# Registration of Wills Bill 2016

## Background

* In 2005 Senator Terry Leyden made history by ensuring the taking in the Seanad of a Private Members’ Bill introduced by a Government Member of the House.
* The Bill was approved unanimously by the Fianna Fáil Senators and the Fianna Fáil parliamentary party at a meeting attended by the Taoiseach, and all Ministers, including the Chief Whip, Deputy Tom Kitt.
* As Minister of State Leyden, he had brought some Bills through the Seanad but they were provided by the Civil Service, they were never Private Members’ Bills. So what happened on Wednesday 9th of November 2005 was historic and set a precedent for legislation.
* In introducing the Bill Senator Leyden asserted it was of universal importance, was not a party political issue and would benefit the majority of people.
* It had come to Senator Leyden’s attention that many people have been deprived of their rightful inheritance by the lack of a will or the inability to find the will of a family member.
* They have been done a great disservice by the State and this Bill is the only way to rectify the situation.
* When Senator Leyden returned to the Oireachtas other cases came to his attention where wills had allegedly been made but not found.
* In 2004, he pointed out how some 5,400 wills were probated in Ireland but more than 28,000 people died. This significant shortfall demonstrates his point — many people do not make wills.
* Many make private wills but these are normally held with their papers and documents.
* The only individuals required to register a will are Catholic clergy. Every Catholic cleric must leave a copy of his will in the possession of the bishop.
* There is no requirement on the solicitors registered in this country who execute and make wills to provide lists that would be held in a central bona fide registry such as the General Register Office in Roscommon.
* At present, a person makes a will with a solicitor who records it in his or her book of wills and the document is held in the legal firm’s safe deposit box. The Law Society Gazette regularly advertises requests for the whereabouts of wills that have been mislaid, are missing or cannot be found. Many people who would otherwise be entitled to inheritances from wills have been deprived.
* Senator Leyden quoted Jack Lemmon, *‘“Death ends a life, not a relationship”. There are pages and pages of people searching for lost wills in the Law Society Gazette in the hope that their loved one made a will. Many people make wills not knowing that sometimes they may not be executed correctly or at all. It is a unique situation where the purchaser of this service has no after-sales come back. We have a responsibility to ensure that citizen’s wishes are honoured and given the proper legal recognition they deserve.’*
* In the course of his research Senator Leyden discovered a Council of Europe convention for the establishment of a scheme of registration of wills. This dates back to 1972 but was never ratified by Ireland.
* The main aim of the convention was the provision of a registration scheme enabling a testator to register his will to reduce the risk of the will remaining unknown or being found belatedly, and to facilitate the discovery of the existence of the will after the death of the testator.
* This was on account of the situation where a growing number of persons make their will away from home and even in a foreign country.
* Since most member states do not require wills to be deposited with a court of law, a notary or another authority, and have no central register, the heirs are often unaware of the existence and the whereabouts of a will.
* In 2011 Senator Leyden made it clear that a voluntary approach based on persuasion must be adopted at this stage. In that regard, the proposals in the Bill are interim arrangements. One cannot introduce a law imposing fines on solicitors who fail to register a will. At a certain point, however, the procedure should be that when a will is made a fee will be paid and the will sent to the General Register Office where it will be held securely and no one, other than the testator or, in the event of his or her death, the family of the testator, will have access to it. This would allow families, on the production of a death certificate, to check whether a will had been made and access its contents. This process will be slow but it was hoped at some point all wills registered in solicitors' offices will be held at a central location.

