

# ILM Factsheet

## Royal sign manual directions

These notes are intended as a guide only and we recommend anyone reading these notes always to take professional advice in specific cases, and not to act solely in reliance on the notes.

If the reader recalls nothing else from this article, he or she is invited to remember just two things:

1. There is no charity called "Cancer Research"; and
2. When drawing up a will, solicitors should check that the charity or charities named actually exist. In most cases this can be done by checking the Register of Charities on the Charity Commission's web site ([www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)) or by a telephone call either to the Commission or to the charity in question. Where a charity has changed its name, both the former and current name may be listed in the Institute of Legacy Management database - see [www.ilmnet.org](http://www.ilmnet.org) (Members Section and Solicitors Section).

Regrettably, and all too frequently, this simple check is not done and personal representatives are left with the problem of disposing of direct gifts to non-existent charities or for charitable purposes where no particular charity or trustee has been selected by the testator. This problem is hardly novel but it may surprise some to learn that there exists under our unwritten constitution a little known and possibly anachronistic prerogative power whose existence can be traced back to the seventeenth century and beyond, which provides us in the twenty first century with a quick and cost effective procedure to resolve it. That procedure is a direction from the Attorney General under the Royal Sign Manual.

### **What is the Royal Sign Manual?**

The Sign Manual is, literally, the signature of the monarch. Directions disposing of charitable gifts were signed by the Queen until 3 May 1986 when she delegated her power to dispose of charitable gifts to the Attorney General. Since section of the 1 Law Officers Act 1997 came into force directions can also be signed by the Solicitor General.

### **What does a Sign Manual Direction do?**

It identifies the charitable beneficiary whose identity was previously uncertain. The jurisdiction is analogous to that of the court and the Charity Commissioners to make administrative schemes in respect of charitable gifts. The personal representatives must then administer the gift in accordance with the direction.

### **When is it used?**

It is used for giving effect to direct gifts for charitable purposes where no particular objects or trustees have been selected by a testator. These gifts can either be gifts for charitable purposes expressed in general terms or the testator could have named what appears at first blush to be an organisation with charitable objects but, on further investigation, none is found to exist with that name.

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Frequently encountered examples of the first type are gifts in wills to "cancer research", "arthritis research", "kidney research" and the like. Less common examples have included gifts for "research into a cure for herpes zoster", "handicapped children", "churches", "conservation", "animal welfare", "a charity for the care of donkeys" and "to charity".

Examples of gifts to organisations with charitable objects which have never existed include gifts to "The Hospital for Incurable Women of Brompton Road, London", "Save the Horses Fund", "the Ethiopia Fund", "the Cancer Research Trust", "the London Preservation Society" and "the association for the preservation of tropical rainforests".

### When is it not used?

- It cannot be used to construe a will. If by construing the will as a whole a charity can be identified then the personal representatives can pay the legacy to that charity without the need for a direction. For example, a gift to "cancer research" followed by the address of Macmillan Cancer Relief is capable of being construed as a gift to Macmillan Cancer Relief.
- It cannot be used to resolve a dispute over the validity or construction of a will. The Attorney General will generally not make a direction if he is aware that there is or may be a dispute pending.
- It does not protect personal representatives from challenge from persons claiming to be beneficially entitled to the gift in question.
- It cannot be used by the Attorney General for England and Wales in relation to Scottish or Northern Irish estates in respect of which there are probably no analogous powers.
- It cannot be used where a trust has been interposed on the gift. The jurisdiction was analysed by Mr Justice Vaisey in In re Bennett deceased [1960] Ch 18 who commented at page 24:

"It is a curious thing that the matter seems on the authorities to depend almost entirely on this principle: was the gift to the non-existent beneficiary created by means of a trust or by a direct gift? If it was created by means of a trust, then the usual procedure would follow, and it would be for the court to decide, in the familiar way, by way of scheme what should be done with the disputed amount. If, on the other hand, the gift to the non-existent hospital is not by way of trust but a direct gift, then under a very long series of authorities (not altogether consistent and not altogether easy to interpret) it falls to be dealt with by the royal prerogative".

