

# STATES OF JERSEY



Jersey

## **DRAFT WILLS AND SUCCESSIONS AND PROBATE (JERSEY) AMENDMENT LAW 202-**

---

**Lodged au Greffe on 11th February 2026  
by the Council of Ministers  
Earliest date for debate: 14th July 2026**

---

**STATES GREFFE**



Jersey

## **DRAFT WILLS AND SUCCESSIONS AND PROBATE (JERSEY) AMENDMENT LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Wills and Successions and Probate (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy L.J. Farnham of St. Mary, St. Ouen and St. Peter**  
*Chief Minister*

Dated: 10th February 2026

## REPORT

---

### Background and purpose

The Legislation Advisory Panel, which provides advice to the Chief Minister on laws which do not fall under the responsibility of a specific Minister, is proposing a new set of amendments to the [Wills and Successions \(Jersey\) Law 1993](#) (the “WSJL”) and the [Probate \(Jersey\) Law 1998](#) (the “PJL”). The amendment (the “draft Law”) intends to provide that a spouse or civil partner should have the legal right to life enjoyment of the family home if their spouse or civil partner dies and does not leave it to them in their will. This would change the extant rules in Jersey law where otherwise the surviving spouse is entitled to claim the life enjoyment of one third of all immovable property of the deceased as “dower.”

The purpose behind changing the scope of the rules is to continue and enhance the existing protection of the surviving spouse or civil partner who does not inherit the home they lived in with the deceased. Moreover, the change should reflect the position and circumstances of the majority of families in Jersey who are likely to own just one property that cannot be divided to enable a surviving spouse to enjoy one third of it. Thus, it is hope that the amendments may reduce possible conflicts arising between the surviving spouse/civil partner and other members of the family who inherit ownership of immovable property of the deceased, including the family home. The amendments will not affect: the type of property to which the right applies; the duty of the spouse or civil partner to maintain the property and return it in the same condition they received it; how a spouse or civil partner’s right to life enjoyment is secured; the ability for a secured creditor to enforce a mortgage; the circumstances in which the spouse of civil partner may accept payment in lieu of their right to life enjoyment; the ability for the right to life enjoyment to be amended by agreement; or the potential to lose life in enjoyment in particular circumstances.

The proposed amendments further provide for making the legal concept of the “principal heir” gender neutral. This will mean that the concept of the principal heir will apply to the eldest heir regardless of gender. In Jersey law at present, the “principal heir” is the eldest male heir or, if there is no male heir, the eldest female heir (or a representative of that person if the principal heir has deceased). Historically, the eldest male had a privileged status when inheriting property and while these privileges have been largely eroded, the concept still exists and has practical significance, such (for example) as being able to take legal possession of moveable property prior to an executor or administrator being appointed for estate purposes.

The Law will also amend the PJL to broaden the scope of the discretion of the Judicial Greffier or Inferior Number of the Royal Court to grant probate to other individuals beyond those entitled to the grant.

The draft Law also makes certain other changes to provide that the WSJL and PJL adhere to modern drafting best-practice.

### The Draft Law

With respect to the detail of the draft Articles themselves, Article 1 introduces the operative amendments to the WSJL in Part 1 (Articles 1 to 12) with then Article 2 making various technical drafting corrections and clarifications.

Articles 3 and 4 allow for the rights of relatives of the half-blood in collateral succession to be extended to movable property rather than only immovable. Moreover, Article 3AA provides that in a collateral succession on intestacy, relatives of the half-blood take a half share and relatives of the whole blood take a whole share. These changes came about as a result of a desire for more equitable provisions highlighted during the consultation.

Article 5 intends to simplify the wording of the extant Article 5(2) in the WSJL, making it clear that consent is not required for a surviving spouse or civil partner to take a transfer of a lease of the matrimonial home or civil partnership home – another matter which arose out of the consultation. Articles 8 and 6 have the effect of respectively deleting and replacing the extant articles dealing with the concept of dower in the WSJL, making clear that it no longer applies to one third of all the deceased's immovable property but rather to the whole matrimonial or civil partnership home. Article 6 also provides that the new definition of dower will only apply to those who die on or after commencement. Article 6 also makes certain other clarificatory changes.

Article 7 functions then to amend Article 6 to reflect the new changes made to dower and removes a reference to *viduité*, a concept which has already been abolished. Article 9 provides clarification that the Royal Court's extant powers to deprive a person of their right of enjoyment of an estate continues alongside relevant exceptions.

Article 10 is the operative article which deals with the principal heir, ensuring that the principal heir will be the eldest heir, regardless of sex.

Articles 11 and 12 introduce Schedules 1 and 2 respectively which set out a series of consequential amendments to the [Loi \(1880\) sur la propriété foncière](#) and the [Loi \(1996\) sur l'hypothèque des biens-fonds incorporels](#) to reflect the new definition of dower and provide for a series of more minor changes to the WSJL to reflect modern drafting standards as well as other consequentials.

Article 13 introduces the amendments to the PJJ in Part 2, with Article 14 providing for the broadening of discretion to be given to the Judicial Greffier and Inferior Number of the Royal Court to grant probate to those other than those entitled under Article 14.