## Provisions of Bill

* The Bill will enable a person who makes a will, or his or her solicitor, to voluntarily register the name and address of the custodian of his or her will. This will reduce the risk of the will remaining unknown or being found belatedly. It will also facilitate the discovery of a will after the death of the person who made it.
* This Bill provides for the privacy of the registered particulars of the will prior to the testator’s death. This will underpin the development of a modern system of registration of wills that responds to the needs of modern society.
* The Registration of Wills Bill provides a clear statutory basis for the registration of wills by extending the civil registration service.
* The register of wills will be kept in the General Register Office in Roscommon.
* Having the register of deaths, births and marriages in Roscommon has been a tremendous boost to the town and surrounding areas. It has also provided a great service to members of the public.
* The Bill amends the Civil Registration Act 2004 and provides a clear statutory basis for the registration of wills by extending the Civil Registration Service.
* Part 1 contains the usual provisions for a Short Title, collective citation, definitions and commencement.
* Part 2 outlines the organisational structure for the administration of the register of wills.
* Part 3 provides for the registration of wills.
* Part 4 provides for miscellaneous amendments to the Civil Registration Act 2004.
* Section 10 provides for the registration of wills by a registrar of any local registration authority. Qualified informants may register wills at a convenient office by providing the required particulars of the will and signing the register in the presence of the registrar. A qualified informant is the testator or his or her instructed solicitor. The required particulars of the will are set out in the Schedule and include the name and address of the custodian of the will, the testator’s signature, name, address, sex, date and place of birth and personal public service number, the informant’s signature and name and address, the date of registration and the registrar’s signature. Subsection (3) provides that one or more wills, including codicils, made by the same testator may be registered or re-registered. This means that if a person decides to change his or her will, he or she can register or at least indicate the location of the new will.
* Section 11 provides that information held in the register of wills shall not be accessible to members of the public and or made available except as provided for under section 12. This ensures the privacy of will records. The will would not be held in the General Register Office but either by the testator or a solicitor’s office or in another safe location identified in the registration.
* Section 12 requires the Registrar General or a member of his or her staff authorised by him or her to search the register of wills and provide a certified copy of an entry in such register at the request of an applicant on payment of the appropriate fee, provided the death of the testator has been registered or the applicant is the testator. This means that a copy of the registered entry is only available to the testator or someone else on the death of the testator.

## Other Points

* The 2005 Bill received the endorsement of many other members of the Seanad.
* Senator Camillus Glynn said that the Bill brought forward by Senator Leyden brought *“into focus the worth of this House as a House of legislation. Many people have said in the past, unjustly and unfairly, that this House is a talking shop. This Bill puts the lie to that pronouncement … As everybody knows, where there is a will there is a way but I remind Members that, invariably, where there is a will there is a relative, and that is where the problems start.*
* Senator Glynn spoke of how the legal profession can play a pivotal role in ensuring that people make wills. *“We do not know the day or the hour, as we were told by the great man from Nazareth, when death will come like a thief in the night. It can befall any of us at any time. It is only proper and responsible, therefore, that people would have their affairs in order and family lawyers and people of that nature have an important role to play in exhorting people to make a will. That is very important.”*
* Senator Glynn then returned to his earlier comment to the effect that where there is a will there is a relative and said that *“one does not have to be a rocket scientist to know what has happened when the appropriate will was not made but natural justice was not done. People will say that one will not get justice in a court; one has to go to Heaven. That is a viewpoint held by many but my point is that wills have been contested by people who were motivated by nothing other than greed and the people who had the moral entitlement to the property did not get it. However, morals have no basis in law. The law comes down to what is written on pieces of paper such as this one.”*
* Senator Fergal Browne of Fine Gael congratulated Senator Leyden on initiating this Bill and thanked him and his daughter for her excellent briefing on the purpose of the Bill.
* The then Minister of State Sean Power responded to the bill on behalf of the government. The Minister agreed that there was a strong case to be made for a system whereby the interests of citizens can be further protected in terms of making provision for family after one’s passing.
* He went on to say that “*recognising the importance of civil registration and acknowledging the changing needs of society, the Government approved a programme of work to modernise the civil registration service and that the introduction of the new civil registration system is a flagship initiative in providing life-centred services to customers.*
* Commending Senator Leyden on his initiative, the Minister said he hoped the Bill would have a safe passage through both Houses.
* Senator Micheál Kitt shared time with Senator Labhrás Ó Murchú in welcoming the bill. Senator Kitt said it was *“unique and historic that a Senator from the Government side has a Bill before the House”* and he went on to point out that *“since we introduced single farm payments under decoupling in the Common Agricultural Policy there had been problems with land entitlements which are worth a significant amount but to which title cannot be established by young farmers without a will.”*
* He also said how his *“parish priest reminds people at least twice a year to make a will but that cannot always be included in legislation”.*
* Senator Ó Murchú also complimented Senator Leyden on tabling this Bill and said that *“many of us are probably kicking ourselves, wondering why we did not think of it because of its relevance and importance. We are particularly proud that the Bill is with us in the Seanad, and that a Senator initiated it.”* He had no doubt this Bill will be enacted.
* Committee Stage of the bill was ordered for Wednesday, 16 November 2005 and took place on Wednesday, 13 December 2006 alongside all remaining stages of the bill when it was passed by Seanad Éireann
* Then Leader of the Seanad, Mary O'Rourke said she had *“followed the debate on the monitor”* and been very interested in it. She said *“Well done”*, to Senator Leyden.
* Though the Bill passed the Seanad it fell with the dissolution of the Oireachtas in 2007.

