



## **Epidemic Preparedness (Wills Act 2007— Signing and Witnessing of Wills) Immediate Modification Order 2020**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 16th day of April 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 15 of the Epidemic Preparedness Act 2006—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Justice made after being satisfied of the matters required by section 15(2)(b) of that Act and after receiving from the chief executive of the Ministry of Justice a written recommendation stating the matters required by section 15(2)(a) of that Act.

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## Order

### 1 Title

This order is the Epidemic Preparedness (Wills Act 2007—Signing and Witnessing of Wills) Immediate Modification Order 2020.

### 2 Commencement

This order comes into force on 17 April 2020.

### 3 Enactment to which modifications made

This order modifies requirements imposed by the Wills Act 2007 (the **Act**).

### 4 Wills may be signed and witnessed using audiovisual links

*Modification to how will-maker required to sign or direct signing*

- (1) Section 11(3) of the Act has effect as if the will-maker must—
- (a) sign the document; or
  - (b) direct another person to sign the document on his or her behalf in his or her presence; or
  - (c) direct another person to—
    - (i) sign a copy of the document on his or her behalf before him or her via an audiovisual link from another place because an epidemic notice is in force; and
    - (ii) make clear on the copy it is signed in that way; and
    - (iii) send a photograph or scan of the signed copy promptly to 1 holder, who is identified by him or her, of—
      - (A) the document; and
      - (B) all required photographs or scans of signed copies of it.

*Modifications to how witness required to witness signing*

- (2) Section 11(4) of the Act has effect as if at least 2 witnesses must—
- (a) be together in the will-maker's presence, or be together with the will-maker and the other witnesses in the will-maker's presence or via an audiovisual link from 1 or more other places because an epidemic notice is in force, when the will-maker—
    - (i) complies with section 11(3) (as modified by subclause (1)); or
    - (ii) acknowledges that—
      - (A) he or she signed the document earlier and that the signature on the document is his or her own; or
      - (B) another person directed by him or her signed the document earlier on his or her behalf in his or her presence; or

- (C) another person directed by him or her complied earlier with each of his or her directions given under subclause (1)(c)(i), (ii), and (iii); and
- (b) each sign the document in the will-maker's presence, or—
  - (i) sign a copy of the document before him or her via an audiovisual link from another place because an epidemic notice is in force; and
  - (ii) make clear on the copy it is signed in that way; and
  - (iii) send a photograph or scan of the signed copy promptly to 1 holder, who is identified by him or her, of—
    - (A) the document; and
    - (B) all required photographs or scans of signed copies of it.

*Modifications to witnesses' permitted attestation clause*

- (3) Section 11(5) of the Act has effect as if, as evidence of compliance with section 11(4) of the Act (as modified by subclause (2)), at least 2 witnesses may each state on the document or on a copy of the document, in the will-maker's presence, or via an audiovisual link with him or her and the other witnesses from 1 or more other places because an epidemic notice is in force, the following:
  - (a) that he or she was present with the other witnesses when the will-maker, or that he or she was together with the will-maker and the other witnesses in the will-maker's presence or via an audiovisual link from 1 or more other places because an epidemic notice is in force when the will-maker,—
    - (i) signed the document; or
    - (ii) acknowledged that he or she signed the document earlier and that the signature on the document is his or her own; or
    - (iii) directed another person whose signature appears on the document to sign the document on his or her behalf in his or her presence; or
    - (iv) acknowledged that another person directed by him or her signed the document earlier on his or her behalf in his or her presence; or
    - (v) directed another person to do what is specified in subclause (1)(c)(i), (ii), and (iii); or
    - (vi) acknowledged that another person directed by him or her complied earlier with each of his or her directions given under subclause (1)(c)(i), (ii), and (iii); and
  - (b) that he or she signed the document in the will-maker's presence, or that he or she—
    - (i) signed a copy of the document before the will-maker via an audiovisual link from another place because an epidemic notice is in force; and

- (ii) made clear on the copy it is signed in that way; and
- (iii) sent a photograph or scan of the signed copy promptly to 1 holder, who is identified by the will-maker, of—
  - (A) the document; and
  - (B) all required photographs or scans of signed copies of it.

