

CHANGES TO THE WILLS AND SUCCESSIONS (JERSEY) LAW 1993

LEGISLATION ADVISORY PANEL

CONSULTATION

Introduction

1. The Legislation Advisory Panel (the “**Panel**”) provides advice to the Chief Minister on laws which do not fall under the responsibility of a specific Minister.
2. The Panel would like to hear from the public, and lawyers working in this area, on proposed changes to the Wills and Successions (Jersey) Law 1993 (the “**1993 Law**”).
3. The main changes are:
 - a. Giving a spouse or civil partner the right to life enjoyment of the family home (i.e. the home that the spouse or civil partner lived in with the deceased) if their spouse or civil partner dies and does not leave it to them in their will.
 - b. Making the legal concept of the “principal heir” gender neutral.
 - c. Making the inheritance rights of relatives of the whole and half blood (which are relevant when a person dies without a will and has no surviving spouse/civil partner or children) apply equally to the inheritance of immovable (i.e. real) property and movable (i.e. personal) property or, alternatively, removing this distinction entirely.
4. The Panel is also proposing to make some other changes to update the 1993 Law to modern drafting standards. This section is more technical and so it may be more appropriate for lawyers practising in this area to comment on the proposed changes. However, all views are welcome and will be considered on an equal basis.
5. The consultation is accompanied by a draft Law which shows how the changes would appear in the 1993 Law if adopted.
6. The Panel is inviting feedback on the specific questions set out in the consultation as well as any other feedback on the proposed changes. Feedback can be provided by completing this

[survey](#). The survey questions are also included in this document - responses should be sent to **policyengagement@gov.je**.

7. The deadline for submitting feedback is 6 September 2024.
8. The privacy notice for this consultation can be found here: [Public Engagements and Consultations privacy notice \(gov.je\)](#)

Right to enjoy the family home

9. The Panel is proposing 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 (see Article 5A of the draft Law).
10. This would change the existing rules in Jersey law that, in the same circumstances, the surviving spouse or civil partner is entitled to claim the life enjoyment of one third of all the immovable property (i.e. land or buildings on land) of the deceased. This is known as “dower”.
11. An example of the existing rule in practice would be where the deceased owned a family home and several fields used for farming. In this case, the spouse or civil partner would be entitled to claim the life enjoyment of one third of all this property, but may not be entitled to actually live in the family home. In practice there is a court procedure for determining which parts of the immovable property the life enjoyment is attached to.¹ This adds complexity to the administration of an estate and may be a basis for disputes to arise.
12. The Panel’s proposal is that the spouse or civil partner would not be entitled to claim the life enjoyment of one third of the fields (so would not, for example, be entitled to any money for renting out the fields) but would be entitled to live in the family home for the remainder of their life. This change is not, however, intended to remove the rights of a secured creditor to enforce their security if there is a default on a mortgage on the family home (see further below).
13. Where the spouse or civil partner has a right to life enjoyment, they do not own the property but may enjoy its ‘use and fruits’. The person who inherits the property in the will owns it, but does so subject to the spouse or civil partner’s right enjoy it during their lifetime.
14. The purpose of changing the scope of the rules on life enjoyment 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. The Panel believes 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. This change may reduce the scope for conflict to arise between the surviving spouse and other members of the family who inherit ownership of the deceased’s immovable property, including the family home.
15. This change would not affect:
 - a. The type of property to which the right applies (i.e. it applies to property which is owned by the deceased, including property held by way of share transfer or held under a lease of 9 years or more²).

¹ The division is determined by following a court procedure set out in the Royal Court Rules.

² Sometimes referred to as a contract lease. It does not apply to leases of less than 9 years (sometimes referred to as a paper lease). This includes a periodic tenancy, a fixed term tenancy and leases governed by the Residential Tenancy (Jersey) Law 2011.

- b. The duty of the spouse or civil partner to maintain the property and return it in the same condition that they received it.
- c. How the spouse or civil partner's right to life enjoyment is secured (i.e. by way of legal charge on the property³).
- d. The ability for a secured creditor to enforce a mortgage or the circumstances in which the spouse or civil partner may accept payment (i.e. *franc douaire* or money in dower) in lieu of their right to life enjoyment in certain circumstances.
- e. The ability for the right to life enjoyment to be amended by agreement.
- f. The potential for a spouse or civil partner to lose their right to life enjoyment in certain circumstances.

16. The change would not apply to co-habiting couples (i.e. couples who are not married or not in a civil partnership). This would be a more fundamental law change which would need further consideration.

