

STATES OF JERSEY



DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 19th March 2013
by the Chief Minister

STATES GREFFE



Jersey

DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 2) (JERSEY) LAW 201-

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 (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 15th March 2013

REPORT

1. Introductory

- 1.1 This *projet de loi* would amend the customary law as well as the Wills and Successions (Jersey) Law 1993 (“the 1993 Law”).
- 1.2 The amendments relate principally to the rights of dower (*douaire*)¹ and *viduité* in Jersey law. Dower may be claimed by a wife when her husband dies; and *viduité* is a right enjoyed by a husband when his wife dies. As will be explained below in more detail, the two concepts differ in nature, and this results in substantially differing rights as between husband and wife on the death of the other.
- 1.3 The difference in husbands’ and wives’ rights in this respect was the subject of a Report commissioned by the Jersey Community Relations Trust in 2009 (*see* paragraph 6 *below*) which assessed the extent to which the existing law complied with the European Convention on Human Rights.
- 1.4 That Report has been considered carefully by the Legislation Advisory Panel; and the result is this draft Law which is intended to equalise the rights of surviving spouses, male and female, by –
 - (a) removing altogether the husband’s right of *viduité*; and
 - (b) reforming dower (*douaire*) so that a usufructuary right equivalent to it can be claimed by the husband when his wife dies, as well as by the wife when her husband dies.
- 1.5 This reform follows on from the Wills and Successions (Amendment) (Jersey) Law 2010 (**L.22/2010**) which was adopted by the States on 23rd March 2010 and came into force on 29th January 2011.
- 1.6 That Law met the aim of the original Legislation Committee’s Consultative Document entitled *Succession Rights for Children Born out of Wedlock* to “... extend the rights of the illegitimate child to inherit from the estates of his or her wider family as though he or she were legitimate”. But this was intended as part only of an ongoing consideration at the time by the Legislation Advisory Panel of other aspects of the laws of succession.
- 1.7 The Panel has gone on to consider Article 8 of the 1993 Law which prevents a separated spouse, in the case of desertion or judicial separation, from claiming the life enjoyment of the matrimonial home and certain other succession rights when the other spouse dies. A corresponding provision – Article 8AA – was made by the Civil Partnership (Jersey) Law 2012 in relation to a civil partner who deserts, or separates from, the other. Amendments to these provisions are also made, which will be explained in further detail in paragraph 9 *below*.

¹ The French word *douaire* and English word *dower* tend to be used interchangeably, as they are in this Report.

2. What are dower and viduité?

- 2.1 A married person's immovable² property left by will is subject to a claim –
- of dower (*douaire*) by the widow, or
 - of *viduité* by the widower.
- 2.2 Dower is a right to the life enjoyment – the *usufruit*³ – of 1/3 of the late husband's immovable estate.
- 2.3 *Viduité*⁴ is a right to the *usufruit* of the whole of the late wife's immovable estate.
- 2.4 It should be emphasized that the right to dower or *viduité* arises only when the property has been left by will. Under Article 6(3) of the 1993 Law, to the extent that a spouse dies intestate (*i.e.* does not make a will) as to immovable estate, the surviving spouse is not entitled to dower or *viduité*. (*See* paragraph 4 *below* for further details about what happens if there is no will.)

3. How do dower and viduité work?

- 3.1 Dower and *viduité* both guarantee provision for the surviving spouse, but they do so in different ways, and subject to different conditions.
- 3.2 Proportion of the estate affected: As noted already, *douaire* extends to one third of the deceased's immovables; whereas *viduité* extends to the whole of the deceased's immovables.
- 3.3 Child of the marriage: For *douaire*, no child of the marriage need have been born (although the marriage must have been consummated); whereas for *viduité*, there must have been a child born of the marriage.
- 3.4 Conduct during the marriage: An unworthy wife may forfeit her entitlement to *douaire*, *e.g.* by having deserted her husband; whereas the husband's right to *viduité* is not affected by any similar consideration of his conduct.
- 3.5 Re-marriage: A widow may remarry and keep her dower entitlement; whereas a widower loses his right to *viduité* if he remarries.
- 3.6 Procedures: Widows must make application to court to secure their entitlement to dower; whereas widowers are automatically entitled to *viduité*.

4. What happens where no will has been made?

- 4.1 As mentioned in paragraph 2.4, dower and *viduité* do not apply to property in respect of which no will has been made. Instead, under Article 6 of the 1993 Law, the surviving spouse is entitled to the whole of the immovable estate, if the deceased spouse died without children.
- 4.2 If the deceased did leave children, then the surviving spouse takes an equal share with each of the children surviving. If any of the children has already died leaving children of their own, then those grandchildren of the deceased

² By 'immovables' is meant both land and all things – such as a house and fixtures – attached to the land (hence 'immovable estate').

³ 'usufruct' in English.

