

PRACTICAL GUIDE

Legacies

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1.0 Introduction

Churches and charities are reliant on the generosity of their members, both with tithes/offerings and through one-off gifts and legacies. They are always pleased to receive donations towards their work and such donations can normally be Gift Aided when the donor has a taxable income. Legacies often help to provide long term financial security for the work of the church or charity. If you would like to leave a gift to a charity or church, you will need to specify this in your Will. A solicitor will be able to help, and you may like to give them a copy of this paper. It is important to take legal advice to ensure that the Will is clear and legally effective. Legal advice on Wills is not expensive if your affairs are fairly straightforward. If you have already made a Will you can add to or change its provisions at any time.

Gifts to charity in Wills are exempt from Inheritance Tax without limit in addition to not counting towards the amount which each person can give free of Inheritance tax (currently £325,000).

Should you wish to bequeath an amount to a church or charity some suggested wording for bequests is included later in this paper. Any legacies would be held in the church/charity's general funds unless otherwise directed. If you leave a share or percentage less than the whole of the residue of your estate, and your estate is going to be liable to Inheritance Tax it is important that you take legal advice to include the correct wording to avoid complications. We are not dealing with that wording here as it is beyond the scope of this paper.

If you do not make a Will your assets will usually be shared among family members, as set out in legislation. This may not be what you intended. Making a Will ensures that all your assets are distributed as you choose, including leaving money to charities. From April 2012 it is a tax requirement that a charity which should be registered as a charity with the Charity Commission (Office of the Scottish Charity Regulator for Scottish charities) is so registered in order to qualify for tax reliefs including Inheritance Tax. This rule already applies to Gift Aid.

Many individuals may want to support national works, such as Church Growth Trust (www.churchgrowth.org.uk) or Counties (www.countiesuk.org). The suggested wording below can be used for these.

2.0 Types of legacy

It is up to you how you decide to support a charity in your Will. Your gift might be a specific sum of money, a gift of assets or property (e.g. stocks and shares) or a residuary legacy. A residuary legacy means leaving the residue of your estate which is the amount left over after funeral costs, other legacies and any other financial debts, taxes or expenses have been paid. You can leave all or a proportion of the residue to a charity/church. Any type of legacy to a charity is exempt from Inheritance Tax so by leaving money to charity you are reducing the size of the rest of your estate that may be liable to Inheritance Tax. Furthermore, since April 2012 there is available a reduction from 40% to 36% in the rate of Inheritance Tax levied on death where 10% of the net estate after deduction of debts and all reliefs and exemptions other than charitable relief is bequeathed to charity.

3.0 Carefully wording your will

It is absolutely vital that the wording in your Will clearly records your wishes and that the Will is legally enforceable. Considerable distress and legal expense can be incurred after somebody's death if it is not clear what was intended. If you want to leave a gift to a specific church your Will

must define clearly which church you wish to benefit by reference to a full address for the church premises or other principal correspondence address of the church and by confirming the name of the church in full. If the church is a registered charity it is also helpful to include their registered charity number. Indeed, registered charity numbers are useful to help to correctly identify any charity that you want to leave a gift to. Charities have to display their charity numbers on their literature and websites, so they should not be difficult to find.

The following Will clauses are offered to you as a means of making a gift to a specific church or charity. The specific wording anticipates and avoids the pitfalls that can occur when inadequate wording is used, but it will need adapting to the form layout and definitions in the rest of the Will. Your own solicitor will be able to tell you which clause is best suited to your own wishes.

3.1 Example 1

I, give and bequeath to the [name and address of church/charity and charity number] ("the Church" or "the Charity"), the sum of £ [amount] OR the residue (after payment of all my debts, testamentary and funeral expenses and the expenses of winding up my estate (including Inheritance Tax and any legacies bequeathed by this my will or any codicil hereto)), free of all taxes, government and other duties, to the Church/Charity for its general charitable purposes so that such sum/residue may be expended as income. And I declare that the receipt of the treasurer (or one of the trustees or other proper officer if no treasurer is appointed) for the time being of the Church/Charity shall be sufficient discharge for my executors.

3.2 Example 2

I, GIVE the sum of £ [amount] to the [specify name and address of church/charity and charity number] ("the Church" or "the Charity") for its general charitable purposes so that such sum may be expended by the leaders or trustees of the Church/Charity in the reasonable exercise of their discretion as income of the Church/Charity provided that if before my death (or after my death but before the leaders or trustees have given effect to the gift in question) the Church/Charity has changed its name or has amalgamated with or transferred all of its assets to any other charitable body then this gift shall take effect as if it had been made (in the first case) to the Charity/Church in its changed name or (in the second case) to the charitable body which results from such amalgamation or to which the transfer has been made. And I declare that the receipt of the treasurer (or one of the trustees or other proper officer if no treasurer is appointed) for the time being of the Church/Charity shall be sufficient discharge for my executors.

3.3 Example 3

I GIVE the sum of £ [amount] to the [specify name and address of church and charity number] ("the Church") for the benefit of the general fund of the Church so that such sum may be expended by the leaders or trustees of the Church in the reasonable exercise of their discretion as income of the Church provided that if the Church no longer exists at the date of my death the legacy hereby bequeathed shall be held upon trust for a [national charitable organisation such as Church Growth Trust of [specify address] charity number 1138119 or Counties of [specify address] charity number 264278 in such shares between them as my executors shall in their absolute discretion exercised within two years of my death think fit or in the absence of any exercise of such discretion by my executors within two years of my death in equal shares between them. And I declare that the receipt of the treasurer (or one of the trustees or other proper officer if no treasurer is appointed) for the time being of the Church shall be sufficient discharge for my executors.

3.4 Example 4

I GIVE a [specify fraction] share of my residuary estate and the income thereof to the [specify the name and address of the church/charity and charity number] ("the Church" or "the Charity") which may be expended as income of the Church/Charity for its general charitable purposes. I declare that the receipt of the treasurer (or one or more of the trustees of the Church/Charity or other proper officer if no treasurer is appointed) for the time being of the Church/Charity shall be sufficient discharge to my executors and I further declare that in determining the said [specify the fraction] share of my residuary estate my executors shall divide my residuary estate into the requisite shares without making any allowance for the inheritance tax payable by reason of my death attributable to my residuary estate and then reducing such shares as are not exempt from inheritance tax by the inheritance tax attributable thereto¹.

¹ There is an advantage to dividing up the costs before applying Inheritance tax.