Article 15 provides that the Law will come into force 7 days after it is registered.

### **Consultation**

A consultation on the Draft Law was held between 29th May 2024 and 6th September 2024 and invited comments from the public and lawyers working in the area of wills, succession and probate. The Judicial Greffier and the Law Society Sub Committee on Succession were also briefed specifically owing to their particular interests in the subject-matter.

### **Financial and staffing implications**

There are no additional or financial implications for Government as a result of this proposition.

### **Children's Rights Impact Assessment**

A full Children's Rights Impact Assessment (CRIA) is not required in relation to this proposition.

### **Human Rights**

The notes on the human rights aspects of the Draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not, be taken as legal advice.

## APPENDIX TO REPORT

**Human Rights notes on the Draft Wills and Succession and Probate (Jersey)  
Amendment Law 202-**

These notes have been prepared in respect of the draft Law by the Law Officers' Department.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law has been reviewed by the Law Officers' Department to ensure compliance with the European Convention on Human Rights (the "**Convention**"/"**ECHR**"). Subject to the following observations, it has been determined that, due to the nature of the amendments made, the draft Law does not give rise to any additional human rights issues above and beyond those that exist under the current version of the Wills and Successions (Jersey) Law 1993 (the "**Principal Law**").

Notwithstanding that the Law Officers' Department's view is that the draft Law does not give rise to additional human rights concerns *per se*, it is considered prudent to highlight the following new provision in the context of Article 8 (Right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 ("**A1 P1**") (Protection of property) of the Convention.

If approved, Article 7 of the draft Law inserts new Article 5A (Variation of dower – right of surviving spouse or civil partner to life enjoyment of matrimonial home or civil partnership home if individual dies testate) (the "**Key Amendment**") into the Principal Law. Paragraphs (1) and (2) of Article 5A provide as follows:

- (1) *If an individual dies testate as to their immoveable estate, their surviving spouse or civil partner is entitled to dower as it is varied by paragraph (2).*
- (2) *Dower is an entitlement to a usufruct of the whole matrimonial home or civil partnership home (and no longer extends to any other part of the immoveable estate as to which the individual dies testate).*

Currently, the entitlement to dower (arising in relation to a testate succession of immovables) applies to one third of all the deceased's immovable estate. The Key Amendment, if approved, will change the scope of dower so that it will instead apply to the matrimonial home or the civil partnership home.

**Article 8 of the Convention (Right to respect for private and family life, home and correspondence):**

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The Key Amendment could, potentially, engage Article 8 of the Convention, as matters relating to succession and disposition are “*intimately connected with family life*” ([Marckx -v- Belgium](#), para 52). However, paragraph 53 of the **Marckx** case goes on to state as follows:

*“...it is not a requirement of Article 8 (art. 8) that a child should be entitled to some share in the estates of his parents or even of other near relatives: in the matter of patrimonial rights also, Article 8 (art. 8) in principle leaves to the Contracting States the choice of the means calculated to allow everyone to lead a normal family life (see paragraph 31 above) and such an entitlement is not indispensable in the pursuit of a normal family life. In consequence, the restrictions which the Belgian Civil Code places on Alexandra Marckx’s inheritance rights on intestacy are not of themselves in conflict with the Convention, that is, if they are considered independently of the reason underlying them. Similar reasoning is to be applied to the question of voluntary dispositions.”*

Also, as stated in paragraph 43 of the [Haas v The Netherlands](#) judgment:

*“...an applicant cannot derive from Article 8 a right to be recognised as the heir of a deceased person for inheritance purposes.”*

The Law Officers’ Department considers that the case law referred to above would suggest that Article 8 is unlikely to be triggered with respect to the Key Amendment. However, in the event that Article 8 might be considered to be triggered, the Law Officers’ Department considers that the Key Amendment would be ECHR-compliant on the following basis. As a qualified right, some interferences are permissible if, for good public policy reasons, such interferences are proportionate to the legitimate aim pursued. An interference must accord with the conditions in Article 8(2): they must be provided by law; must pursue one of the legitimate aims set out therein; and must be “necessary in a democratic society”, that is, proportionate to the aim pursued. This requires that a fair balance is struck between the competing interests of affected individuals and of the community as a whole.

Clearly the Key Amendment is provided by law, being the draft Law. The policy intent of the change in scope of the entitlement to dower reflected in the Key Amendment is to continue, and in some respects, enhance the existing protection of the surviving spouse or civil partner who does not inherit the home they lived in with the deceased. It is considered that this change will reflect the circumstances of the majority of spouses and civil partners in Jersey who are likely to own just one property that cannot be divided to enable a surviving spouse to enjoy one third of it. To the extent that there was any potential interference with Article 8 rights, it is considered that such interference would be proportionate to the legitimate aim pursued, being the protection of the rights of surviving spouses or civil partners. The draft Law and the proposals contained therein have also been subject to public consultation.

#### **A1 P1 of the Convention (Protection of property):**

1. *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

2. *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

According to *Marckx* (paragraph 50), A1 P1:

*“does no more than enshrine the right to the peaceful enjoyment of “his” possessions, that consequently it applies only to a person’s existing possessions and that it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions.”*

The Law Officers’ Department considered whether A1 P1 rights might be interfered with respect to the Key Amendment. The case of *Marckx* confirmed that A1 P1 is only concerned with a person’s existing possessions and not those which may be acquired by inheritance or succession. A1 P1 does not confer a right to future property.