⁴ *Viduité* is also referred to as *franc veuvage*. Nothing turns on the different description.

step into the shoes of their deceased parent and claim what would have been his or her share.

5. Are douaire and viduité peculiar to Jersey law?

- 5.1 No they are not.
- 5.2 Reserved rights of life enjoyment over a deceased's immovable estate may not be familiar to present day common law practitioners, but Scots, French and other civil law practitioners will recognise them at once. They have much in common with, for example, earlier Scots law concepts of *terce* and *courtesy*. *Terce* was the right of the widow to the enjoyment ('liferent') of one third of the deceased's immovable (heritable) property; *courtesy* was the right of the widower to the enjoyment of the whole of the deceased's heritable property.
- 5.3 More particularly where Jersey is concerned, *douaire* was firmly established throughout the northern *pays de coutumes* of France, and especially so in Normandy. So too in Normandy was *franc veuvage*, i.e. *viduité*. In modern French law, the rights of the surviving spouse are able to be protected by choice of an appropriate régime of community of matrimonial property (*communauté de biens*).

6. Is there a need for reform?

- 6.1 On 12th October 2009, a Report by Professor Meryl Thomas was published. As mentioned in paragraph 1.3 *above* that Report had been commissioned by the Jersey Community Relations Trust, and examined certain Jersey laws of succession in relation to the Human Rights (Jersey) Law 2000.
- 6.2 The *Thomas* Report concerned itself (among other things) with the fact that surviving spouses were treated differently *vis-à-vis* dower and *viduité* and that such differences appeared to be discriminatory and might infringe certain rights secured under the European Convention on Human Rights. To quote Professor Thomas –

“Men and women are treated differently in relation to their rights of inheritance over immovable property in testate⁵ succession. This undoubtedly constitutes a difference in treatment between persons in similar situations, based on sex, but this does not necessarily make it discriminatory within Article 14 [of the European Convention on Human Rights]. A difference in treatment is discriminatory if it has no objective and reasonable justification, it does not pursue a legitimate aim, or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the contracting member states enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment. Therefore the question is whether there is a reasonable justification or a legitimate aim in according different rights to the widow and widower on the death of the spouse ...”.

⁵ i.e. where there is a will

6.3 The Report went on to note that *douaire* had existed in France and “*was particularly appreciated in Normandy since community of property⁶ did not operate [there]*” and that “*dower was and is a means whereby the widow was and is protected since there was no community of property régime in Normandy and thereby Jersey.*” *Viduité* also existed formerly in France and, although it fell into disuse elsewhere, “*it retained its force in Normandy because of the lack of a community of property régime ...*”.

6.4 The Report concluded –

“In short both dower and viduité were and are necessary to protect a surviving spouse on the death of the deceased since there is no community of matrimonial property in Jersey. Failure to recognise dower and viduité could result in freedom of testation, which could have dire consequences for the surviving spouse.”

Both therefore appeared to fulfil a legitimate aim.

6.5 But, in spite of both having an entirely legitimate aim, there still needed to be justification for the difference in the way that the two concepts operated, in other words some rational reason in the modern age for –

- the widow’s right of dower to be of a different amount to the widower’s right of *viduité*; and
- the different conditions attached to each.

6.6 This has resolved itself, therefore, into these basic questions that the Legislation Advisory Panel has had to pose itself: can the difference in amount and the difference in conditions be regarded as reasonable and justified? Do those differences achieve a legitimate aim?

6.7 Professor Thomas observed that the difference in amount between dower and *viduité* were largely historic –

“The fact that dower extends merely to 1/3 of the immovable property echoes the laws of the Salic Franks (who invaded Normandy prior to Duke Rollon⁷). Under Salic law the widow was given 1/3 acquêts, and we see this 1/3 echoed in Norman law. It was reduced to writing in the Grand Coutumier, where dower was said to amount to 1/3 of ‘toute la terre’ which the husband possessed when the marriage was contracted.

The reason that viduité extends to the whole of the wife’s immovable property is believed to result from the Norman rule protecting lineage – paterna paternis materna maternis. The wife’s propres would return to her family according to the maxim. Viduité is a means whereby the widower is given a right to use the property for life before lineal succession occurs.”

⁶ Community of property involves property acquired during the marriage being automatically taken to be owned jointly by both spouses and being divided upon divorce, annulment or death.

⁷ ‘Rollon’ in the French spelling of ‘Rollo’.

