

STATES OF JERSEY



DRAFT PROBATE (AMENDMENT) (JERSEY) LAW 202- (P.42/2022): COMMENTS

**Presented to the States on 21st April 2022
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

1. The Chief Minister lodged the proposition Draft Probate (Amendment) (Jersey) Law 202- [\[P.42/2022\]](#) (the draft Law) on 7 March 2022. If adopted this will allow for new arrangements relating to the management of movable estate of the deceased in certain circumstances by bringing forward changes to the [Probate \(Jersey\) Law 1998](#) (the existing Law).
2. The Panel received a briefing from Government of Jersey Officers on the proposals of P.42/2022 (the Draft Law) on 1 February 2022. Following the lodging of the Draft Law the Panel wrote to the Chief Minister to ascertain further information on the formation of the proposed changes.¹ A response was received on 6 April 2022 from the Assistant Chief Minister who will be bringing the proposition to the Assembly on the Chief Minister's behalf.²
3. The Panel has concluded that it is broadly in agreement with the sentiment of the draft Law and recognises that the changes do aid in managing a deceased persons effects. The Panel would respectively request that the Assistant Chief Minister does consider, in advance of the Assembly debate, those points raised in its concluding comments especially in relation to proposed exemption thresholds.

Purpose and formation.

4. The draft Law will allow people (for example banks or care providers) who are holding the personal property of deceased people, where that property is located in Jersey, to release that property to another person (for example, a family member) in certain circumstances.
5. The draft Law achieves this by providing exemptions for specific circumstances in which the holder of the deceased's property (the holder) may pass items of relatively low value to another person (the applicant) without that person receiving a grant of probate or administration in order to establish their right to recover or receive the deceased person's estate.
6. Each exemption is permissive, not mandatory and as such the holder may release property if conditions are met but are not required to do so. A grant of probate is still required where the deceased person has a valid will in place and a grant of administration is still required if none of the exemptions apply.
7. The Panel has been informed that the provisions of the draft Law have been developed with support and guidance from the Legislation Advisory Panel and that work to update the Probate Law initially commenced in 2017 when representatives of the Jersey Care Federation pro-actively raised concerns about that Law during a separate consultation process related to the Regulation of Care Law.
8. The Assistant Chief Minister has indicated that competing priorities following an initial consultation in 2018 meant the work was not picked up again until 2021. During October and December of 2021 a public consultation was

¹ [Letter – To Chief Minister re P.42/2022 Draft Probate \(Amendment\) Law – 30 March 2022](#)

² [Letter - Assistant Chief Minister to Corporate Services Scrutiny Panel re P.42-2022 Probate Law - 6 April 2022](#)

undertaken by the Government of Jersey via publication on gov.je and direct contact of the following:

- a) the Chief Nurse and the Prison Governor, who are potentially required to manage the property of deceased persons the Viscount and Receiver General;
 - b) the Viscount and Receiver General;
 - c) care home providers; and,
 - d) funeral directors.
9. The Assistant Chief Minister has informed the Panel that initial direct correspondence to care home providers sent in October 2021 was not received by multiple Care Homes and as such a series of meetings were scheduled to take place on 8, 11 and 13 April 2022.
10. The Panel would suggest that key points of any discussions held at meetings with Care Homes should be published by the Assistant Chief Minister, and the proposition be amended or withdrawn should any issues be raised.

Exemption 1: Small Estate Exemption

11. If adopted the draft Law will allow the holder to give the deceased person's personal property to another person if:
- a) The deceased person did not live in Jersey and their personal property held by the holder in the island does not exceed £30,000; or,
 - b) The deceased person lived in Jersey, their personal property held by the holder does not exceed £30,000 and the applicant declared that gross value of worldwide moveable estate does not exceed £30,000.
12. This builds upon a clause in the existing Law for the release of assets of less than £10,000. It is noted that the Minister for Health and Social Services (the Minister) may alter the £30,000 threshold by Order.
13. The Assistant Chief Minister has confirmed the figure of £30,000 was agreed in consultation with the Viscount and Probate service, however submissions to the consultation were mixed on whether this was too high or low.
14. The Assistant Chief Minister has indicated that review of Probate arrangements between different jurisdictions shows that relevant figures can vary greatly with England's amount being £50,000, in Scotland this is £36,000 and in the Isle of Man and Guernsey it is unlimited – i.e. the holder can release funds of any amount without the need for a grant.
15. A number of conditions will be in place to negate ill attempt, with the applicant having to acknowledge that the holder is not liable to further claims to the property, that the holder must believe the applicant to be entitled to the property and there is no caveat in place preventing the distribution of a deceased person's property.

16. The Panel notes that the £30,000 threshold is significantly lower than in other jurisdictions however may be altered by Ministerial Order should practical implementation of the draft Law suggest the need to do so.
17. The Panel concludes that there is insufficient evidence in the proposition to agree that £30,000 is the correct threshold for the small estate exemption in Jersey. Further verification should be provided to the Assembly, in advance of the debate, to clarify decision making of the proposed threshold by the Assistant Chief Minister especially as other smaller jurisdictions have an unlimited threshold and consultation submissions were mixed on the suggested threshold. The Panel would highlight that evidence specific to Jersey such as housing and living cost analysis completed to clarify decision making of the proposed threshold should be provided to the Assembly to inform the debate.

