



Jersey

## DRAFT WILLS AND SUCCESSIONS (VARIATION OF DOWER) (JERSEY) AMENDMENT LAW 202-

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## DRAFT WILLS AND SUCCESSIONS (VARIATION OF DOWER) (JERSEY) AMENDMENT LAW 202-

A **LAW** to amend further the Wills and Successions (Jersey) Law 1993.

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<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 –

### 1 Wills and Successions (Jersey) Law 1993 amended

Articles 2 to 12 amend the Wills and Successions (Jersey) Law 1993.

### 2 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) in the four places it appears, after “civil partner” there is inserted “or spouse”,
  - (iii) in the introductory words, “which is” is deleted,
  - (iv) in sub-paragraph (a), before “a *bien-fonds*” there is inserted “that is”,
  - (v) in sub-paragraph (b), before “held under a lease” there is inserted “that is”,
  - (vi) in sub-paragraph (c) –
    - (A) before “a *bien-fonds*” there is inserted “that forms part of”,
    - (B) for “corporation of” there is substituted “corporation in”.
- (b) after the definition “Court” there is inserted –
  - “ “disposition” means a disposition made by –
    - (a) a will or codicil; or

- (b) an instrument executed *entre vifs* which relates to rights of succession;”;
- (c) the definition “matrimonial home” is deleted;
- (d) in the definition “*usufruit*” 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 3A inserted

After Article 3 there is inserted –

#### **“3A Right of relatives of the half blood in collateral succession**

In every collateral succession on intestacy, whether to movable or immovable estate, relatives of the half blood whether consanguine or utérin will each have a half share and relatives of the whole blood will each have a whole share.”.

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

In Article 4, paragraph (2) is deleted.

### 5 Part 3 division heading inserted

After the sub-heading of Part 3 there is inserted –

“RIGHT TO ENJOYMENT”.

### 6 Article 5 (right to life enjoyment of matrimonial home or civil partnership home) amended

For Article 5 there is substituted –

#### **“5 Right on intestacy of surviving spouse or civil partner to 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 or 7.
- (3) 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 under paragraph (1).”.

**7 Article 5A and 5B inserted**

After Article 5 there is inserted –

**“5A Right of surviving spouse or civil partner to life enjoyment of matrimonial home or civil partnership home if individual dies testate (dower)**

- (1) If an individual dies testate as to their immovable estate, their surviving spouse or civil partner is entitled to dower on terms [akin to] a widow’s customary right of dower.
- (2) The variation to dower in paragraph (1) does not apply to the estate of a person who died before the 1st January 2014.
- (3) Dower is an entitlement to a *usufruit* of the whole matrimonial home or civil partnership home (and no longer extends to any other part of the immovable estate as to which the surviving spouse or civil partner dies testate).
- (4) The variation in paragraph (3) does not apply to the estate of a person who dies before the commencement of the Wills and Successions (Variation of Dower) (Jersey) Amendment Law 202-.
- [(5) 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 under this Article.]

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

- (1) In this Law (apart from Article 5A) 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 varied by 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 varied by Article 5A(3).
- (3) In dispositions executed on or after 1st January 2014, a reference to *douaire* or dower, however expressed, unless the contrary intention appears, includes the entitlement to dower of a civil partner and a widower.”.

**8 Part 3 division inserted**

Before Article 6 there is inserted –

“RIGHTS TO SUCCEED”.

**9 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) a child who has predeceased the individual and leaves issue who survive the individual.”;
- (b) in paragraph (2), for “paragraph (1)(b)” there is substituted “paragraph (1)(b)(iii)”;
- (c) 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.”.

#### **10 Articles 6, 6A and 6B deleted**

Articles 6, 6A and 6B are deleted.

#### **11 Article 7 (devolution of movable estate) amended**

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

#### **12 Part 3 division inserted**

After Article 7 there is inserted –

“EXCEPTIONS”.