- 6.8 The different conditions attached to dower and *viduité* were again of historical origin.
- 6.9 It is unnecessary to reproduce in full the helpful historical analysis provided by Professor Thomas. Suffice it to say she concluded that “... *the difference in the conditions attached to dower and viduité and the difference in the nature of the rights themselves [seemed to be] rooted in the history of Normandy and Jersey*”. But the concepts of dower and *viduité*, in the context of the European Convention on Human Rights, have to be judged by contemporary views. Any justification based upon historical antecedents would, in her opinion, have been “*very unlikely to succeed*”.
- 6.10 The Legislation Advisory Panel reflected carefully on the content of the Report commissioned by the Jersey Community Relations Trust, insofar as it related to matters of dower and *viduité* and the possibility that the discrimination based on sex inherent in those concepts might violate the Human Rights (Jersey) Law 2000.
- 6.11 The Panel noted the antiquity of these concepts and their origins in our Norman *coûtume*, possibly even in the laws of the Salic Franks. The Panel was not quick to counsel discarding something so deeply rooted in the history and culture of Jersey. Nonetheless, it recognised that there had to be a justification for the difference in the way that the two concepts operated, and that such justification had to be sustainable, not on the basis of historical attachment, but by reference to the values and assumptions of the modern age.
- 6.12 With that in mind, the Panel felt bound to accept that the discriminatory elements inherent in the workings of *douaire* and *viduité* were in substance at odds with the egalitarian norms of the modern western world of which Jersey – obviously – is part.
- 6.13 The Panel therefore accepted the need for legislative change to equalise the treatment of surviving spouses insofar as their reserved rights of life enjoyment of property were concerned.

7. *The decision to reform*

- 7.1 Having concluded that change was needed, the Panel did not recommend to the Chief Minister the outright abolition of reserved usufructuary rights. To repeat the words of Professor Thomas –
- “... dower and viduité ... are necessary to protect a surviving spouse on the death of the deceased ... Failure to recognise dower and viduité could have dire consequences for the surviving spouse.”*
- 7.2 The Panel, in connection with the preparation of the Civil Partnership (Jersey) Law 2012, had already examined the possibility of aligning dower and *viduité* rather than abolishing them altogether, and reached the conclusion – now reflected in that Law – that same sex couples should enjoy a reciprocal right equating to that of dower.
- 7.3 In the light of the Panel’s consideration of the concepts of dower and *viduité*, it was decided to recommend to the Chief Minister that married couples should likewise enjoy what would, in effect, amount to a reciprocal right of dower (to the exclusion, that is, of any right of *viduité*). Therefore the

principal goal of this draft Law is the establishment of such a reciprocal right; and in turn the abolition of the law relating to *viduité*.

- 7.4 This would secure equality of treatment, not only as between husband and wife, but overall as the law applies both to married couples and to civil partners.
- 7.5 The adoption of a universal right equating to *douaire* was thought to be more appropriate than the adoption of a universal right equating to *viduité*.
- 7.6 The Panel did also look at the régime governing intestacy⁸ and also at the separate rules of *légitime* governing movables (money, furniture, *etc.*), and explored the possibility that some form of either or both of these might apply where there was a will of immovables, instead of a right of dower. But this threw up difficulties and considerations about testamentary freedom in the wider sense, and more fundamentally the nature in law of movable and immovable property, and would have entailed a far reaching and fundamental review of the whole law of succession, better suited to another phase of the Panel's review.

8. The draft Law

- 8.1 As stated, the main purpose of the draft Law is to establish the equivalent of a right of dower between spouses irrespective of gender (and to abolish the existing right of a male surviving spouse to *viduité*). The similarity of purpose with civil partnerships in this respect meant that much of the drafting groundwork was done in preparing the Civil Partnership Law.
- 8.2 This draft Law contains amendments of the 1993 Law to secure for a surviving male spouse a right of *usufruit* in his wife's immovable estate in the same proportion, and on the same terms, as that to which a surviving female spouse is entitled by virtue of her *droit de douaire*. There is no need to duplicate the detail contained in the draftsman's Explanatory Note, but it will be helpful nonetheless to highlight the following aspects.
- 8.3 The legal hypothec attaching to the right of dower, *i.e.* the *hypothèque de douaire* – by virtue of which a widow is able to make her claim in a *dégrévement* – is provided for by Articles 7 to 9 of the *Loi (1880) sur la propriété foncière*. The necessary amendments of that Law have been made to accommodate equivalent hypothecary rights for male surviving spouses. In the process, the relevant provisions of those Articles, as amended by the Civil Partnership Law, have been consolidated so as to provide collectively for the hypothecary rights of surviving husbands, surviving wives and surviving civil partners, the rights of each now being wholly aligned.
- 8.4 One further matter required to be addressed in terms of the alignment of the rights of surviving spouses with the rights of surviving civil partners. The Civil Partnership Law, in conferring on surviving civil partners the right to claim dower, exempted them from the rule known as '*le douaire se gagne au coucher*'. This is the rule of customary law under which a widow loses her claim to dower if it is shown that the marriage was not consummated.

⁸ *i.e.* where there is no will (*see paragraph 4 above*).

8.5 This rule having been disapplied in relation to dower claimed by surviving civil partners, the Legislation Advisory Panel decided to recommend to the Chief Minister that it be abolished in relation to the right of *usufruit* claimed by a surviving spouse. In this way, there will be no difference in the treatment of spouses and of civil partners in terms of their entitlement. The law relating to petitions for nullity of marriage in cases of non-consummation would remain intact, of course.

