

HOW TO PROTECT MINOR CHILDREN AFTER PARENTS' DEATH IN THE UK?



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EN ANGLETERRE ET AU PAYS DE GALLES, UNE PERSONNE DÉCÈDE AVEC OU SANS TESTAMENT. LA DISTINCTION PREND DE SON INTÉRÊT DÈS LORS QUE LE DÉFUNT LAISSE UN OU PLUSIEURS ENFANTS MINEURS. LE PRÉSENT ARTICLE EXPOSE LES RÈGLES DE PROTECTION DU MINEUR DANS LE CADRE DES SUCCESSIONS EN ANGLETERRE ET AU PAYS DE GALLES.



When an individual dies in England and Wales they either die testate (with a Will) or intestate (without a Will). The distinction becomes particularly relevant if they die leaving minor children. Outlined

below are the key differences between what happens to the estate of an individual who dies testate or intestate leaving minor children, it being assumed for the purpose of the present summary that the individual who has died leaves no surviving spouse/partner as if they did then different rules will apply.

INDIVIDUAL DIES LEAVING A WILL

If the testator has made a Will then various options are available to them when it comes to providing for their minor children.

The testator would have stipulated in the Will who they wish to appoint as guardians of their minor children (the appointment of a guardian will only take effect on the testator's death if at that time there is no other person with parental responsibility for the child): this is one of the many important reasons why people with minor children make Wills.

It is also important to give consideration to the appointment of guardians and the role of the Trustees because Executors and trustees fulfil different roles.

The role of an executor is to collect in the assets of the estate and discharge the liabilities of the estate. Once these have been discharged, the executors will hold the remainder of the estate as trustees, on trust for the beneficiaries, for example the minor children, until they attain of age. If different

persons are appointed as executors and trustees, the executors will need to vest the estate in the trustees.

Where a Will contains a trust it is normal to appoint the same persons as both executors and trustees

Often people will wish to appoint the same person as a guardian and a Trustee but this may give rise to a conflict so different individuals should be appointed. It would be prudent to state at this point that any provisions that provide for a minors interest to be held in trust must be held by at least two trustees.

The various option available to an individual to provide for their minor children are as follows;

- Within the Will the testator can stipulate that the children will be fully entitled to the assets at the age of 18. Whilst they remain under that age the assets are held in Trust and managed by the Trustees (whom are appointed in the Will) until the children attain 18. For tax purposes this is known as a **bereaved minors Trust** and receives a beneficial tax advantage. The disadvantage with this type of trust is that the children receive the money at the age of 18, something that concerns a lot of parents and often this is the least preferred option.
- Alternatively, the testator could stipulate that the children will not receive their share of the estate until they attain the age of 25. This would be classed as **an 18-25 Trust**. The main advantage of this type of trust is that the children do not receive the estate until they are 25. Once the child has attained the age of 18 and the estate remains in trust until they attain 25 it is subject to an inheri-

tance tax charge but this is often seen as a small price to pay to ensure the children do not receive the estate until 25.

- With the two above options, the Trustees do have the discretion to apply the trust assets for the benefit of the child if they so wish as provided for under **the Trust Act 1925**; the same also applies for any income that the trust generates in that this can be applied for the benefit of the child. This power given to the Trustees can be useful if money is needed for the children's school fees or university fees. As the Trustees have this power it is very important the testator appoints individuals who they trust as it is possible to advance all of the children's share of the estate under this Act. This power can be varied or limited in the Will, should the parent so wish.
- Within the Will the testator could also leave a life interest to the children so for example the money on the estate would be left in the life interest trust but the children would be entitled to the interest the money generates or the right to live in a property but would never own the assets outright.
- Within the Will the testator could leave the estate in a **discretionary trust** so the assets in the trust are held by the trustees who make the decision as to who receives the assets.

INDIVIDUAL DIES WITHOUT A WILL

The statutory trusts will apply, which means that the estate is held in trust for the children as are living at the date of death and who attain the age of 18 or who marry or form a civil partnership under that age. ♦

