be of sound mind and full legal capacity. You must be over 18 to be of full legal capacity. To be of sound mind:

- You must understand the nature of your act and its effects. This means that you must be clear (1) that the action you are taking is the making of a will, (2) as to the nature of the will-making process itself, and (3) as to the fact that the will does not come into effect until your death.
- You must understand the extent of the property of which you are disposing.
- You must be able to comprehend and appreciate the claims to which you ought to give effect. This requires you not only to understand the people who are the potential recipients of your generosity, but also to decide between them or reject them all in making dispositions under your will. This requires an element of judgment. You will not satisfy this requirement if you are not aware of those who could claim to be included as a beneficiary, since you cannot exercise judgment in deciding between persons if you do not know they exist.
- You must not be suffering from any delusion or disorder of mind which influences your will in disposing of your property.

Even though you may be of sound mind and of full legal capacity when you create your will, it is possible that, after your death, a person dissatisfied with the way in which you have disposed of your property may challenge your will by arguing that you lacked capacity. You will be asked a question to see if any possible basis for such an argument can be anticipated, so that precautionary steps can be taken to protect your will from a challenge.

If you answer yes to the question, a declaration of capacity will be inserted into your will which your doctor will have to complete to confirm that, at the time you signed your will, you were of sound mind.

Answering 'Yes' to the question is not an indication or admission that you lack capacity, but merely a trigger for further precautions to be taken to make sure that your will is protected from challenge.

The question is this:

> *Do you have reason to believe that others might question your capacity when making your will?*

You should consider the following:

- Do you suffer from an impairment of, or a disturbance in the functioning of, your mind or brain? It does not matter whether the impairment or disturbance is permanent or temporary. For example, do you suffer from Alzheimer's disease, or have you suffered a stroke.
- Are you suffering, or have you recently suffered, from a serious illness or disability? The illness may be a physical or a mental illness. Although, a lack of capacity cannot be established by reference, for example, to a physical illness or disability alone; it is sometimes unfortunately the case that unjustified assumptions are made by others as to capacity on the basis of irrelevant considerations. The objective is to ensure that if you are at risk of being unfairly judged or assessed in this way, steps are taken now so that there are no unseemly arguments on the subject after your death.
- Might others make assumptions, as to your capacity, by reference to your age, appearance, behaviour, mood, speech, beliefs, memory capacity or other personal characteristics?

FAQs

What happens if my residuary estate is to be divided between a person or organisation that is exempt from IHT and someone who isn't?

If the will does not say what is to happen in this situation, IHT will be payable from the residuary estate.

A problem arises where there is a gift of residue which is to be divided between a beneficiary that is exempt from IHT (e.g. a charity) and a beneficiary that is not (e.g. your child or friend).

In this case, none of the tax attributable to the value of the property passing to your child or friend can be paid out of the share of residue passing to the charity.

If you give your residuary estate in such a way that it is to be shared equally between an exempt beneficiary and a non-exempt beneficiary, you should decide whether you want the shares to be equal before tax or equal after tax. If the shares are equal before tax, the non-exempt beneficiary's share will bear tax and the shares after tax will be unequal. If you want the shares after tax to be equal, you need to increase the non-exempt beneficiary's share so that, after tax has been deducted from it, it will equal the exempt beneficiary's share.

> Example:
>
> Residuary estate is worth £2million and is left as to half to the testator's child and half to a charity. Applicable rate of tax is 40%.
>
> Equal shares before tax – child and charity each receive £1million before tax (50% each). There is no tax payable on charity's share, so that the charity receives £1million (62.5%). The child's share will pay 40% tax, so the child will receive £600,000 (37.5%) after tax.
>
> Equal shares after tax – the testator will need to provide for the child's share to be increased to ensure that after tax is deducted from the child's share, the child and the charity are each left with the same

amount. On these figures, the child would have to receive £1,250,000 (62.5%) before tax, on which tax of £500,000 would be payable, leaving £750,000 (50%) after tax; and the charity would receive £750,000 (37.5% of the before-tax amount and 50% of the after tax amount).

The equal shares after tax approach results in more tax being payable overall, and the non-exempt beneficiary gains at the expense of the exempt beneficiary.

Similarly, if you give your residuary estate in such a way that it is to be shared in specified shares between an exempt beneficiary and a non-exempt beneficiary, you should decide whether you want the shares to be the before-tax shares or the after-tax shares. If the shares are the before-tax shares, the non-exempt beneficiary's share will bear tax and the after-tax share will be reduced. If you want the shares to be the after-tax shares, you need to provide that the non-exempt beneficiary's share is increased so that, after tax has been deducted from it, the shares of the exempt and non-exempt beneficiary will be as you intended.

Example:

Residuary estate is worth £2million and is left as to 40% to the testator's child and 60% to a charity. Applicable rate of tax is 40%.

Before tax shares – child receives £800,000 (40%) before tax and charity receives £1.2million (60%) before tax. There is no tax payable on charity's share, so that the charity receives £1.2million (71.43%). The child's share will pay 40% tax, so the child will receive £480,000 (28.57%) after tax.

After tax shares – the testator will need to provide for the child's share to be increased to ensure that after tax is deducted from the child's share, the child and the charity are each left with the shares intended. On these figures, the child would have to receive £1,052,631.58 (52.63%) before tax, on which tax of £421,052.63 would be payable, leaving £631,578.95 (40%) after tax; and the charity would receive £947,368.42 (47.37% of the before- tax amount and 60% of the after-tax amount).

Again, the after-tax shares approach results in more tax being payable overall, and the non-exempt beneficiary gains at the expense of the exempt beneficiary.

In this will, the assumption is that the before-tax shares approach is the one that will apply. If you wish to give effect to the after-tax shares approach, you will need to adjust the percentage shares that you leave to each beneficiary accordingly.

Who manages a trust, and what powers do they have?

Trustees and their powers are defined by law (Trustee Act 1925, or in Northern Ireland, Trustee Act (Northern Ireland) 2001), as amended by whatever you have in your will. This will gives them wide ranging powers so they can act to maximise the value of your estate.

Can I choose different percentages for my children when giving away the remainder of my estate?

Yes.

Can my executor also be a beneficiary?

Yes

I’m not sure if want to have alternate beneficiaries. What’s the point in having the choice?

This gives you some control over who the remainder of your estate goes to if your initial beneficiaries all die.