9. Reform of Articles 8 and 8AA (of the 1993 Law)

9.1 Reference was made at paragraph 1.7 *above* to Articles 8 and 8AA of the 1993 Law, which bar a separated spouse or civil partner, in the case of desertion or judicial separation, from claiming the life enjoyment of the matrimonial home, or civil partnership home, and certain other succession rights when the other spouse/civil partner dies.

9.2 Articles 8 and 8AA operate in relation only to what are known as the statutory surviving spouse and surviving civil partner provisions, that is to say, the right of a surviving spouse or civil partner to –

- life enjoyment of the matrimonial/civil partnership home (under Article 5 of the 1993 Law);
- the immovable estate on intestacy (under Article 6); and
- part of the movable estate – known as *légitime* (under Article 7).

9.3 This does not include the customary law right of dower, which is able to be claimed when a will has been made which does not otherwise provide for the surviving spouse or surviving civil partner. In relation to dower, the rules governing disqualification are contained not in the 1993 Law, but in case law. Thus, for example, a claim for dower will not lie where a widow has been convicted of the manslaughter of her husband: *In Re Estate Poole* 25 GLJ 48.

9.4 This leaves the Royal Court having to apply two different tests – one statutory and the other customary law – depending upon whether the deceased did or did not leave a will. The Legislation Advisory Panel has concluded, following consultation, that there is no good reason for the test to differ depending merely upon whether the succession was testate or intestate.

9.5 The amendments to Articles 8 and 8AA – contained in *Articles 3 and 4* of the draft Law respectively – would therefore enable the Royal Court to apply the same test whenever a surviving spouse or surviving civil partner made a claim in an estate, irrespective of whether the claim is based on a customary or statutory law right. Accordingly –

- (a) Articles 8 and 8AA would apply whenever a surviving spouse or civil partner claimed any right in an estate; and
- (b) this would not prejudice the power of the Royal Court, upon any other lawful ground, to exclude a surviving spouse or surviving civil partner from claiming in the estate.

10. Conclusion

- 10.1 To summarise the principal effect of this draft Law, it would remove one of the remaining discriminatory elements in the Jersey law of succession, by finally equalising the rights of surviving spouses where land left by will is concerned. This would be achieved by –
- (a) removing the husband's right of *viduité*; and
 - (b) enabling the right of *usufruit* attaching to dower to be claimed by the husband or the wife depending on which of them died first.
- 10.2 Taken together with the earlier reform of the succession rights of non-marital children in 2011, this would represent a significant modernisation of Jersey's inheritance laws.
- 10.3 As noted earlier, the law of *viduité* is rooted deep in Jersey's Norman customary tradition, and there will always be an understandable reluctance to abandon what may be seen as an integral part of the Island's legal heritage. But, ultimately, Jersey law must respond to the needs and values of a community living in the 21st Century in a global economy.
- 10.4 The other reform – in relation to Articles 8 and 8AA of the 1993 Law – would be essentially a rationalisation of the powers of the Royal Court and, as such, a non-contentious measure.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

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 Note on the Wills and Successions (Amendment No. 2) (Jersey) Law 201-

1. This Note has been prepared in respect of the Draft Wills and Successions (Amendment No. 2) (Jersey) Law 201- by the Law Officers' Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR"). References below to "Articles" are to Articles contained in the draft Law unless otherwise specified.

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

2. The principal purpose of the draft Law is to eliminate differential treatment between married men and women in terms of their succession rights to the estates of each other.
3. To this end –

Article 2 inserts a new Article 6B in the Wills and Successions (Jersey) Law 1993 ("the 1993 Law") which provides that, where a wife dies testate as to immovable estate, the widower shall have a right of *usufruit* in that immovable estate to the same extent and upon the same terms as a widow has by virtue of her right of dower in the immovable estate as to which her husband dies testate. This change to the Law does not affect a succession which opens before the change comes into force.

Article 7 inserts a new Article 14A in the 1993 Law abolishing a widower's entitlement to *viduité* in the immovable estate of his deceased wife as to which she died testate. This change to the Law does not affect a succession which opens before the change comes into force.

4. These two provisions are effective to remove the potential objections to the present law based on the engagement of either –

ECHR Article 1 Protocol 1 (respect for 'possessions') in conjunction with Article 14 (discrimination); or

ECHR Article 8 (respect for private and family life, home and correspondence) in conjunction with Article 14.

5. The remaining Articles, except for Article 3, contain provisions that are consequential upon the above 'core' provisions removing the discriminatory features of the existing law. None calls for comment, except the new Article 14B of the 1993 Law – inserted by Article 7 – which abolishes the rule of law expressed in the maxim *le douaire se gagne au coucher*. This is the rule in relation to dower whereby the widow loses her right of *douaire* if it is shown that the marriage was been consummated. No such rule applied to a widower claiming *viduité*. Accordingly the abolition of the rule is consistent with the core provision of the draft Law eliminating differential treatment.