In such circumstances, the Charity Commission may allocate the legacy by way of a scheme, and we therefore recommend that enquiries are made to the Commission at P O Box 1277 Liverpool L69 3UG

- It is not used where the testator has provided in his or her will for the eventuality of an organisation with charitable objects named in his will not existing and provides for his personal representatives to decide which charity should benefit from the gift.

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### Since when has it been used?

Its use can be traced back to at least 1675. In AG -v- Peacock (1675) Finch 245, Lord Nottingham LC upheld a bequest "to charitable uses for the good of the poor for ever" on the ground that "the King by his prerogative could cure the uncertainty and apply the property cy-pres to like charitable objects under the sign manual". Charles II, who was known to be interested in the welfare of social and educational charities, directed that the money be applied for the benefit of the poor children of his new royal foundation in Christ's Hospital who were to be taught arithmetic and the art of navigation.

### How is a charity selected by the Attorney General?

In determining how to dispose of the gift the Attorney General adopts the same approach as would be adopted by the court. The factors to which he will have regard are:

- the testator's intentions as expressed in his or her will. A gift to "*asthma research*" will be applied to a charity which conducts research into asthma.
- extrinsic evidence which suggests that the testator had a particular charity in mind when they made their will. For example, sometimes there will be a record of a testator donating to a particular charity during their lifetime; sometimes they are known to have supported a local charity shop; sometimes it can be established that the testator pledged a legacy to a particular charity; and sometimes they may have made known their wishes to their executors, family or friends.

The Attorney General will then consider all the evidence and a direction will normally be made in accordance with the testator's perceived intentions although the Attorney General is not bound by these.

### What is the Treasury Solicitor's procedure?

The Treasury Solicitor acts for the Attorney General in these cases and is the person to whom requests should be directed in the first instance.

- When personal representatives or their solicitors first make contact they are provided with a copy of a note of procedure and asked for (a) sight of the original grant of probate or letters of administration with will annexed, (b) any other evidence as to the charity the testator intended to benefit and (c) the value of the gift where this is not apparent from the will.
- The Treasury Solicitor will then check the Register of Charities both to check that no charity exists with that name and to identify charities which further the purposes which the testator intended to benefit.
- When enquiries are complete, a submission and draft direction will be put up to either the Attorney General or Solicitor General for their consideration.
- The signed direction is generally returned to the Treasury Solicitor within a few weeks.
- The original direction is then forwarded to the personal representatives.

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### Some facts and figures:

The Attorney General is currently making around 50 Sign Manual directions a year. Most of these bequests are small (£1,000 or less). By far the most common use for directions is in respect of gifts to "cancer research". A significant proportion of wills are "home made".

### The Cancer Research Rota

Because by far the largest number of cases referred to the Attorney General for a direction concern gifts to "cancer research" and because there will often be no evidence that the testator had a particular cancer research charity in mind, a system has been developed whereby such gifts are applied in accordance with a "rota".

There are currently seven charities which conduct research into cancer on the rota: Cancer Research UK, The Institute of Cancer Research, The Leukaemia Research Fund, Breakthrough Breast Cancer, Tenovus, The Roy Castle Lung Cancer Foundation and Marie Curie Cancer Care. Although called a rota it is not a true rota. Instead each gift is applied to the charity with the lowest running total so that each receives roughly equal amounts over a period of time. Very large gifts may be shared equally between all seven rota charities. The amount distributed under the rota can vary substantially from year to year but is roughly £800,000 per annum.

### Advantages

A direction under the Sign Manual procedure has two notable advantages: it is cheap and it is quick. The Attorney General does not charge for a direction. Where solicitors or banks administering the estate drafted the will in question they are requested not to charge for their time in procuring a direction. Except in cases where there is a dispute, a direction can usually be made within weeks.

In exceptional cases (for example where the person who is entitled to take out the grant under rule 20 of the Non-Contentious Probate Rules 1987 is the residuary beneficiary and a direction is required to ascertain the identity of that beneficiary) directions will be made before a grant of probate or letters of administration with will annexed have been extracted.

Personal representatives or their solicitors who would like the Attorney General to make a direction in a particular case should write to the Charities Team of the Treasury Solicitor's Department, One Kemble Street, London WC2B 4TS.

Part of the procedure on receipt of a signed Direction is to write to the charity concerned informing them that a direction has been made in its favour.

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