*No particular form of words required for statements or clause*

- (4) Section 11(6) of the Act has effect as if no particular form of words is required for the purposes of—
  - (a) making clear on a copy of a document, as required by subclause (1)(c)(ii), that it is signed at the will-maker's direction on his or her behalf before him or her via an audiovisual link from another place because an epidemic notice is in force; or
  - (b) making clear on a copy of a document, as required by subclause (2)(b)(ii), that it is signed by a witness before the will-maker via an audiovisual link from another place because an epidemic notice is in force; or
  - (c) section 11(5) (as modified by subclause (3)).

## **5 Revocation**

This order is revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Rachel Hayward,  
for the Clerk of the Executive Council.

## **Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order is made under the Epidemic Preparedness Act 2006 and its effect is temporary. It comes into force on 17 April 2020 and is revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked. It modifies requirements imposed by section 11 of the Wills Act 2007 (the **Act**) that may be impossible or impracticable to comply with during an epidemic.

The modifications allow wills to be signed and witnessed using audiovisual links.

*Modification to how will-maker required to sign or direct signing*

*Clause 4(1)* modifies section 11(3) of the Act so that the will-maker must sign the document or direct another person to sign the document on his or her behalf in his or her presence, or (a modification) direct another person to—

- sign a copy of the document on his or her behalf before him or her via an audiovisual link from another place because an epidemic notice is in force; and
- make clear on the copy it is signed in that way; and
- send a photograph or scan of the signed copy promptly to 1 holder, who is identified by him or her, of—
  - the document; and
  - all required photographs or scans of signed copies of it.

*Modifications to how witness required to witness signing*

*Clause 4(2)* modifies section 11(4) of the Act so that, when the will-maker complies with, or acknowledges compliance earlier with, section 11(3) of the Act (as modified), at least 2 witnesses must be together in the will-maker's presence, or (a modification) be together with the will-maker and the other witnesses—

- in the will-maker's presence; or
- via an audiovisual link from 1 or more other places because an epidemic notice is in force.

*Clause 4(2)* also modifies section 11(4) of the Act so that the witnesses may witness the will-maker acknowledging that another person directed by him or her (under section 11(3) of the Act as modified) earlier—

- signed a copy of the document on his or her behalf before him or her via an audiovisual link from another place because an epidemic notice is in force; and
- made clear on the copy it is signed in that way; and
- sent a photograph or scan of the signed copy promptly to 1 holder, who is identified by him or her, of—
  - the document; and
  - all required photographs or scans of signed copies of it.

*Clause 4(2)* also modifies section 11(4) of the Act so that the witnesses must each sign the document in the will-maker's presence, or (a modification)—

- sign a copy of the document before him or her via an audiovisual link from another place because an epidemic notice is in force; and
- make clear on the copy it is signed in that way; and
- send a photograph or scan of the signed copy promptly to 1 holder, who is identified by him or her, of—
  - the document; and
  - all required photographs or scans of signed copies of it.

*Modifications to witnesses' permitted attestation clause*

*Clause 4(3)* modifies section 11(5) of the Act in light of modifications made by *clause 4(1) and (2)*.

*No particular form of words required for statements or clause*

Clause 4(4) modifies section 11(6) of the Act in light of modifications made by clause 4(1), (2), and (3).

### **Statement of reasons**

The Minister of Justice is satisfied of the matters required by section 15(2)(b) of the Epidemic Preparedness Act 2006 for the reasons that follow.

*Effects are, or are likely to be, such that requirement is impossible or impracticable to comply (or comply fully) with*

It is important that people are able to make a will while the Epidemic Preparedness (COVID-19) Notice 2020 is in force.

During a lockdown period, people who live with other adults may be able to sign a will in the physical presence of 2 witnesses (for example, if no disposition in the will to or through a witness will be void under section 13 of the Wills Act 2007). However, people who live alone, or with 1 other adult, will not be able to do so. For those people, it is “impossible” or “impracticable” (that is to say, practically impossible) to sign a will in the physical presence of 2 witnesses. Moreover, even if a lower alert level applies, it is likely to be important for vulnerable people to remain isolated.

*Modifications go no further than reasonably necessary*

The modifications are—

- limited to modifying requirements, set out in section 11 of the Wills Act 2007, for signing and witnessing of wills; and
- temporary (they end when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked).

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 16 April 2020.  
This order is administered by the Ministry of Justice.