6. Article 3 is concerned with the grounds upon which a person may be disqualified from claiming in the estate of his or her deceased spouse or civil partner. The purpose of the amendments to Articles 8 and 8AA, respectively, of the 1993 Law is to make it clear that the grounds upon which a person may be so disqualified do not differ depending merely upon whether the succession is testate or intestate. The existing statutory grounds are desertion by the surviving spouse or a decree of judicial separation in favour of the deceased spouse; the existing customary law grounds are not definitively settled, but they must be of a substantially serious nature, *e.g.* the manslaughter of the deceased by the claimant *In Re Estate Poole* 25 GLJ 48. The grounds for such disqualification are not extended in themselves by the draft Law; the purpose is simply to make it clear that such grounds – be they statutory or customary law grounds – are to be applied on the same footing to testate and intestate successions.

ECHR rights engaged

Article 14

7. Article 14 provides that the enjoyment of rights and freedoms set forth in the Convention shall be secured without discrimination on any ground. Therefore, this is not a standalone Article and only when a “primary” ECHR Article is engaged, Article 14 shall also be capable of being engaged if there is discrimination in the enjoyment of the primary Article.

Article 14 & Article 1, Protocol 1

8. Article 1, Protocol 1 ECHR (“right to enjoy possessions”) is not engaged because this Article “*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.*” (*Marckx -v- Belgium* (1979-80 2 E.H.R.R. 330, para. 50). Therefore, this Article is only concerned with a person’s existing possessions and not those which may be acquired by inheritance or succession.

Article 14 & Article 8

9. ECHR Article 8 (respect for private and family life, home and correspondence) is however engaged as matters relating to succession and disposition are “*intimately connected with family life*” (*Marckx -v- Belgium*). There is a difference in treatment between a widow (*douaire*) and a widower (*viduité*) in the enjoyment of an Article 8 right, and therefore Article 14, in conjunction with Article 8, is engaged.
10. As mentioned in paragraph 6 of the main body of the Report, a difference in treatment shall only be found to be discriminatory for the purposes of Article 14 ECHR if such differing treatment has no objective and reasonable justification, it does not pursue a legitimate aim, or if there is not the means employed to achieve the legitimate aim pursued are not proportionate. Moreover, contracting states enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment.

11. There is clearly a legitimate aim (i.e. protecting the interests of surviving spouses). However, the difference of treatment between a widow and a widower would, as noted in paragraph 6.9 of the Report, be difficult to justify, based on the historic roots of both *douaire* and *viduité*.
12. As a result, the draft Law seeks to remove this difference in treatment by abolishing *viduité* whilst extending the *douaire* to surviving widowers, the latter currently only enjoyed as a right by widows (in both cases, where the deceased spouse has died testate). Furthermore, the draft Law shall also extend the *douaire* to surviving civil partners (where the deceased civil partner has died testate). Thus, in light of the Civil Partnership (Jersey) Law 2012, the draft Law shall provide surviving civil partners with equivalent rights to surviving spouses.
13. Following these revisions, the issue of compatibility with Article 14 ECHR, when read with Article 8 ECHR, that exists regarding the differing treatment between female surviving spouses and male surviving spouses, and between both of those groups and surviving civil partners, shall be remedied. **The draft Law is therefore compatible with Article 14 ECHR, when read with Article 8.**

Article 1, Protocol 1

14. As mentioned above, Article 1, Protocol 1 ECHR does not extend to succession rights and therefore, **Article 1, Protocol 1 is not engaged as regards abolishing the right of *viduité*.**

Explanatory Note

At present, dower (or *douaire*) is an entitlement of a widow to life enjoyment of one third of the immovable estate of her husband as to which he dies leaving a will. This Law extends dower so that it becomes also a right enjoyed by a widower to the same extent and upon the same terms as a widow is entitled to dower in the immovable estate as to which her husband dies testate. That is, it becomes a right to life enjoyment of one third of the immovable estate of his wife as to which she dies leaving a will.

At the same time this Law abolishes *viduité*, the existing right of a widower to life enjoyment of the whole of the immovable estate of his wife as to which she dies leaving a will.

Article 1 defines “principal Law” to mean the Wills and Successions (Jersey) Law 1993.

Article 2 replaces Article 6A (previously inserted in Part 3 of the principal Law by the Civil Partnership (Jersey) Law 2012) and inserts new Articles 6B and 6C in Part 3 of the principal Law.

The new Article 6B extends a right of *usufruit* to widowers that is parallel to the right of widows by virtue of their right of dower, but provides that the extension does not apply to the estate of a woman who dies before Article 6B comes into force.

Article 6A is replaced in order to ensure uniformity of language with Article 6B, referring to a right of *usufruit* enjoyed by a surviving civil partner to the same extent and upon the same terms as a widow by virtue of her right of dower in the immovable estate as to which her husband dies testate.