## EXPLANATORY NOTE

---

This Law, if passed, will make a series of amendments to the Wills and Successions (Jersey) Law 1993 (the “WSJL”), most notably to amend the scope of dower so that it applies to the matrimonial home or civil partnership home rather than one third of all the deceased’s immovable estate. This law will also amend Article 14(5) and (6) of the Probate (Jersey) Law 1998 (the “PJL”) to broaden the scope of the discretion of the Judicial Greffier or Inferior Number of the Royal Court to grant probate to individuals other than the individuals entitled to the grant under that Article.

*Article 1* introduces the amendments to the WSJL in *Part 1 (Articles 1 to 12)*.

*Article 2* amends Article 1 (interpretation) of the WSJL. The words “that forms part of” are added before “*bien-fonds*” to correct an error in how share transfer properties are described in the definitions of “civil partnership home” and “matrimonial home”. Because of drafting changes to Article 5 of the WSJL the way in which the definition of “*usufruit*” is expressed is slightly altered.

*Articles 3 and 4* work together to move Article 4(2) of the WSJL into a new Article 3AA (right of relatives of the half blood in collateral succession) and extend its application to movable property as well as immovable property. Article 3AA provides that in a collateral succession on intestacy relatives of the half-blood each take a half share and relatives of the whole blood each take a whole share.

*Article 5* replaces Article 5 of the WSJL. It simplifies the wording of Article 5(2) to make clear that consent is not required for a surviving spouse or civil partner to take a transfer of a lease of the matrimonial home or civil partnership home under this Article. It also updates the Article to modern drafting standards, adds a reference to intestacy (death without having made a valid will) to the heading to clarify when the Article applies and divides it into 3 paragraphs.

*Articles 6 and 8* work together. *Article 8* deletes Articles 6A, 6B and 6C (all of which relate to dower) and *Article 6* recasts them as new Articles 5A and 5B. New Article 5A (dower) restates Articles 6A and 6B. It provides that spouses and civil partners are entitled to dower if their spouse or civil partner dies testate (having made a valid will). Paragraph (2) defines dower so that it no longer applies to one third of all the deceased’s immovable estate but instead to the whole matrimonial home or civil partnership home. Paragraph (3) provides that the new definition of dower will only apply to those who die on or after the commencement of this Law.

*Article 6* also inserts Article 5B (references to dower in enactment and in dispositions), which is a reworking of Article 6C. Paragraph (1) provides that the definition of dower in statutory law, wherever it appears, is to dower as defined by new Article 5A. Paragraph (2) provides that references to dower in dispositions (i.e. wills, codicils etc.) executed on or after the commencement of this Law will be taken to be references to dower as defined by new Article 5A. Paragraph (3) repeats Article 6C(2) to state that references to dower in dispositions made since 1 January 2014 (the date that the Wills and Successions (Amendment No. 2) (Jersey) Law 2013 (the “2013 Amendment Law”) came into force) will be taken to be references to dower as extended by the 2013 Amendment Law to civil partners and widowers.

*Article 7* amends Article 6 (devolution of immovable estate on intestacy) of the WSJL to reflect the changes to dower made by *Article 6*. In addition, a reference to *viduité*, a concept that has been abolished, is removed.

*Article 9* amends Articles 8 (spouses living apart) and Article 8AA (civil partners living apart) of the WSJL. Paragraph (3) of each Article is amended to make it clear, with the addition of a subparagraph (a), that the Court’s powers to deprive a person of their right of enjoyment of an estate continue alongside the statutory exceptions set out in Articles 8 and 8AA.

*Article 10* inserts a new Article 14D into the WSJL that varies the customary law by providing that the principal heir, in respect of the estate of a person who dies on or after the commencement of this Law, will be the eldest heir, regardless of sex.

*Article 11* introduces *Schedule 1 (consequential amendments)* and provides a power to make further consequential amendments to enactments by Regulations. *Schedule 1* contains amendments to the Loi (1880) sur la propriété foncière and the Loi (1996) sur l'hypothèque des biens-fonds incorporels. These amendments reflect the new definition of dower introduced by this Law.

*Article 12* introduces *Schedule 2 (minor amendments)*. A series of minor amendments are made to the WSJL which include –

- (a) updating to modern drafting standards;
- (b) updating some cross-references or adding missing cross-references;
- (c) making changes to article headings to be consistent with the content of the Article;
- (d) combining the definitions of “civil partnership home” and “matrimonial home” for conciseness and to indicate that they mirror each other;
- (e) moving the definition of “disposition” from Part 3A of the WJSL and placing it in Article 1 because it has general application beyond Part 3A;
- (f) introducing 3 new division headings – “right to enjoyment”, “rights to succeed” and “exceptions” – into Part 3 of the WSJL to increase user accessibility;
- (g) amending Article 6(1)(b) to increase clarity around the description of the individuals to whom the immoveable estate devolves on intestacy; and
- (h) amending Article 22A of the WSJL to insert an actual date.