Questions:

1. Do you agree with the proposed change?

Yes

No

Please explain below why you agree or disagree with the proposed change.

³ Referred to in Jersey as a hypothec.

2. Are there challenges or unintended consequences to implementing the proposed change that the Panel should be aware of?

Change to the “principal heir”

17. The Panel is proposing to change the concept of the principal heir so that they will be the eldest heir regardless of gender (see Article 14C of the draft Law).
18. In Jersey law, 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 is dead).
19. Examples of the concept of principal heir in operation include:
 - a. If a parent dies leaving an older daughter and younger son, the younger son will be the principal heir (being the eldest male) and not the older daughter.
 - b. If a parent has a son (who also has children) and a daughter, when the parent dies, if the son is already dead, the son’s children (regardless of their gender) may step into his shoes and be the principal heir in preference to the daughter.
 - c. If a person dies without leaving a spouse or children, but has an older sister and younger brother, then the younger brother will be the principal heir.
20. Historically, the eldest male had a privileged status when inheriting property. The privileges of the principal heir have been eroded substantially over time. However, the concept still has some significance in practice. The extent of the remaining privileges are open to question. However, the principal heir may still be entitled to take legal possession of moveable (i.e. personal) property prior to an executor or administrator being appointed to administer the deceased’s estate. The principal heir may also be entitled to obtain the grant of probate (and therefore the power to administer the estate) in preference to other heirs if a person dies without leaving a spouse or civil partner.
21. Given that the principal heir may still have privileges during an inheritance, the Panel proposes to change the concept of the principal heir rather than abolish the concept entirely. This will avoid unintentionally changing areas of the law without giving them due consideration, but at the same time it will remove an obvious element of inequality between male and female heirs.

Questions:

3. Do you agree with the proposed change?

Yes

No

Please explain why you agree or disagree with the proposed change.

4. Are there challenges or unintended consequences to implementing the proposed change that the panel should be aware of?

Relatives of the whole and half blood

22. In Jersey law, if a person dies leaving a will, this is referred to as a testate succession. If a person dies without leaving a will, this is referred to as an intestate succession.
23. On an intestate succession, the rules of inheritance differ depending on whether the deceased is survived by a spouse or civil partner and/or issue (i.e. children or grandchildren) or whether the deceased is survived only by other relatives (i.e. siblings, cousins, uncles or aunts and grandparents). The former is referred to as a direct succession and the latter is referred to as a collateral succession.
24. On an intestate collateral succession (i.e. the deceased has no will and no surviving spouse/civil partner or issue) relatives of the “whole blood” and “half blood” are treated differently.
25. A relative of the whole blood is a brother or sister who shares the same mother or father. A relative of the half blood is a brother or sister who shares either the same mother or the same father but not both.
26. Currently, if this situation arises, a relative of the whole blood will be entitled to a whole share of the property while a relative of the half blood will be entitled to a half share (i.e. half of what the relative of the whole blood is entitled to).
27. For example, if a person dies without a will and is only survived by a sibling of the whole blood and a sibling of the half blood, then both are entitled to inherit the person’s house. However, the whole blood sibling will take two thirds and the half blood sibling will take one third (the two relatives will own the house in common according to their shares).
28. In the past this rule was expressly applied to both immovable and movable property by statute. However, when Article 4(2) of the 1993 Law was enacted, it only expressly applied this rule to *immovable* property. It is not entirely clear why this was done and it has left some room for uncertainty about how moveable property should be treated, though in practice the same whole blood / half blood rule is applied under customary law.
29. The Panel’s proposal is to do one of two things, either:
 - a. restore the position to the pre-1993 Law position so that the whole / half blood rule expressly applies to both immovable and movable property; or
 - b. abolish the rule so that whole and half blood relatives inherit the same proportion of a person’s estate on intestacy.
30. Regarding the second option, it could be argued that the concepts of whole and half blood no longer reflect modern family relationships and should be abolished altogether. It may be noted that in Guernsey, which has similar Norman customary law roots for its law of succession, the

equivalent rule was abolished in 2011.⁴ The effect of this change would be that on an intestate collateral succession, brothers and sisters of the deceased would inherit immovable and movable property in equal shares regardless of whether they are relatives of the whole or half blood.

Questions:

5. Should the express provision in Article 4(2) of the 1993 Law governing the inheritance by relatives of the whole blood and half blood be extended to cover movable (i.e. personal) property?

