

# **Private Client Section podcast: Professor King's spotlight on the Law Society's guidance on Video will witnessing**

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# Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020/952

- For wills made on or after 31 January 2020 and on or before 31 January 2022, “*presence*” in Wills Act 1837, s9 includes presence by “*means of videoconference or other visual transmission.*”.
- Presence is relevant twice in s9
  - 9(c) T must sign or acknowledge in the presence of two or more witnesses present at the same time; and
  - 9(d) each witness must sign or acknowledge an earlier signature in the presence of T (but not necessarily in each other’s presence),

## Important points on the process

- Read the government's guidance as well as the Law Society's.
  - Where people can make wills conventionally, they should do so.
- The process must be in '*real*' time. Witnessing a recording is not permitted.
- If possible, the process should be recorded.
- '*Presence*' requires T and witnesses to see the act of signing, not the head and shoulders.
- The same document has to be signed by all the parties.
  - If T dies before the process is completed, the will is invalid.
- Capacity and undue influence issues are more difficult to assess remotely.
- Identity checks necessary if witnesses do not know T.
- Attestation clause will need amending.

## Who is going to use the procedure?

- According to the guidance, only those who cannot make a Will conventionally.
- But unlikely to be suitable for those on their death bed because of the time needed to get the Will to the witnesses.
- Potentially useful where T is socially isolating, in hospital or in a care home and witnesses cannot be admitted because of risk of infection. The witnesses could be outside in the street.
- BUT if a line of sight can be provided through a window or partition, this is likely to be more satisfactory.

## Policy matters

- Is your practice going to oversee remote execution at all?
- Will you do it if you have not prepared the Will?
  - Retainer would have to be limited to overseeing execution.
- Will you charge extra?
- How is storage of the recording to be managed?
  - Zoom allows cloud recording or local recording.
  - Cloud recordings are only available for 30 days (have to be downloaded within that period).
  - If recorded locally, whose machine?

## The exception

- The SI was announced in July 2020 but applies to Wills executed remotely from 31 January 2020.
- Until the announcement, Wills executed remotely were regarded as invalid.
- So it is **possible** for someone to make a remotely witnessed Will in February, die in April and have their family prove an earlier will thinking the February Will was invalid.
- Reg 3 says that the SI does not affect any grant of **probate** made before Sept 28 or anything done pursuant to a grant of probate made before then.
- However, grants of administration on intestacy made before Sept 28 will be overturned by remotely witnessed Wills.
- What happens to grants of administration where there is a Will is unclear.

# Thank you for listening