*Article 13* introduces the amendments to the PJJ in *Part 2 (Articles 13 and 14)*.

*Article 14* amends Article 14(4) and (5) (entitlement to grant as administrator or executor dative) to broaden the discretion given to the Judicial Greffier and Inferior Number of the Royal Court to grant probate to individuals other than those entitled under Article 14. It replaces “special” with “relevant” to qualify the word “circumstances”. The Article is also updated to modern drafting standards and the word “appropriate” is added to “necessary or convenient” in both Article 14(4) and (5).

*Article 15* gives the title by which this Law may be cited and provides that this Law comes into force 7 days after it is registered.

## English translation

The following translation of Schedule 1 is provided for information only and is not intended to have any legal effect.

### SCHEDULE 1

(Article 11)

#### CONSEQUENTIAL AMENDMENTS

##### PART 1

#### 1 Amendment of the 1880 Law concerning immovable property

This Part amends the 1880 Law concerning immovable property.

#### 2 Article 1 amended

In Article 1, after the definition SURVIVING SPOUSE there is inserted –

MATRIMONIAL HOME has the same meaning as “matrimonial home” in the [Wills and Successions \(Jersey\) Law 1993](#).

CIVIL PARTNERSHIP HOME has the same meaning as “civil partnership home” in the [Wills and Successions \(Jersey\) Law 1993](#).

#### 3 Articles 7 to 9 substituted

For Articles 7 to 9 there is substituted –

##### 7

- (1) A surviving spouse or civil partner has a hypothec with right of recourse against successors in title over the matrimonial home or civil partnership home as security for their dower. This hypothec ranks from the day of the decease of the deceased spouse or civil partner.
- (2) If, during a marriage or civil partnership, a spouse or civil partner makes cession or their property is adjudged renounced, the surviving spouse or civil partner retains all their rights without taking proceedings to enforce them; except that, after the death of a spouse or civil partner who has made cession, as well as in the case of the *dégrévement* of the property of a spouse or civil partner after their death, the surviving spouse or civil partner cannot claim, by way of dower, the actual enjoyment of the matrimonial home or civil partnership home – whether it is in the hands of tenants or other successors in title or is included in the property undergoing *dégrévement*: but the surviving spouse or civil partner is entitled to *franc douaire* [dower in money] on the matrimonial home or civil partnership home.
- (3) In the case of *dégrévement*, after the death of a spouse or civil partner, of the matrimonial home or civil partnership home subject to the dower of the surviving spouse or civil partner, the latter must be summoned to appear at the

*dégrèvement* in accordance with Article 92, and has the right to constitute themselves tenant of the matrimonial home or civil partnership home according to the order of priority of their hypothec.

## 8

- (1) Following entry into possession by the surviving spouse or civil partner of the matrimonial home or civil partnership home, in the event of *dégrèvement* of the matrimonial home or civil partnership home, no procedural step need be taken by the surviving spouse or civil partner to retain possession of the matrimonial home or civil partnership home.
- (2) In the case where recourse has to be had to the property of the deceased spouse or civil partner, entry into possession, as described above, has the following effects.
- (3) The surviving spouse or civil partner retains the enjoyment of the immovable property that constitutes the dower until the quarter day next falling immediately after the 3 months following the Court order that recourse be had to the assets: this on paying the *rentes* and charges to which the dower is subject – in proportion to the time elapsed. If the relevant quarter day is 25 March, 24 June or 29 September, and there is agricultural land as part of the matrimonial home or civil partnership home, the surviving spouse or civil partner is entitled to retain possession of them, as well as of the dwelling and out-buildings that they occupy and use for cultivating that land, until the next Christmas Day: but on payment of rent or compensation to the person entitled for difference in time.

## 9

- (1) In the event of *dégrèvement* of any part of their property, the surviving spouse or civil partner is not required to take any action to conserve their hypothecary rights, or to take any procedural step in the *dégrèvement*, as regards an agreement for *franc douaire* [dower in money], regardless of whether the agreement has been registered.
- (2) On a *dégrèvement*, the surviving spouse or civil partner has a preferential right to 3 years' arrears, from the date of the Act of the Court ordering the *dégrèvement*, of their *franc douaire* [money in dower] as is apportioned on the hereditaments respectively comprised in the property undergoing *dégrèvement*.
- (3) In the case of recourse to the property of a deceased spouse, an agreement for *franc douaire* is absolutely void.

## 9A

The consequential amendments made to Articles 7, 8 and 9 by the Schedule to the Wills and Successions and Probate (Jersey) Amendment Law 202- do not apply in relation to the estate of a person who dies before the day that Law came into force.

---

**PART 2****4 Amendment of 1996 Law on the hypothecation of incorporeal hereditaments**

This Part amends the 1996 Law on the hypothecation of incorporeal hereditaments.

**5 Article 2 (hypothecation of incorporeal hereditaments) amended**

In Article 2 –

- (a) in paragraph (1)(a), “or” is deleted;
- (b) at the end of paragraph (1)(b), for “the Royal Court” there is substituted “the Royal Court; or”;
- (c) after paragraph (1)(b) there is inserted –
  - (c) under Article 7 of the [Loi \(1880\) sur la propriété foncière](#).