Yes

No

6. Alternatively, should the rules governing relatives of the whole or half blood be abolished?

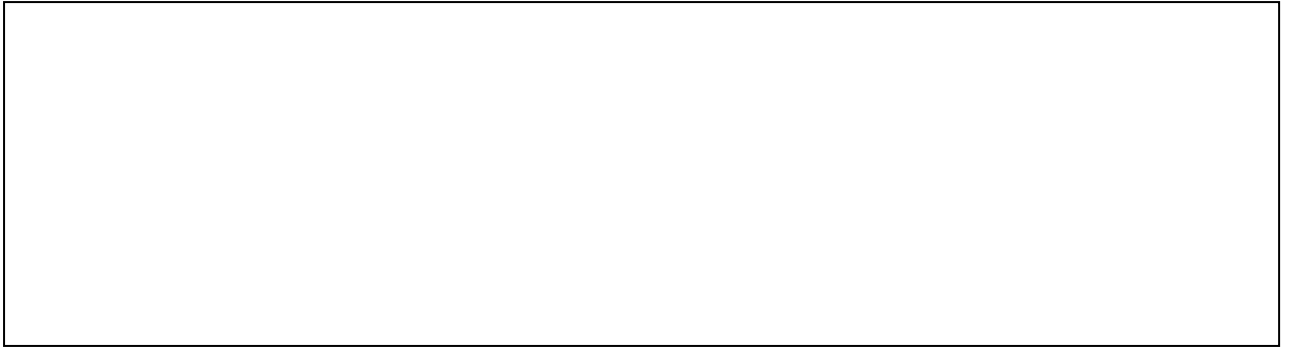
Yes

No

Please explain your answer.

7. Are there challenges or unintended consequences to implementing the proposed change that the Panel should be aware of?

⁴ See paragraph 4 of the Schedule to the Inheritance (Guernsey) Law 2011, which states that on an intestate succession *“Siblings of the half blood rank equally with siblings of the whole blood in parity of degree.”*



Other changes to the 1993 Law

1. In addition to the three main changes proposed by the Panel, it is also proposing to make some other changes to update the 1993 Law to modern drafting standards
2. This section is more technical and so it may be more appropriate for lawyers practising in this area to comment on the proposed changes. However, all views are welcome and will be considered on an equal basis.
3. The proposed changes include:
 - a. Combining the definitions of “civil partnership home” and “matrimonial home” and correcting the description of share transfer properties within those definitions as forming part of a *bien-fonds* (i.e. a parcel of land) rather than the *bien-fonds* itself.
 - b. Moving the definition of “disposition” from Part 3A to Article 1 where all the other definitions are located.
 - c. Introducing new divisions into Part 3 to aid the reader with better sign-posting.
 - d. Updating the drafting style of Articles 5 and 6, without changing their effect in law, so that they are easier to read and understand.
 - e. Articles 5(3) and Article 5A(5) currently state:

Despite any provision in a lease requiring consent to the transfer of the lease, consent is not required for a surviving spouse or civil partner to take transfer of the lease of the matrimonial home or civil partnership home [...].

This paragraph has been criticised as creating doubt about whether it deals with cases where the lease is silent on the matter of transfer or assignment. It has also been criticised for lacking clarity as to precisely what, if anything, needs to be done in order to perfect (i.e. transfer) the entitlement to life enjoyment. As the life enjoyment in Articles 5 and 5A arise by operation of law a transfer may not be required at all.

The Panel would like to receive views on whether Articles 5(3) and 5A(5) should be amended so that the terms of a lease, or the absence of terms of a lease, do not have any effect on the surviving spouse’s or civil partner’s entitlement to life enjoyment.

- f. Amending Articles 8A and 8AA to clarify that the provisions in relation to spouses and civil partners living apart do not limit the Court’s customary law powers to deprive or exclude a person from their right to enjoy or to succeed to an estate.
- g. Making consequential amendments to the *Loi (1880) sur la propriété foncière* to account for the changes made to the 1993 Law. The Panel would like to receive views from practitioners on whether any of the provisions in Articles 7, 8 or 9 are now

obsolete in light of the proposed amendments to the scope of dower e.g. will *franc douaire* and dower settlements continue to have relevance?

Questions:

8. Do you agree with the proposed changes to the 1993 Law and the consequential amendments to the *Loi (1880) sur la propriété foncière*?

Yes

No

Please explain your answer.

9. How should Article 5(3) and Article 5A(5) be changed so as to improve clarity about what needs to happen, if anything, for a spouse or civil partner to secure their entitlement to life enjoyment of a lease of the matrimonial or civil partnership home?

10. Do you consider that the proposed amendments to the 1993 Law result in any of the provisions of Articles 7, 8 or 9 of the *Loi (1880) sur la propriété foncière* becoming obsolete?