## Position of Government in 2005

* While the Bill was welcomed at Second Stage by Minister of State Seán Power, at Committee Stage another Minster of State Brian Lenihan said that the Government had reservations about the legislation.
* He said that *“one of the problems with any system of public registration, which was hinted at in some of the amendments tabled, is that testators want a zone of confidentiality to attach to their operations in this regard, which makes the designation of a public register for these instruments very difficult”.*
* *“There is a lack of any evidential basis in the register such as in the register of deaths where the evidential basis is established by the fact that a medical practitioner or coroner must provide a certificate and the register must be signed by a relative of the deceased.*
* *In general when births, marriages and deaths are registered they are based on the supply of information by a person authorised to give that information to the registrar and Parliament has generally provided that a presumption attaches to the document evidencing the facts of registration, that the facts are as stated in the particulars.*
* *No such presumption attaches to this register. For that reason, the registration does not provide an assurance that a will is valid or the last will of a person has been revoked, amended or superseded.*
* *The reality for the general register is that the registers maintained by the General Register Office enjoy a presumption of accuracy and reliability. The creditworthiness of the register would be somewhat undermined when those who had registered their wills realised that no reliability can attach to the registration. That is the Department’s position on the Bill.*
* *The Bill raises an important issue of principle and I welcome the fact that Senator Leyden has introduced it. I know that it commended itself to Senators on Second Stage and that the Seanad has approved the Bill. It raises important questions and seeks to address the mischief of the disappeared will. In some jurisdictions there is provision for a central register of wills much as we have a central register of land transactions, such that if one wants a valid will one must register it in a central location. That has not been the tradition of our law which has always allowed a testator to make his or her will as he or she pleases.*
* *There is a half-way house solution which could be proposed, namely, that there should be a central depository of wills and that once a will is executed, it would be deposited there. Again, that would be a matter for legislation amending the Succession Act and would require the assistance of the Department of Justice, Equality and Law Reform.*
* *The concern of the Government is that the well-established reliability which attaches to the documentation issued by the General Register Office could be undermined were we to legislate that wills would be registered there without any assurance of their validity or contents.*