Exemption 2: Particular Holders

18. This exemption will have similar impact to exemption 1 (Small Estate Exemption), however, will provide more certainty to groups such as care providers who may become holders, these will be named by the Minister through Ministerial Order.
19. In this case an application form must be completed by an applicant and the holder must believe that:
 - a) The property held is not worth more than £30,000, either through common sense or review of receipts or similar; or.
 - b) The applicant has indicated that they are entitled to the property through the deceased person's will or through virtue of being the deceased person's spouse, child or sibling and no other person has a stronger claim to the property
20. The Panel is in agreement that particular holders will require written application prior to releasing property to ensure their liability is limited.

Exemption 3: Item(s) worn by deceased people (or items with them)

21. The Draft Law will provide exemption to allow funeral directors to authorise a deceased person to be buried or cremated with an item or items of their personal property up to the value of £1,000. Application may also be given to increase this figure to £10,000. In both cases the property must have been worn by the individual at time of death.
22. The Panel questioned how the value of £1,000 was settled upon as a figure for allowance of funeral directors to bury or cremate an item without receipt of an application form and has been informed by the Assistant Chief Minister that this was based on feedback received from the 2017 stakeholder meetings. The Assistant Chief Minister has also highlighted that the values include all item(s) buried or cremated with the person. This would include, for example, the value of items of clothing if that clothing had belonged to the deceased person. As such it is suggested to the Panel as sensible that the lower value of £1,000 is the threshold at which no application is required.

23. The Panel notes that funeral directors were contacted as part of the consultation process of the draft Law and that no comments on these thresholds were made. Although this may not signal agreement it does not signal disagreement.

Exemption 4: Viscount acting as delegate

24. An exemption will be given in cases where the Viscount has been appointed as delegate for the deceased person under the [Capacity and Self-Determination \(Jersey\) Law 2016](#), and they are satisfied that the total value of the deceased person's worldwide movable estate does not exceed £30,000, in order to pay funeral directors or outstanding bills.
25. The Panel forwarded its letter to the Chief Minister to the Viscount for her awareness, no further comment was passed to the Panel on this exemption.
26. The Panel believes this is a sensible exemption.

Exemption 5: Ownerless property

27. In the case where property is ownerless, or "bona vacantia" upon an individual's death and by law passes to the crown the holder may release it to the Receiver-General without production of a grant if they cannot identify a person to whom they should release it either under a will or the law of intestate succession.
28. The Panel has not received any comment upon this exemption, however, notes that there is no threshold to the amount and that the only safeguard to incorrect release of property will be that the holder must make reasonable efforts to identify a person to whom the movable estate should be released under the terms of the deceased person's will or the laws relating to intestate succession in the country in which the deceased was domiciled at death.
29. The Panel concludes that clear guidance must be given as to the responsibility to identify a person to whom the movable estate should be released prior to its identification as bona vacantia and release to the Receiver-General.

Further points

30. The report to P.42/2022 outlines that guidance will be provided alongside the online application form in order to assist both holders of property and applicants to operate within the new arrangements. It can be highlighted that there is no provision in the Draft Law to require the holder to keep signed application forms, and this will only be issued as guidance.
31. The Panel believes that Holders must be informed of the necessity to keep evidence such as application forms or other correspondence with applicants, to avoid liability should their actions be called into question.
32. A new offence where a person knowingly provides false information when applying or requesting the release of personal property will be introduced by the Draft Law. The Draft Law will also update language concerning the existing offence of intermeddling to ensure it is in line with the [Interpretation \(Jersey\) Law 1954](#).

33. The Draft Law will greatly increase Regulation making power for the Assembly to make further amendments to the Law without recourse to Privy Council.
34. The Panel notes that no direct mention to *Légitime*, or forced heirship, as established in Article 7 (2) of the [Wills and Successions \(Jersey\) Law 1993](#), is given in P.42/2022.
35. The Panel concludes that the Assistant Chief Minister must outline the implications of *Légitime* upon the draft Law.

Conclusions

36. Having examined P.42/2022 the Panel has concluded that it is broadly in agreement with the sentiment of the draft Law and recognises that the changes do aid in managing a deceased persons effects.
37. However, the Panel has concluded that there is insufficient evidence in the proposition to agree that £30,000 is the correct threshold for the small estate exemption in Jersey. Further verification should be provided to the Assembly, in advance of the debate, to clarify decision making of the proposed threshold by the Assistant Chief Minister especially as other smaller jurisdictions have an unlimited threshold and consultation submissions were mixed on the suggested threshold. The Panel would highlight that evidence specific to Jersey such as housing and living cost analysis completed to clarify decision making of the proposed threshold should be provided to the Assembly to inform the debate.
38. Should the Assembly adopt the proposition, the Panel has made the following observations to aid in its implementation:
 - The Panel would suggest that key points of any discussions held at meetings with Care Homes during April 2022 should be published by the Assistant Chief Minister, and the proposition amended or withdrawn should any issues be raised.
 - Clear guidance must be given as to the responsibility to identify a person to whom the movable estate should be released prior to its identification as *bona vacantia* and release to the Receiver-General, to ensure Exemption 4 does not unduly impact the rightful receiver.
 - The Panel believes that Holders must be clearly informed of the necessity to keep evidence such as application forms or other correspondence with applicants, to avoid liability should their actions be called into question.
 - The Assistant Chief Minister must outline the implications of *Légitime* upon the draft Law.