Jersey

## DRAFT WILLS AND SUCCESSIONS AND PROBATE (JERSEY) AMENDMENT LAW 202-

### Contents

#### Article

|   |  |           |
|---|--|-----------|
| <b>PART 1</b>                                   |  | <b>15</b> |
| WILLS AND SUCCESSIONS (JERSEY) LAW 1993 AMENDED |  | 15        |
| 1   | Wills and Successions (Jersey) Law 1993 amended.....   | 15        |
| 2   | Article 1 (interpretation) amended .....   | 15        |
| 3   | Article 3AA inserted.....  | 15        |
| 4   | Article 4 (heirs take as tenants in common) amended.....   | 16        |
| 5   | Article 5 (right of surviving spouse to life enjoyment of matrimonial home or surviving civil partner to life enjoyment of civil partnership home) amended ..... | 16        |
| 6   | Article 5A and 5B inserted .....   | 16        |
| 7   | Article 6 (devolution of immovable estate on intestacy) amended .....  | 17        |
| 8   | Articles 6A, 6B and 6C deleted.....  | 17        |
| 9   | Article 8 (spouses living apart) and Article 8AA (civil partners living apart) amended   | 17        |
| 10  | Article 14D inserted .....   | 17        |
| 11  | Consequential amendments.....  | 17        |
| 12  | Minor amendments .....   | 18        |
| <b>PART 2</b>                                   |  | <b>18</b> |
| PROBATE (JERSEY) LAW 1998 AMENDED               |  | 18        |
| 13  | Probate (Jersey) Law 1998 amended.....   | 18        |
| 14  | Article 14 (entitlement to grant as administrator or executor dative) amended .....  | 18        |
| <b>PART 3</b>                                   |  | <b>18</b> |
| FINAL   |  | 18        |
| 15  | Citation and commencement .....  | 18        |
| <b>SCHEDULE 1</b>                               |  | <b>19</b> |
| CONSEQUENTIAL AMENDMENTS                        |  | 19        |
| PART 1  |  | 19        |
| 1   | Loi (1880) sur la propriété foncière amended.....  | 19        |
| 2   | Article 1 amended.....   | 19        |

|                   |   |           |
|-------------------|---|-----------|
| 3                 | Articles 7 to 9 substituted.....  | 19        |
| PART 2            |   | 20        |
| 4                 | Loi (1996) sur l'hypothèque des biens-fonds incorporels amended .....                             | 20        |
| 5                 | Article 2 (hypothèque des bien-fonds incorporels) amended.....                                    | 21        |
| <b>SCHEDULE 2</b> |   | <b>22</b> |
| MINOR AMENDMENTS  |   | 22        |
| 1                 | Article 1 (interpretation) amended .....  | 22        |
| 2                 | Article 2 ( <i>Représentation</i> ) amended.....  | 22        |
| 3                 | Article 3 (right of maternal relatives in collateral succession) amended .....                    | 22        |
| 4                 | Part 3 Division headings inserted .....   | 22        |
| 5                 | Article 6 (devolution of immovable estate on intestacy) amended .....                             | 23        |
| 6                 | Article 7 (devolution of movable estate) amended.....   | 23        |
| 7                 | Article 8 (spouses living apart) amended .....  | 23        |
| 8                 | Article 8AA (civil partners living apart) amended.....  | 23        |
| 9                 | Article 8A (interpretation of Part 3A) amended .....  | 24        |
| 10                | Article 22A (Wills and Successions (Amendment No. 2) (Jersey) Law 2013: application) amended..... | 24        |



Jersey

## DRAFT WILLS AND SUCCESSIONS AND PROBATE (JERSEY) AMENDMENT LAW 202-

A LAW to amend further the [Wills and Successions \(Jersey\) Law 1993](#) and the [Probate \(Jersey\) Law 1998](#), and to make consequential amendments to other enactments.

---

|  |                              |
|--|------------------------------|
| <i>Adopted by the States</i>                         | <i>[date to be inserted]</i> |
| <i>Sanctioned by Order of His Majesty in Council</i> | <i>[date to be inserted]</i> |
| <i>Registered by the Royal Court</i>                 | <i>[date to be inserted]</i> |
| <i>Coming into force</i>                             | <i>[date to be inserted]</i> |

**THE STATES**, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

---

### PART 1

#### [WILLS AND SUCCESSIONS \(JERSEY\) LAW 1993](#) AMENDED

#### **1 [Wills and Successions \(Jersey\) Law 1993](#) amended**

This Part amends the [Wills and Successions \(Jersey\) Law 1993](#).

#### **2 Article 1 (interpretation) amended**

In Article 1(1) –

- (a) in the definition “civil partnership home”, in sub-paragraph (c) –
  - (i) before “a *bien-fonds*” there is inserted “that forms part of”;
  - (ii) for “corporation of” there is substituted “corporation in”;
- (b) in the definition “*usufruit* of the matrimonial home or the civil partnership home”, for ““*usufruit* of the matrimonial home or the civil partnership home”” there is substituted ““*usufruit*”, in relation to the matrimonial home or the civil partnership home,”.