The new Article 6C makes it clear that a reference to dower in Article 6(3) of the principal Law, in other Jersey Laws and other Jersey legislation and in dispositions executed after Article 6C comes into force includes a reference to that right of *usufruit* of a surviving civil partner or widower.

Article 3 amends Article 8 (concerning surviving spouses who are living apart at the date one of them dies) and *Article 4* amends Article 8AA (concerning surviving civil partners who are living apart at the date one of them dies) of the principal Law –

- (a) to add to those Articles cross-references respectively to the new Articles 6B and 6A (referred to above) so that the latter are disapplied (as well as Articles 5, 6 and 7) in cases of succession where desertion had occurred without cause or a decree of judicial separation had been granted to the deceased spouse or deceased civil partner;
- (b) to make it clear that Articles 8 and 8AA are not intended to take away the Royal Court’s customary law powers to exclude persons from the right to succeed to an estate in appropriate circumstances.

Article 3 also amends Article 8 of the principal Law to ensure that, in circumstances of desertion without cause or of judicial separation, the Royal Court has the same powers to exclude a surviving spouse from the right to succeed to an estate in a case of testate succession as in a case of intestate succession.

Articles 5 and 6 simply apply a uniform style to 2 headings to Articles in Part 5 of the principal Law, a Part which abolishes certain rules of customary law.

Article 7 inserts 2 new Articles in Part 5 of the principal Law. Inserted Article 14A abolishes *viduité*, and inserted Article 14B abolishes the customary law requirement that a prerequisite for an entitlement to dower is the consummation of the relevant marriage.

Article 8 inserts Article 22A in the principal Law. Article 22A provides that none of the amendments made by this Law apply in relation to the estate of a person who dies before this Law comes into force.

Article 9 and the *Schedule* set out a number of amendments consequential on the amendments set out above.

Article 10 provides for the citation of the Law.

Article 11 provides for the Law to come into force as the States appoint by Act.

The *Schedule* amends references in other Laws to *douaire* as an entitlement of a widow so that they will now extend to a parallel entitlement of a widower. At the same time, in replacing Articles 7, 8 and 9 of the *Loi (1880) sur la propriété foncière*, the *Schedule* removes references in those Articles to *liquidation* and *décret* and their associated procedures. *Liquidation* no longer exists and *décret* can at this stage no longer operate in relation to dower rights.

English Translation

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

SCHEDULE

(Article 8)

CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

1 Amendment of the 1862 Law concerning the holding of immovable property on trust and the incorporation of associations

In Article 7 of the 1862 Law concerning the holding of immovable property on trust and the incorporation of associations, for the words “as well as of the dower of the widow of a trustee” there shall be substituted the words “as well as of the dower of the widow, or the widower, of a trustee”.

2 Amendment of the 1880 Law concerning immovable property

(1) In Article 1 of the 1880 Law concerning immovable property for the definitions “SPOUSE” and “SURVIVING SPOUSE” the following definitions shall be substituted –

“SPOUSE: as the case requires –

- (a) the husband;
- (b) the wife; or
- (c) the civil partner.

SURVIVING SPOUSE: as the case requires –

- (a) the widower;
- (b) the widow; or
- (c) the surviving civil partner of a deceased civil partner.”.

(2) For Articles 7 to 9 of the 1880 Law concerning immovable property the following Articles shall be substituted –

“7

- (1) A spouse has a hypothec with right of recourse [against third-holders] over the immovables of the other spouse as security for the dower of the first-mentioned spouse. This hypothec ranks from the day of the decease of the other spouse.
- (2) If, during a marriage or civil partnership, a spouse makes cession or has his or her property adjudged renounced, the surviving spouse retains all his or her rights without needing to take proceedings to enforce them. However, after the death of a spouse

who has made cession, as well as in the case of the discumbrment of the property of a spouse after his or her death, the surviving spouse cannot lay claim, by way of dower, to the actual enjoyment of the corporeal hereditaments that are subject to his or her dower. This rule applies whether they are in the hands of tenants or other third-holders or are included in the property undergoing discumbrment. However, where that rule applies, the surviving spouse shall be entitled to *franc douaire* [dower in money] on each and every one of the corporeal hereditaments.

- (3) The surviving spouse is entitled to the actual enjoyment of his or her third of the other immovables that are subject to the dower if there are any amongst the property subject to discumbrment. If these immovables are in the hands of third-holders, the surviving spouse must accept – if the third-holders so wish – an appropriate annual payment in lieu of his or her third.
- (4) In the case of discumbrment, after the death of a spouse, of any of the property subject to the dower of the surviving spouse, the latter shall be summoned to appear at the discumbrment in accordance with Article 92 and shall have the right to constitute himself or herself tenant of the said property according to the rank of his or her hypothec.