#### **13 Article 8 (spouses living apart) amended**

In Article 8 –

- (a) in the heading for “living” there is substituted “residing”;
- (b) in paragraph (A1) –
  - (i) in sub-paragraph (a), for “Articles 3, 6, 6B and 7 which” there is substituted “Articles 5, 5A, 6 and 7 that”;
  - (ii) in sub-paragraph (b), for “his or her capacity as such” there is substituted “their capacity as spouse”.
- (c) 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;

- (d) in paragraph (2) –
  - (i) for “Where, by operation of the provisions of paragraph (1)”, there is substituted “If, by operation of paragraph (1)”,
  - (ii) for “applied shall devolve” there is substituted “applied devolves”;
- (e) 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.”.

#### 14 Article 8AA (civil partners living apart) amended

In Article 8AA –

- (a) in the heading for “living” there is substituted “residing”;
- (b) in paragraph (1) –
  - (i) for the opening words there is substituted –,
    - “(1) The provisions of Articles 5, 5A, 6, and 7 that operate to confer property, or an *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, by operation of 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.”.

#### 15 Article 8A (interpretation of Part 3A) amended

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

#### 16 Article 14C inserted

After Article 14B there is inserted –

##### “14C Abolition of role of gender in determining principal heir

- (1) In determining the principal heir, the gender of a person does not give that person, or that person’s descendent, precedence over any other person.

- (2) Paragraph (1) does not apply in relation to the estate of a person who died before the day that the Wills and Successions (Variation of Dower) (Jersey) Amendment Law 202- came into force.”

**17 Article 16 (testamentary dispositions and appointments revoked by divorce or dissolution of civil partnership) amended**

In Article 16, in the heading, “Testamentary” is deleted.

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

In Article 22A, for “the day that Law came into force” there is substituted “1st January 2014”.

**19 Consequential Amendments**

The Schedule makes amendments to the Loi (1880) sur la propriété foncière that are consequential on this Law coming into force.

**20 Citation and commencement**

This Law may be cited as the Wills and Successions (Variation of Dower) (Jersey) Amendment Law 202- and comes into force [7 days after it is registered] [on a day to be specified by the States by Act].

## SCHEDULE

(Article 19)

### CONSEQUENTIAL AMENDMENTS

[The following translation of the Schedule is provided for information only and is not intended to have any legal effect]

#### 1 Amendment of Loi (1880) sur la propriété foncière/ Amendment of the 1880 Law concerning immoveable property

- (1) In Article 1 of the Loi (1880) sur la propriété foncière after the definition “CONJOINT SURVIVANT” there is inserted –

““DOMICILE CONJUGAL” has the same meaning as “matrimonial home” in the Wills and Successions (Jersey) Law 1993.”

““DOMICILE DU PARTENARIAT CIVIL” has the same meaning as “civil partnership home” in the Wills and Successions (Jersey) Law 1993.”.

““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.”.

- (2) For Articles 7 to 9 of the 1880 Law concerning immoveable property there is substituted –

“7

- (1) A surviving spouse or civil partner ~~spouse~~ has a hypothec with right of recourse against successors in title over the ~~immovables of the other spouse~~ matrimonial home or civil partnership home as security for their ~~dower of the first mentioned spouse~~. This hypothec ranks from the day of the decease of the ~~other spouse~~ 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 dégrèvement 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 ~~hereditaments that are subject to his or her dower~~ matrimonial home or civil partnership home - whether ~~they are it is~~ in the hands of tenants or other successors in title or ~~are is~~ included in the property undergoing dégrèvement: but the surviving spouse or civil partner shall be entitled to *franc douaire* [dower in money] on ~~each and every one of the said hereditaments~~ the matrimonial home or civil partnership home].

- (3) [The surviving spouse is entitled to the actual enjoyment of ~~his or her~~ their third of the other immovables that are subject to the dower if there are any amongst the property subject to dégrèvement. If these immovables are in the hands of third-~~party-~~holders, the surviving spouse must accept – if the third-~~party-~~holders so wish – an appropriate annual payment in lieu of ~~his or her~~ their third].
- (4) In the case of dégrèvement, after the death of a spouse or civil partner, of ~~any of the properties~~ the matrimonial home or civil partnership home subject to the dower of the surviving spouse or civil partner, the latter shall be summoned to appear at the dégrèvement in accordance with Article 92, and shall have the right to constitute themselves tenant of the ~~said property~~ matrimonial home or civil partnership home according to the order of priority of their hypothec.”.