#### **3 Article 3AA inserted**

After Article 3 there is inserted –

**3AA Right of relatives of the half-blood in collateral succession**

In a collateral succession on intestacy, whether of movable or immovable estate, relatives of the half-blood whether *consanguin* or *utérin* each take a half share and relatives of the whole blood each take a whole share.

**4 Article 4 (heirs take as tenants in common) amended**

For Article 4, there is substituted –

**4 Heirs take as tenants in common**

Subject to the provisions of this Law and subject to the operation of the right of *représentation*, the immovable estate as to which a person dies intestate shall devolve in equal undivided shares between the heirs at law and such heirs shall take as tenants in common (*en parts égales en indivis pour eux et leurs hoirs respectifs*).

**5 Article 5 (right of surviving spouse to life enjoyment of matrimonial home or surviving civil partner to life enjoyment of civil partnership home) amended**

For Article 5 there is substituted –

**5 Right on intestacy of surviving spouse or civil partner to usufruit (life enjoyment) of matrimonial home or civil partnership home**

- (1) If an individual dies intestate as to the matrimonial home or civil partnership home, their surviving spouse or civil partner is entitled to a *usufruit* of that home with the usual rights and obligations of a *usufruitier*.
- (2) Paragraph (1) does not apply if the surviving spouse or civil partner is entitled absolutely to the matrimonial home or civil partnership home under Article 6.
- (3) Consent is not required for a surviving spouse or civil partner to take a transfer of the lease of the matrimonial home or civil partnership home under paragraph (1).

**6 Article 5A and 5B inserted**

After Article 5 there is inserted –

**5A Dower**

- (1) If an individual dies testate as to their immovable estate, their surviving spouse or civil partner is entitled to dower.
- (2) From the commencement date, “dower” means an entitlement to a *usufruit* (life enjoyment) of the whole matrimonial home or civil partnership home (and no longer extends to any other part of the immoveable estate as to which the individual dies testate).
- (3) In this Article, “commencement date” means the date of commencement of the Wills and Successions and Probate (Jersey) Amendment Law 202-.

**5B References to dower in enactments and in dispositions**

- (1) In this Law and in any other enactment, whenever enacted, a reference to dower or *douaire*, however expressed, unless the contrary intention appears, is a reference to dower as defined in Article 5A.
- (2) In a disposition executed on or after the day this Article comes into force, a reference to dower or *douaire*, however expressed, unless the contrary intention appears, is a reference to dower as defined in Article 5A.
- (3) In dispositions executed on or after 1 January 2014, a reference to dower or *douaire*, however expressed, unless the contrary intention appears, includes the entitlement to dower of a civil partner and a widower.

**7 Article 6 (devolution of immovable estate on intestacy) amended**

In Article 6 for paragraph (3) there is substituted –

- (3) If an individual dies intestate as to immovable estate consisting of the matrimonial home or civil partnership home, their surviving spouse or civil partner is not entitled to dower.

**8 Articles 6A, 6B and 6C deleted**

Articles 6A, 6B and 6C are deleted.

**9 Article 8 (spouses living apart) and Article 8AA (civil partners living apart) amended**

In Article 8 and Article 8AA, for paragraph (3) there is substituted –

- (3) Paragraphs (1) and (2) do not limit any power of the Court, on any grounds other than the grounds set out in paragraph (1) –
  - (a) to deprive a person of their right to enjoyment of the estate; or
  - (b) to exclude a person from any of their rights to succeed to the estate.

**10 Article 14D inserted**

After Article 14C there is inserted –

**14D Abolition of role of sex in determining principal heir**

- (1) In determining the principal heir, the sex of a person does not give that person, or that person's descendant, precedence over any other person.
- (2) Paragraph (1) does not apply in relation to the estate of a person who dies before the day of the commencement of the Wills and Successions and Probate (Jersey) Amendment Law 202-.

**11 Consequential amendments**

- (1) Schedule 1 contains amendments to other enactments that are consequential on this Part coming into force.

- (2) The States may by Regulations make further amendments to enactments that are consequential on this Part coming into force.

## 12 Minor amendments

Schedule 2 contains minor amendments.

## PART 2

### PROBATE (JERSEY) LAW 1998 AMENDED

## 13 Probate (Jersey) Law 1998 amended

This Part amends the Probate (Jersey) Law 1998.

## 14 Article 14 (entitlement to grant as administrator or executor dative) amended

(1) For Article 14(5) there is substituted –

(5) If it appears to the Judicial Greffier that, because of relevant circumstances, it is necessary, convenient or appropriate to make a grant to a person other than the person entitled to the grant under paragraphs (2) to (4), the Judicial Greffier –

- (a) is not obliged to make a grant to the person entitled;
- (b) may make a grant to the person as the Judicial Greffier thinks fit; and
- (c) may place limits, as the Judicial Greffier thinks fit, on that grant.

(2) For Article 14(6) there is substituted –

(6) If it appears to the Inferior Number that, because of relevant circumstances, it is necessary, convenient or appropriate that a grant be made to a person other than the person entitled to the grant under paragraphs (2) to (4), the Inferior Number may authorise the Judicial Greffier –

- (a) not to make a grant to the person entitled;
- (b) to make a grant to the person that the Inferior Number thinks fit; and
- (c) to place limits, that the Inferior Number thinks fit, on that grant.