8

- (1) A dower settlement, whether made before the Greffier or by private agreement, followed by the entry into possession by the surviving spouse of the immovables allotted to him or her, has the effect, in the event of discumbrment of the property of the principal heir or of any other heir of the deceased spouse, that no procedural step need be taken by the surviving spouse to retain possession of the said immovables.
- (2) In the case where recourse has to be had to the property of the deceased spouse, 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 surviving spouse shall have the right to the enjoyment of the immovables that constitute the dower until the quarter day next falling after the 3 months after the Court has ordered that recourse be had to the assets. However, that enjoyment is on condition that the *rentes* and charges to which the dower is subject are paid in proportion to the time that has elapsed. If the relevant quarter day is 25th March, 24th June or 29th September, and there is arable land among the corporeal hereditaments subject to the dower, the surviving spouse shall be entitled to retain possession of them, as well as of the dwelling and out-buildings that he or she occupies and are used in working the said land, until the next Christmas day: but this is on condition that rent or other compensation is paid to the appropriate person for the time difference.

- (1) In the event of discumbrment of any part of his or her property, the surviving spouse is not required to take any action to conserve his or her hypothecary rights, or to take any procedural step in the discumbrment, as regards an agreement for *franc douaire* [dower in money], whether or not the agreement has been registered.
- (2) The surviving spouse shall have a preferential right, in the event of discumbrment, to 3 years' arrears, from the date of the Act of the Court ordering the discumbrment, of so much of his or her *franc douaire* as is charged on the corporeal hereditaments comprised in the property undergoing discumbrment.
- (3) In the case of recourse to the property of a deceased spouse, an agreement for *franc douaire* shall be absolutely void.”.

3 Amendment of the 1915 Law concerning immovable property (guarantees)

In Article 5 of the 1915 Law concerning immovable property (guarantees), the paragraph that begins with the words “The widow of a *rentier*” and ends with the words “Treasurer of the States.” shall be repealed.



Jersey

DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 2) (JERSEY) LAW 201-

Arrangement

Article

1	Interpretation	23
2	Articles 6A, 6B and 6C substituted	23
3	Article 8 amended	24
4	Article 8AA amended.....	24
5	Heading to Article 13 substituted.....	25
6	Heading to Article 14 substituted.....	25
7	Articles 14A and 14B inserted	25
8	Article 22A inserted	25
9	Consequential amendments to other Laws.....	26
10	Citation.....	26
11	Commencement.....	26

SCHEDULE **27**

CONSEQUENTIAL AMENDMENTS TO OTHER LAWS		27
1	Amendment of Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations	27
2	Amendment of Loi (1880) sur la propriété foncière	27
3	Amendment of Loi (1915) sur la propriété foncière (garanties)	29



Jersey

DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 2) (JERSEY) LAW 201-

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law “principal Law” means the Wills and Successions (Jersey) Law 1993¹.

2 Articles 6A, 6B and 6C substituted

For Article 6A of the principal Law there shall be substituted the following Articles –

“6A Extension of right in nature of dower to civil partners

Where a civil partner dies testate as to immovable estate, his or her surviving civil partner shall have a right of *usufruit* in that immovable estate to the same extent and upon the same terms as a widow has by virtue of her right of dower in the immovable estate as to which her husband dies testate.

6B Extension of right in nature of dower to widowers

Where a wife dies testate as to immovable estate, the widower shall have a right of *usufruit* in that immovable estate to the same extent and upon

the same terms as a widow has by virtue of her right of dower in the immovable estate as to which her husband dies testate.

6C References to dower in enactments and in dispositions

- (1) In this Law (apart from Articles 6A and 6B) and in any other enactment, whenever enacted, a reference to *douaire* or dower, however expressed, shall be taken to include, unless the contrary intention appears, a reference to the right of *usufruit* conferred by Article 6A or 6B.
- (2) In any disposition executed after this Article came into force, a reference to *douaire* or dower, however expressed, shall be taken to include, unless the contrary intention appears, a reference to the right of *usufruit* conferred by Article 6A or 6B.”.

3 Article 8 amended

In Article 8 of the principal Law –

- (a) before paragraph (1) there shall be inserted the following paragraph –

“(A1) In this Article the ‘surviving spouse provisions’ means –

 - (a) the provisions of Articles 5, 6, 6B and 7 which operate to confer property or any *usufruit*, interest, right or title in or to property on a surviving spouse; and
 - (b) so much of the customary law as operates to confer property or any *usufruit*, interest, right or title in or to property on a surviving spouse in his or her capacity as such.”;
- (b) in paragraph (1), for the words beginning “The provisions of Articles 5,” and ending “(in this Article referred to as the ‘surviving spouse provisions’)” there shall be substituted the words “The surviving spouse provisions”;
- (c) after paragraph (2) there shall be added the following paragraph –

“(3) Paragraphs (1) and (2) are without prejudice to any power of the Court, on any grounds other than the grounds set out in paragraph (1), to exclude a person from the right to succeed to an estate.”.

