

Chief Minister



19-21 Broad Street | St Helier
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Senator Kristina Moore
Chair, Corporate Services Scrutiny Panel

BY EMAIL

6 April 2022

Dear Chair,

P.42 / 2022 Draft Probate (Amendment) Law

Thank you for your letter, dated 30 March 2022, in which you ask about three matters related to the draft Probate (Amendment) Law. I am writing to you in my capacity as Assistant Chief Minister as I will be taking this item to the Assembly on the Chief Minister's behalf.

Please note, the provisions of the law have been developed with support and guidance from the Legislation Advisory Panel (LAP) hence I have copied my response to Deputy Johnson, as Chair of the LAP.

1. Consultation and feedback

Stakeholder consultation 2017

Work initially commenced on changes to the Probate Law in 2017 / 2018 when representatives of the Jersey Care Federation pro-actively raised concerns about the law during an entirely separate consultation process related to the Regulation of Care Law.

At that time, meetings were held with the Chairs of the Care Federation, who directly consulted their members and provided feedback to officers, plus representatives of funeral directors and the Jersey Bankers Association.

Work was halted in 2018 whilst consideration was given as to whether more extensive amendments were required. Competing priorities meant this work was not picked up again until 2021.

Public and stakeholder consultation 2021

Work recommended on amendments to the law in late 2021 at which point a public consultation was launched via www.gov.je. This consultation ran from 19 October until 14 December 2021.

<https://www.gov.je/Government/Consultations/Pages/ProbateLaw.aspx>

Two organisations responded to the on-line consultation:

- Jersey Bankers Association
- Law Society's Capacity, Succession and Estate Planning Sub-Committee.

A copy of the comments received, and the action taken in response to those comments, is attached. Both consultees have been sent the response document.

Officers also directly contacted:

- the Chief Nurse and the Prison Governor as Government of Jersey stakeholders, who are required / potentially required to manage the property of deceased persons. Both support the proposed changes.
- the Viscount and Receiver General. Both support the proposed changes.

To coincide with the launch of the on-line consultation officers sent the attached consultation letter via email in October 2021 to:

- all care home providers. One response was received from an individual who had no comments to make.
- funeral directors. No responses were received.

A further update letter was sent via email on 25 March 2022 to care home providers, funeral directors and social housing providers as the particular holders to be prescribed under Article 19B of the amended law. A copy is attached.

The 25 March email resulted in a number of Care Home providers contacting Officers to inform them that the October email had not be received by multiple Care Homes. A series of briefing meetings have, therefore, been organised on the following dates:

- Friday 8 April: 16.30 to 17.30
- Monday 11 April: 12.00 to 13.00
- Wednesday 13 April: 15.00 to 16.00

Officers will also attend the Community Sector Support meeting on 13 April to provide a further briefing, this meeting is well attended by the care sector.

Having been informed that the October email did not reach all Care Home Managers, officers have subsequently made follow up calls to all Funeral Directors, who have verified receipt of the emails.

Officers are still awaiting a response from one of the Funeral Directors, all of the other Funeral Directors who have been contacted are supportive of the proposals.

2. Value of items that can be buried or cremated

There are two values associated with items that can be buried or cremated with deceased persons:

- if the item(s) value is more than £1,000 but does not exceed £10,000, the funeral director may only authorise burial or cremation on receipt of an application form from a person who is entitled to receive the item(s)
- if the item(s) value does not exceed £1,000 the funeral director does not require an application form.

The rationale for these values is:

- they are lower than the £30,000 small estates exemption because the item(s) cannot be retrieved if entitlement is disputed at a later date – i.e. a lower value has been selected in order to limit any potential risk
- the values were based on feedback received from the 2017 stakeholder meetings
- 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. The lower value of £1,000 is considered to be a sensible threshold at which no application form is needed given that it includes clothing. It should be noted that, as matters currently stand, a funeral director may be committing an offence if they authorise burial or cremation of items without a grant of probate / administration being in place – i.e. this amendment regularises existing practice.

3. Arrangement in other jurisdictions

Threshold limits: Probate arrangements vary between different jurisdictions, including in relation to the threshold for a small estates' exemption (i.e. the value of estate that a holder can release without the need for a grant of probate or administration). In England that amount is £50,000, in Scotland it 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.

The £30,000 threshold, as set out in the amendment law is, therefore, lower than other jurisdictions although it may be increased or decreased by Order. The £30,000 figure was agreed in consultation with the Viscount and Probate service. As set out in the attached feedback from the Law Society and the Jersey Bankers Association, one thinks the threshold too high, the other too low.

Application processes as set out in Articles 19B and 19C: The application process provided for in Articles 19B and 19C of the law is provided to be of assistance to care providers and funeral directors based on their feedback in 2017 / 2018. The provisions are not directly comparable with those of other jurisdictions.

The provisions set out in Article 19B replicate those of Article 19A, except that an application form is provided for in Article 19B in order to be of assistance to care providers. Whilst it can be reasonably suggested that a statutory application form is not required given the provisions of Article 19A, it has been included in the law as it provides care providers greater certainty as to how to operate. Users of the Article 19A provisions will, in the main, be institutions such as banks who will be more experienced and adept at handling the estate of deceased people as handling estate accords with their prime purpose.

Please do not hesitate to let me know if you have any further queries or if you would like to discuss any of these points in further detail.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Richard Buchanan', written in a cursive style.

Connétable Richard Buchanan
Assistant Chief Minister

Cc. Deputy David Johnson, Chair of LAP