## PART 3

### FINAL

## 15 Citation and commencement

This Law may be cited as the Wills and Successions and Probate (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.

## SCHEDULE 1

(Article 11)

### CONSEQUENTIAL AMENDMENTS

#### PART 1

#### 1 [Loi \(1880\) sur la propriété foncière](#) amended

This Part amends the [Loi \(1880\) sur la propriété foncière](#).

#### 2 Article 1 amended

In Article 1, after the definition CONJOINT SURVIVANT there is inserted –

DOMICILE CONJUGAL a le même sens que “matrimonial home” dans la Loi dite [Wills and Successions \(Jersey\) Law 1993](#).

DOMICILE DU PARTENARIAT CIVIL a le même sens que “civil partnership home” dans la Loi dite [Wills and Successions \(Jersey\) Law 1993](#).

#### 3 Articles 7 to 9 substituted

For Articles 7 to 9 there is substituted –

##### 7

- (1) Le conjoint survivant ou le partenaire civil survivant a sur le domicile conjugal ou le domicile du partenariat civil, pour assurance de son douaire, une hypothèque avec droit de suite, qui prendra date du jour du décès du conjoint décédé ou du partenaire civil décédé.
- (2) Si, constant le mariage ou le partenariat civil, le conjoint ou le partenaire civil fait cession ou que ses biens soient adjugés renoncés, le conjoint survivant ou le partenaire civil survivant conservera tous ses droits sans faire de diligences; excepté qu’après la mort du conjoint cessionnaire ou partenaire civil cessionnaire, ainsi qu’en cas de dégrèvement des biens du conjoint ou du partenaire civil après le décès de celui-ci, le conjoint survivant ou le partenaire civil survivant ne pourra prétendre d’avoir, par voie de douaire, la jouissance actuelle du domicile conjugal ou du domicile du partenariat civil – qu’il soit entre les mains de tenants ou autres tiers détenteurs, ou parmi les biens en dégrèvement: mais le conjoint survivant ou le partenaire civil survivant aura droit à un franc douaire sur le domicile conjugal ou le domicile du partenariat civil.
- (3) En cas de dégrèvement, après la mort du conjoint ou du partenaire civil, du domicile conjugal ou du domicile du partenariat civil sujette au douaire du conjoint survivant ou du partenaire civil survivant, celui-ci devra être assigné à paraître audit dégrèvement, conformément à l’Article 92, et aura la faculté de se porter tenant au dit domicile conjugal ou au dit domicile du partenariat civil dans l’ordre de son hypothèque.

**8**

- (1) Suivant la possession par le conjoint survivant ou le partenaire civil survivant du domicile conjugal ou du domicile du partenariat civil, en cas de dégrèvement du domicile conjugal or du domicile du partenariat civil, il ne nécessitera de la part du conjoint survivant ou du partenaire civil survivant, pour conserver la possession dudit domicile conjugal ou dudit domicile du partenariat civil, aucune formalité quelconque.
- (2) Dans le cas qu'il soit nécessaire de remonter à discuter les biens du conjoint décédé ou du partenaire civil décédé, a possession, comme sus est dit, aura les effets suivants.
- (3) Le conjoint survivant aura la faculté de retenir la jouissance de l'immeuble composant son douaire jusqu'à celui des 4 termes ordinaires de l'année, dont l'échéance arrivera immédiatement après l'expiration de 3 mois à partir du jour que la discussion desdits biens aura été ordonnée par la Cour: et ce, en payant les rentes et charges auxquelles ce douaire était assujetti – au prorata du temps échu. Si ce terme tombe au 25 mars, 24 juin, ou 29 septembre, et que les terres labourables forment partie du domicile conjugal or du domicile du partenariat civil, le conjoint survivant ou le partenaire civil aura la faculté d'en retenir la possession, ainsi que du logement et des offices qu'il occupe servant pour l'exploitation desdites terres, jusqu'au jour de Noël ensuivant: payant à qui de droit un loyer ou indemnité pour la différence du temps.

**9**

- (1) En cas de dégrèvement d'aucune partie de sa propriété, le conjoint survivant ou le partenaire civil survivant ne sera point sujet à faire aucun acte conservatoire ou à remplir aucune formalité dans ledit dégrèvement, à l'égard d'un accord de franc douaire, qu'il ait été enregistré ou non.
- (2) Le conjoint survivant ou le partenaire civil survivant aura droit par voie de préférence, en cas de dégrèvement, à 3 années d'arrérages, échues avant la date de l'Acte de la Cour ordonnant ledit dégrèvement, du franc douaire répartie sur les biens-fonds respectivement compris parmi les biens en dégrèvement.
- (3) En cas de discussion des biens du conjoint décédé, un accord de franc douaire sera absolument nul.

**9A**

Les modifications apportées aux Articles 7, 8 et 9 par l'annexe de la Loi dite Wills and Successions and Probate (Jersey) Amendment Law 202- ne s'appliquent pas à la succession d'une personne décédée avant le jour de l'entrée en vigueur de cette Loi.

**PART 2****4** [Loi \(1996\) sur l'hypothèque des biens-fonds incorporels](#) amended

This Part amends the [Loi \(1996\) sur l'hypothèque des biens-fonds incorporels](#).