4 Article 8AA amended

In Article 8AA of the principal Law –

- (a) in paragraph (1), for the words “Articles 5, 6 and 7 operating to confer” there shall be substituted the words “Articles 5, 6, 6A and 7 operating to confer”;
- (b) after paragraph (2) there shall be added the following paragraph –

“(3) Paragraphs (1) and (2) are without prejudice to any power of the Court, on any grounds other than the grounds set out in

paragraph (1), to exclude a person from the right to succeed to an estate.”.

5 Heading to Article 13 substituted

For the heading to Article 13 of the principal Law there shall be substituted the following heading –

“13 Abolition of rule about gifts to concubines”.

6 Heading to Article 14 substituted

For the heading to Article 14 of the principal Law there shall be substituted the following heading –

“14 Abolition of right of principal heir to demand possession of movable estate”.

7 Articles 14A and 14B inserted

After Article 14 of the principal Law there shall be inserted the following Articles –

“14A Abolition of *viduité*

A widower’s entitlement to *viduité* in the immovable estate of his deceased wife as to which she died testate is hereby abolished.

14B Abolition of requirement of consummation in relation to dower

The rule of law expressed in the maxim *le douaire se gagne au coucher* is hereby abolished.”.

8 Article 22A inserted

After Article 22 of the principal Law there shall be inserted the following Article –

**“22A Wills and Successions (Amendment No. 2) (Jersey) Law 201-:
application**

The amendments made to this Law by the Wills and Successions (Amendment No. 2) (Jersey) Law 201-² shall not apply in relation to the estate of a person who died before the day that Law came into force.”.

9 Consequential amendments to other Laws

The Schedule shall have effect.

10 Citation

This Law may be cited as the Wills and Successions (Amendment No. 2) (Jersey) Law 201-.

11 Commencement

This Law shall come into force on such day or days as the States may by Act appoint.

SCHEDULE

(Article 9)

CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

1 Amendment of Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations

In Article 7 of the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations³, for the words “ainsi que du douaire de la veuve d'un fidéicommissaire” there shall be substituted the words “ainsi que du douaire de la veuve, ou du veuf, d'un fidéicommissaire”.

2 Amendment of Loi (1880) sur la propriété foncière

(1) In Article 1 of the Loi (1880) sur la propriété foncière⁴ for the definitions “CONJOINT” and “CONJOINT SURVIVANT” the following definitions shall be substituted –

“CONJOINT: selon le cas –

- (a) le mari;
- (b) la femme; ou
- (c) le partenaire civil.

CONJOINT SURVIVANT: selon le cas –

- (a) le veuf;
- (b) la veuve; ou
- (c) le partenaire civil survivant d'un partenaire civil décédé.”.

(2) For Articles 7 to 9 of the Loi (1880) sur la propriété foncière the following Articles shall be substituted –

“7

- (1) Le conjoint a sur les immeubles de l'autre conjoint, pour assurance de son douaire, une hypothèque avec droit de suite, qui prendra date du jour du décès de l'autre conjoint.
- (2) Si, constant le mariage ou le partenariat civil, le conjoint fait cession ou que ses biens soient adjugés renoncés, le conjoint survivant conservera tous ses droits sans faire de diligences; excepté qu'après la mort du conjoint cessionnaire, ainsi qu'en cas de dégrèvement des biens du conjoint après le décès de celui-ci, le conjoint survivant ne pourra prétendre d'avoir, par voie de douaire, la jouissance actuelle des biens-fonds sujets au douaire – qu'ils soient entre les mains de tenants ou autres tiers détenteurs, ou

parmi les biens en dégrèvement: mais le conjoint survivant aura droit à un franc douaire sur tous et chacun desdits biens-fonds.

- (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, d'aucune de ses propriétés sujettes au douaire du conjoint 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 propriété dans l'ordre de son hypothèque.

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 des immeubles à lui allotis – aura, en cas de dégrèvement des biens du principal héritier ou de tout autre héritier du conjoint décédé, l'effet que, s'il a été dûment enregistré, il ne nécessitera de la part du conjoint survivant, pour conserver la possession desdits immeubles, aucune formalité quelconque.
- (2) Dans le cas qu'il soit nécessaire de remonter à discuter les biens du conjoint décédé, un règlement de douaire, fait et suivi de 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 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 parmi les biens-fonds occupés à douaire il se trouve des terres labourables, le conjoint survivant 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 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 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.”.

3 Amendment of Loi (1915) sur la propriété foncière (garanties)

In Article 5 of the Loi (1915) sur la propriété foncière (garanties)⁵, the paragraph that begins with the words “La veuve d’un rentier” and ends with the words “Trésorier des États.” shall be repealed.

-
- ¹ *chapter 04.960*
 - ² *P.38/2013*
 - ³ *chapter 04.120*
 - ⁴ *chapter 18.495*
 - ⁵ *chapter 18.450*