STEP JOURNAL

Will for change

A look at the effect of divorce and dissolution of civil partnerships on wills.

Life-changing events such as marriage, entering into a civil partnership, or getting divorced always require a review of an individual's testamentary dispositions. These events have an impact on existing wills, although, as one might expect, the effect of a marriage or civil partnership on a will is quite different from the effect of a divorce or dissolution of a civil partnership.

A will is automatically revoked on a marriage/civil partnership (sections 18 and 18B *Wills Act 1837*), unless it is both (a) made in contemplation of marriage/entering into a civil partnership with a particular person, and (b) it contains a recital to that effect.

Unless a new will is made, the estate would pass on intestacy, with the spouse/civil partner receiving a statutory legacy and the remainder of the estate divided under the intestacy rules set out in sections 45 to 52 of *Administration of Estates Act 1925*.

The only exception to this revocation of the whole will (assuming not made expressly in contemplation of the marriage/civil partnership) is in relation to any power of appointment that has been exercised in the will. This might arise, for example, where an individual has power under a family trust to direct that all or part of a trust fund be held for another. Such an appointment under a will is saved by sections 18(2)/18B(2) *Wills Act 1837*, which provide that the appointment shall take effect 'notwithstanding the testator's subsequent marriage/civil partnership unless the property so appointed would in default of appointment pass to his personal representatives'.

A will is not revoked on the dissolution of either a marriage or a civil partnership. However, the terms of the will must be construed as if the former spouse/civil partner had predeceased the testator, by virtue of sections 18A (As amended by section 3 of the *Law Reform (Succession) Act 1995)/18C Wills Act 1837*.

Example of the effect of divorce

Fred made a will when he was single in 2002. He married Maureen in 2004, whereupon the 2002 will was automatically revoked. Fred did not make a new will until 2005. His 2005 will named Maureen as executor to act with Joe, his brother. In the will Fred left his chattels to Maureen and various cash legacies to his nieces and nephews, with the entire residue also passing to Maureen and, if she should predecease him, a gift over to an animal charity.

Fred and Maureen fell out in 2006 and Fred initiated divorce proceedings. The decree absolute was issued in 2008. Fred died in 2009 without having made a new will.

Under section 18A the effect of Fred and Maureen's divorce is as follows:

The provisions appointing Maureen as executor take effect as if she had died on the date of the decree absolute, leaving brother Joe as the sole executor to administer the estate. If there had been ongoing will trusts of which she was a trustee, Maureen would also be deemed to have died in respect of her trusteeship.

The gifts to Maureen under the will (the chattels clause and the residuary gift) also fail, as if she had died on the date of the decree absolute.

The chattels therefore fall into residue, and the default residue provisions take effect, as Maureen is treated as having died, so that the entire residue (including the chattels) pass to the animal charity. The cash legacies to the nieces and nephews remain valid.

Although Maureen receives nothing under the will, her right to apply for financial provision under the *Inheritance (Provision for Family and Dependants) Act 1975* is not affected. Such a right is protected by virtue of section 18A(2) *Wills Act 1837* (and by section 18C(3) in the case of civil partnerships). It is quite likely though that under the terms of the financial settlement on her divorce from Fred, Maureen submitted to an order excluding her right to claim.

The background to section 18A[1] is quite interesting. Before its amendment under the *Law Reform (Succession) Act 1995*, the section had provided that on divorce any appointment of a spouse as executor or trustee should take effect as if it had been omitted. Any gift to the former spouse was to lapse (subject to any contrary intention in the will). However, this wording for section 18A proved unsatisfactory as a court held that the property disposed of would pass on intestacy and not under the alternative provisions set out in the will (*Re Sinclair* [1984] 3 All ER 362). Hence the amendment to section 18A providing that the spouse should be treated as having died on the date of the dissolution of the marriage. The rules for spouses were extended to civil partners under the *Civil Partnership Act 2004*, which introduced corresponding provisions into the *Wills Act 1837.*

- [1]*Section 18A Wills Act had been introduced by the Administration of Justice Act 1982, section 18(2).*

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