“7

- (1) Le conjoint survivant ou le partenaire civil survivant a sur ~~les immeubles de l'autre conjoint~~ 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 ~~l'autre conjoint~~.
- (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 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 ~~des biens fonds sujets au douaire~~ du domicile conjugal ou du domicile du partenariat civil – qu'ils soient 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 ~~tous et chacun desdits biens fonds~~ le domicile conjugal ou le domicile du partenariat civil.
- (3) Le conjoint survivant aura droit à la jouissance actuelle de son tiers des autres immeubles sujets au douaire, s'il y en a parmi les biens en dégrèvement; si ces immeubles sont entre les mains de tiers détenteurs, le conjoint survivant sera tenu d'accepter – si ceux-ci le désirent – un paiement annuel suffisant comme équivalent de son tiers.]
- (4) En cas de dégrèvement, après la mort du conjoint ou du partenaire civil, ~~d'aucune de ses propriétés~~ du domicile conjugal ou du domicile du partenariat civil -sujettes 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 à ~~ladite~~ ledit domicile conjugal ou ledit domicile du partenariat civil ~~propriété~~ dans l'ordre de son hypothèque.

8

- (1) ~~A dower settlement, whether made before the Greffier or by private agreement, followed by~~ entry into possession by the surviving spouse or civil partner of the ~~immovables~~ matrimonial home or civil partnership home allotted to him or her, has the effect, in the event of dégrèvement of the ~~property of the principal heir or of any other heir of the deceased spouse~~ matrimonial home or civil partnership home, ~~that~~ no procedural step need be taken by the surviving spouse or civil partner to retain possession of the ~~said immovables~~ 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, ~~a dower settlement made, and followed by~~ entry into possession, as described above, has the following effects.
- (3) ~~Whether it has been registered or not, the settlement becomes void; but the~~ The surviving spouse or civil partner shall be able to retain the enjoyment of the immovables that constitute 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 25th March, 24th June or 29th September, and there is agricultural land ~~among the hereditaments~~ as part of the matrimonial home or civil partnership home subject to the dower, the surviving spouse or civil partner shall be entitled to retain possession of them, as well as of the dwelling and out-buildings that they occupy and use for cultivating the said land, until the next Christmas day: but on payment of rent or compensation to the person entitled for difference in time.

8

- (1) ~~Un règlement de douaire, fait soit devant le Greffier ou à l'amiable — s'il a été suivi de~~ la possession par le conjoint survivant ou le partenaire civil survivant des immeubles à lui alloués du domicile conjugal ou du domicile du partenariat civil — aura, en cas de dégrèvement ~~des biens du principal héritier ou de tout autre héritier du conjoint décédé du domicile conjugal or du domicile du partenariat civil~~, l'effet que, ~~s'il a été dûment enregistré~~, il ne nécessitera de la part du conjoint survivant ou du partenaire civil, pour conserver la possession ~~desdits immeubles 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, ~~un règlement de douaire, fait et suivi de~~ la possession, comme sus est dit, aura les effets suivants.
- (3) ~~Qu'il ait été enregistré ou non, le règlement sera absolument nul; mais~~ Le conjoint survivant aura la faculté de retenir la jouissance ~~des immeubles~~ d'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 assujéti — au prorata du temps échu. Si ce terme tombe au 25 mars, 24 juin, ou 29 septembre, et que ~~parmi les biens fonds occupés à douaire il se trouve des~~ 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) 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 shall have a preferential right to 3 years' arrears, from the date of the Act of the Court ordering the dégrèvement, of ~~so much 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* shall be absolutely void.”.

## 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 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, ~~de la partie~~ 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

The consequential amendments made to Articles [7, 8, and 9] by the Schedule to the Wills and Successions (Variation of Dower) (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.

## 9A

Les modifications apportées aux Articles [7, 8 et 9] par l'annexe de la Loi dite Wills and Successions (Variation of Dower) (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.”.