**5 Article 2 (hypothèque des bien-fonds incorporels) amended**

In Article 2 –

- (a) at the end of paragraph (1)(a), “ou” is deleted;
- (b) at the end of paragraph (1)(b), for “Justice,” there is substituted “Justice; ou”;
- (c) after paragraph (1)(b) there is inserted –
  - (c) en vertu de l’Article 7 de la [Loi \(1880\) sur la propriété foncière](#),

**SCHEDULE 2**

(Article 12)

**MINOR AMENDMENTS****1 Article 1 (interpretation) amended**

In Article 1(1) –

- (a) in the definition “civil partnership home” –
  - (i) after “civil partnership home” there is inserted “and “matrimonial home” ”;
  - (ii) for “situate” there is substituted “situated”;
  - (iii) in the 4 places it appears, after “civil partner” there is inserted “or spouse”;
  - (iv) in the introductory words, “which is” is deleted;
  - (v) in sub-paragraph (a), before “a *bien-fonds*” there is inserted “that is”;
  - (vi) in sub-paragraph (b), before “held under a lease” there is inserted “that is”;
- (b) after the definition “Court” there is inserted –
  - (a) a will or codicil; or
  - (b) an instrument executed *entre vifs* that relates to rights of succession;
- (c) the definition “matrimonial home” is deleted.

**2 Article 2 (*Représentation*) amended**

In Article 2, for “half blood” there is substituted “half-blood”.

**3 Article 3 (right of maternal relatives in collateral succession) amended**

In Article 3 –

- (a) for “every” there is substituted “a”;
- (b) for “to” there is substituted “of”.

**4 Part 3 Division headings inserted**

(1) Before Article 5 there is inserted –

## DIVISION 1 – RIGHT TO ENJOYMENT

(2) Before Article 6 there is inserted –

## DIVISION 2 – RIGHTS TO SUCCEED

(3) After Article 7 there is inserted –

## DIVISION 3 – EXCEPTIONS

**5 Article 6 (devolution of immovable estate on intestacy) amended**

In Article 6 –

- (a) for paragraph (1) there is substituted –
- (1) If an individual dies intestate as to immovable estate it devolves as follows –
  - (a) if the individual is survived by a spouse or civil partner, but no issue, the surviving spouse or civil partner takes the whole of the immovable estate;
  - (b) if the individual is survived by a spouse or civil partner and issue, equal shares of the immovable estate are taken by –
    - (i) the surviving spouse or civil partner;
    - (ii) a child of the individual who survives the individual; and
    - (iii) the surviving issue of a child who has predeceased the individual, *par souche*.
- (b) in paragraph (2), for “paragraph (1)(b)” there is substituted “paragraph (1)(b)(iii)”.

**6 Article 7 (devolution of movable estate) amended**

In Article 7(1), for “Article 8” there is substituted “Articles 8 and 8AA”.

**7 Article 8 (spouses living apart) amended**

In Article 8 –

- (a) in the heading, for “living” there is substituted “residing”;
- (b) in paragraph (A1) in sub-paragraph (a), for “Articles 5, 6, 6B and 7 which” there is substituted “Articles 5, 5A, 6 and 7 that”;
- (c) in paragraph (A1) in sub-paragraph (b), for “his or her capacity as such” there is substituted “their capacity as surviving spouse”;
- (d) in paragraph (1) –
  - (i) in the opening words, for “shall not apply where” there is substituted “do not apply if”;
  - (ii) in sub-paragraph (b)(i), “such” is deleted;
- (e) in paragraph (2) –
  - (i) for “Where, by operation of the provisions of paragraph (1)”, there is substituted “If, under paragraph (1)”;
  - (ii) for “applied shall devolve” there is substituted “applied devolves”.

**8 Article 8AA (civil partners living apart) amended**

In Article 8AA –

- (a) in the heading for “living” there is substituted “residing”;
- (b) in paragraph (1) for the opening words there is substituted –

- (1) The provisions of Articles 5, 5A, 6, and 7 that operate to confer property, or a *usufruit*, interest, right or title in or to property on a surviving civil partner (in this Article referred to as the “surviving civil partner provisions”) do not apply if –
  - (c) in paragraph (2) –
    - (i) for “Where, by operation of the provisions of paragraph (1)”, there is substituted “If, under paragraph (1)”;
    - (ii) for “applied shall devolve” there is substituted “applied devolves”;
  - (d) for paragraph (3) there is substituted –
- (3) Paragraphs (1) and (2) do not limit any power of the Court, on any grounds other than the grounds set out in paragraph (1) –
  - (a) to deprive a person of their right to enjoyment of the estate; or
  - (b) to exclude a person from any of their rights to succeed to the estate.

## **9 Article 8A (interpretation of Part 3A) amended**

In Article 8A, the definition “disposition” is deleted.

## **10 Article 22A (Wills and Successions (Amendment No. 2) (Jersey) Law 2013: application) amended**

In Article 22A, for “shall not apply in relation to the estate of a person who died before the day that Law came into force” there is substituted “do not apply in relation to the estate of a person who died before 1 January 2014”.