

**GUIDANCE NOTES FOR COMPELTION OF WILL WRITING**  
**QUESTIONNAIRES**

A Questionnaire should be completed for each party making a Will.

Please note that the Will Writing Questionnaires are intended for relatively straight forward Wills and where the person making the Will requires a Trust, an inheritance tax efficient Will or specialist advice a consultation with the solicitor is advised. Mutual or joint Wills are no longer prepared as these are contractual and may prevent subsequent changes and would not normally be recommended by your Solicitor. In some circumstances a contractual Minute of Agreement may be advised (e.g. to protect the inheritance of the children of a previous relationship)

**SECTION A**

Questions 1-3

To be completed in all cases. Please provide your full designation by completing your full name, occupation, date of birth including telephone information as it may be necessary to contact you to clarify instructions. If you are not of Scottish birth or do not reside permanently in Scotland the succession to your estate may be governed by another jurisdiction. In these circumstances, it is important to discuss matters with the solicitor to ensure that a valid and effective Will can be available in connection with the administration of your estate. If you own heritable property outwith Scotland you should also advise your Solicitor as the succession to the heritable property may be governed by law where the property is sited and you may be advised to seek advice from a person qualified in that jurisdiction.

**SECTION B**

The should be completed by individuals who are married or who have a civil partner and wish to make provision in favour of their spouse/partner (if you have no spouse or partner you should complete Section C).

Question 4

If your spouse or partner is to inherit your entire estate please tick the appropriate box. It is usual to provide in the Will to be prepared that the spouse or partner will inherit the estate provided he or she survives for a period of 28 days. This will avoid administrative difficulties in the event that the spouse/partner dies within the 28 day period as your executors would be obliged to make over the estate to another estate,. Furthermore, in the event of a common calamity (i.e. an accident where both parties die within a short period of time) it will avoid the spouse or partner inheriting the entire estate and thus passing this to the family or beneficiaries of the partner/spouse or their nominated beneficiaries). There will also be tax benefits ensuring that each estate has the benefit of the inheritance tax “nil rate band” (the tax exempt band for inheritance tax).

Question 5(b)

If a spouse/partner is not to inherit the entire estate, please advise of the amount of legacy or share of the estate to clarify the nature of the bequest. The reference to the remainder/residue is the remaining estate after the bequest to the spouse/partner and if

there is insufficient space to detail your requirements please use a separate sheet and number it accordingly.

#### Question 5

If you wish the surviving spouse/partner to be your executor and be responsible for administering your estate please delete Question 5. If you wish other parties to be your executor rather than a spouse please complete 5 with the executor(s) details. The Partners of W & A S Bruce are happy to be appointed as executors if you wish to appoint professional executors who will act independent of any of the beneficiaries to ensure the division and distribution of the estate is in accordance with the terms of your Will. You will appreciate that an executor will have full control of the estate and as solicitors hold professional indemnity insurance this would protect beneficiaries in the event of any negligence or inappropriate action by the professional executors/trustees. However, it should be noted that in the event of any error, negligence or misappropriation by non professional trustee the beneficiaries may be prejudiced and serious consideration should be given regarding the appointment of the executors/trustees.

#### Question 6

Completing the details of any substitute executors who would act if the executors predecease or are unable to act due to age or infirmity.

#### Question 7

Please provide full details of any children who are to benefit. Please note that stepchildren will not come under the general classification of children and it is important to specify the exact relationship. Children under the age of 16 do not have legal capacity in Scotland and they are unable to provide an executor with a receipt for sums of money. In circumstances where an underage child inherits it would be necessary for the funds to be held in trust until the children attains 16 and can provide a valid receipt. However, the Will would normally provide that payments can be made to guardians or any parents. It is important that you consider carefully who is to act as guardians to the children (guardians would normally have day to day care of the children). It would not be advisable to have the guardian and the executor as one and the same person due to a possible conflict of interest. The executor would normally make payments to the guardian to ensure that sufficient funds are available for the education, maintenance and well being of the child and also to ensure that the guardian is not out of pocket in order to fulfil the duties of guardian. However, if the guardian is one and the same person the guardian will be making payments to himself or herself and this situation should be avoided.

#### Question 8

Please complete details of any specific legacies or bequests (i.e. jewellery or money) to any beneficiary. Please clarify whether or not the bequest should be effective on the death of the spouse/partner or on the second death.

#### Question 9

Please complete with details of any charitable bequests.

#### Question 10

Please indicate whether or not there is to be an equal division in respect of any bequest to children. Please specify the age of the children who are to benefit. A child under the age of 16 does not have legal capacity and if no age is mentioned the children would inherit age 16 however if you wish to postpone the vesting of the child's inheritance until a later date this should be specified. Normally executors would have power to advance income or capital to children who have not yet attained the vesting age provided that this is paid to the children (if over 16) or to their guardian(s) for their education, maintenance or benefit. There may be adverse tax consequences if vesting is later than 18 and if you propose a later age or if underage beneficiaries have special needs, please discuss with your solicitor.

#### Question 11

Please specify the allocation of the bequests between the children.

#### Question 12

Please provide full names of the children including ages.

#### Question 13

Please clarify whether any pre-deceasing children's share should pass equally between the other surviving children. If this takes place there can be some inequalities in the family as one branch of the family may have lost a parent and also the grandchildren relating to that branch of the family may not receive any benefit.

#### Question 14

It is recommended that full and flexible powers are provided to the executors/trustees. If required a testator (the person making the Will) can give a detailed "back letter" or letter of instruction to executors or trustees indicating how they would wish them to exercise any discretionary powers.

#### Question 16

The note contained in paragraph 16 should be considered carefully and the solicitor should be consulted if there are children from previous relationships. It is also important that the parties are aware that children are entitled to claim legal rights notwithstanding the terms of the Will (e.g. if a Will provides that everything is to pass to a surviving spouse/partner the children can make a claim for legal rights). In the case where there is a surviving spouse/civil partner this claim will amount to a third of the net moveable estate equally between the children and where there is not surviving spouse/civil partner a one half of the net moveable estate. The net moveable estate will comprise of moveable assets ( i.e. excluding land and property) after deduction of debts and funeral expenses. A child has the option to claim any provisions in their favour in the Will or alternatively to claim legal rights, furthermore, legal rights can be claimed with interest but must be claimed within a period of 20 years. An information sheet can be provided by your solicitor on request.

## SECTION C

Section C applies to a single testator or those without children.

### Question 17

Please complete the details of the executor and we would refer you to the guidance notes regarding the completion of questions 5 to 6 above.

### Question 18

Please specify any legacies or bequests and details of any conditions that are attached to such bequests.

### Question 19

Please provide details of any charitable bequests.

### Question 20

Please indicate those that are to inherit the residue or remainder of your estate and the relative proportions. Please clarify in the response to questions 20 whether or not the bequests, in the event of a beneficiary pre-deceasing, are to pass to their children or equally between the remaining beneficiaries. In certain circumstances where a beneficiary pre-deceases their bequests may fall into intestacy and you may wish to indicate a substitute beneficiary or indicate whether or not the bequest will be passed to the other beneficiaries in the same relative proportions in which they inherit the balance of the residue.

### Question 21

Please make any notes of items you wish to discuss or you wish a Solicitor to contact you for clarification. Funeral instructions can be included but these should be intimated to your Executors or family during your lifetime as it is possible the Will is not considered or legal advice taken regarding your estate until after the funeral or arrangements have been made

Please sign and date the questionnaire and return this without delay. The Will is not legally effective until the Will is signed and witnessed.