## 2011 Bill

* In July 2011, Senator Leyden reintroduced the bill in the Seanad saying that the difficulty he experienced when he had a similar Bill passed in the Seanad was that he was unable to secure time in the Dáil.
* In addition, registration and the General Register Office were transferred from the then Department of Health and Children to the then Department of Social and Family Affairs. This created further delays and difficulties.
* Responding for the then then government Minister Joan Burton said that on the face of it, the establishment of a system of registration of wills would appear to be a worthy initiative.
* However, she outlined certain difficulties with the Bill that preclude her from expressing support for it.
* She said that the Bill was drafted against the background of the Council of Europe’s Convention on the Establishment of a Scheme of Registration of Wills, ETS No. 077, which provides for the establishment of national registration schemes and contains supplementary rules governing the international co-operation between the national authorities entrusted with registration. Ireland has not ratified the convention.
* *The Registration of Wills Bill 2011 is very similar to the 2005 Bill in that it provides for a voluntary system of registration of wills by the General Register Office or GRO.*
* *At the time the 2005 Bill was introduced, the then Department of Justice, Equality and Law Reform sought the views of the Law Society of Ireland.*
* *The Law Society expressed reservations about the Bill on a number of grounds, both in terms of the day-to-day practical implementation of the proposed provisions and the infringement of certain legal principles.*
* *The society pointed out that, as the proposed registration of wills is to be a voluntary code, it would have limited effect.*
* *Proponents of a register of wills suggest that a number of wills go undiscovered or are even possibly destroyed each year.*
* *Senator Leyden referred to some of the recent advertisements in the Law Society Gazette. That results in the mistaken distribution of estates under intestacy rules or the terms of a prior will. However, these problems would still exist under a voluntary system of registration.*
* *In addition, the Law Society was of the opinion that the most the Bill’s proposed registration system would achieve would be to confirm that a particular will was registered on a particular day.*
* *Crucially, it would not be conclusive that the will registered would be the last one. That is an important difficulty. A further concern is that registration of a will is not proof of its validity.*
* *The Bill does not appear to address whether a will to be registered has been executed in accordance with the statutory requirements and is valid, nor would registration prove that the will was not made under undue influence.*
* *Also, the register would accommodate the registration of holograph wills. Experience over the years suggests that a large proportion of these wills do not comply with statutory requirements.*
* *The society is of the opinion that, if the issue of the proper execution of wills is not addressed, this calls into question the veracity of information held in a public register, a concern shared by my Department and by the Registrar General.*
* *The Bill proposes that the General Register Office will have responsibility for the registration of wills. Civil registration was introduced in 1845 for the registration of non-Catholic marriages and expanded in 1864 to births, deaths and Catholic marriages. Registration of adoption was introduced in 1952 and civil partnerships in January 2011. The data in the registers form a basic, continuous source of information about the population by providing a record of vital events relating to people and satisfying the need for evidence that has a bearing on rights, entitlements, liabilities, status and nationality.*
* *Civil registration is relevant to each of us at important stages in our lives, beginning with the registration of our births and ending when our deaths are registered. Between those events, civil registration affects us directly, as in the case of marriage and civil partnership, and indirectly, when certificates are required for many of the services available in society, such as enrolling a child in school, obtaining a passport, taking up employment and claiming a social welfare payment.*
* *Each event registered under civil registration legislation has the benefit of an independent evidential basis. This is particularly important. Details of births are notified to the registrar independently of the parents. Details of deaths are attested, either by way of a certificate provided by the medical practitioner who attended the deceased or a coroner’s certificate.*
* *Marriages and civil partnerships are evidenced by the signatures of the parties to a marriage or civil partnership, the witnesses and the solemniser on the registration form, details of which have been recorded by the registrar prior to the event.*
* *As a result of this, the records of the General Register Office enjoy a high reputation for integrity and credibility both nationally and internationally and certificates of vital events are readily accepted as evidence of the facts recorded without the need for further investigation or inquiry.*
* *As the scheme of registration of wills as proposed is voluntary and therefore not comprehensive, it is unable to guarantee that a will registered is the last will and that it has not been amended, revoked or superseded, and its validity cannot be assured. It is, therefore, difficult to see how the scheme as proposed can achieve its objectives.*
* *In addition, I would be fearful that the good reputation enjoyed by our system of civil registration could be undermined.*
* *I am aware that Senator Leyden is seeking to be helpful in a situation where not enough people make wills and evidence of the whereabouts of a will is often scanty. There is still some superstition connected with making a will and many people are reluctant to do so for fear that it might have unwarranted consequences. For a scheme like this to work, much work would need to be done, particularly in addressing the issue of the last will and testament, which is the document that must stand for the purpose of the distribution of an estate.*
* Senator Leyden asked if Minister Burton would consider forwarding the Bill to the Law Reform Commission for its consideration.
* The debate on the 2011 bill in was adjourned without a vote and the bill made no further progress over the next five years.