

STATES OF JERSEY



Jersey

DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 3 – COLLATERAL SUCCESSION OF IMMOVABLE ESTATE) (JERSEY) LAW 202-

**Lodged au Greffe on 22nd December 2023
by the Chief Minister
Earliest date for debate: 6th February 2024**

STATES GREFFE



Jersey

**DRAFT WILLS AND SUCCESSIONS (AMENDMENT
No. 3 – COLLATERAL SUCCESSION OF IMMOVABLE
ESTATE) (JERSEY) LAW 202-**

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. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Mary, St. Ouen and St. Peter**
Chief Minister

Dated: 21st December 2023

REPORT

Introduction

1. The Legislation Advisory Panel (the “**Panel**”) has, on behalf of the Chief Minister, prepared a draft Wills and Successions (Amendment No. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202- (the “**draft Law**”). The effect of the draft Law is to abolish the distinction between *propres* and *acquêts* in the customary law relating to intestate collateral succession (i.e. to succession to property in circumstances where a person dies without a will and has no spouse, civil partner or children).
2. This amendment would bring Jersey into compliance with the Convention on the Elimination of All Forms of Discrimination against Women (“**CEDAW**”) which has been extended to the Island. As part of Jersey’s obligations under CEDAW it has committed to abolish the customary rule of law pursuant to which, if a person dies intestate (i.e. without having made a will), the distribution of their immovable property¹ to collateral relatives (e.g. to uncles, aunts, cousins or remoter relatives) may favour the paternal side of the family.
3. This reform will meet this commitment, simplify the customary law and ensure that the law does not unnecessarily prevent members of a deceased person’s extended family from inheriting property.

CEDAW Background

4. CEDAW was extended to Jersey in February 2021². Article 1 defines the term “discrimination against women” as meaning –

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
5. Article 16 requires State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, amongst other things –

“(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”³
6. Jersey has made a reservation in respect of Article 16 which states –

The Bailiwick of Jersey reserves the right, notwithstanding the obligations undertaken in Article 16, paragraph 1(h), to continue to apply the customary rule of law whereby a person dies intestate, with no issue, the distribution of immovable property may favour the paternal side of the family pending the abolition of this law...⁴
7. On the 9 February 2021, the Secretary of State for Foreign, Commonwealth and Development Affairs wrote to the Secretary-General of the United Nations confirming that

¹ Jersey immovable property is most commonly composed of land or any structure fixed to land, such as a house. It also includes certain rights relating to land.

² [Convention on the Elimination of all forms of Discrimination Against Women \(CEDAW\) \(gov.je\)](https://www.gov.je/convention-on-the-elimination-of-all-forms-of-discrimination-against-women-cedaw)

³ Article 16(h) of the Convention on the Elimination of all forms of Discrimination Against Women

⁴ UK reservation to CEDAW

CEDAW would be extended to Jersey, subject to this reservation which would remain in place pending the abolition of this customary rule of law⁵.

Customary law rules on intestate succession

8. The ‘customary rule of law’ referred to in the reservation relates to the distribution of immovable property inherited on intestacy.
9. Under Jersey customary law, immovable property inherited on intestacy may be either a *propre* or an *acquêt*:
 - a. A *propre* is a parcel of immovable property that was inherited by the deceased (whose succession is in issue) on intestacy or acquired by the deceased during the lifetime of the deceased’s ancestor as an *avance du succession* (e.g. it was received as a gift or purchased from the deceased’s ancestor from whom it would have been inherited on intestacy).
 - b. An *acquêt* is a parcel of immovable property that was acquired by the deceased in any other way, including where it was purchased by the deceased on the open market from someone other than an ancestor or where it was received by the deceased under a will (whomever it is received from).
10. The distinction between *propres* and *acquêts* is of no significance where immovable property is inherited on intestacy in the direct line of succession (e.g. by a child from a parent) as intestate succession in this context is already governed by Article 6 of the [Wills and Succession \(Jersey\) Law 1993](#) (the “1993 Law”). It is also irrelevant where the deceased provides for the immovable property to be inherited by any person under a valid will.
11. The distinction may, however, have a significant effect where the deceased has not made a will and has no spouse, civil partner or children, but does have other relatives such as uncles, aunts or cousins who might inherit (known as an intestate collateral succession).
12. The rules governing a collateral succession to a parcel of immovable property that is appropriately classified as a *propre* can be briefly summarised as follows:
 - a. A *propre* will revert to the side of the family from which it was inherited by the deceased – either the paternal or maternal side in accordance with the principle *paterna paternis, materna maternis*.
 - b. Where a *propre* cannot be said to come from the paternal or the maternal side of the family it will be treated as coming from the paternal side in preference to the maternal side in accordance with the principle *le côté paternel l’emporte par dignité*.
 - c. Where there is no one to inherit on the side of the family that is entitled to inherit, the property will escheat to the Crown as *bona vacantia*. (i.e. ownership reverts to the Crown in the absence of a person who can show a right to it). The property will then be administered by His Majesty’s Receiver General.
13. An example of how these rules could operate in a way that is iniquitous is described below:
 - a. David buys a house, which is an *acquêt* in his hands.
 - b. David dies without a wife or children and the property is inherited by his nearest relative, his sister Judy. The house is a *propre* in Judy’s hands as it was inherited by her from David on his intestacy.

⁵ Letter dated 9 February 2021 from Secretary of State for Foreign, Commonwealth and Development Affairs to the Secretary-General of the United Nations confirming the extension of CEDAW to Jersey subject to the reservations and declarations contained in the letter.

- c. As it came from her brother, rather than being inherited from Judy's mother or father, there is no reason why the *propre* should be paternal or maternal, so it is assumed to be paternal (applying the maxim *le côté paternel l'emporte par dignité*).
 - d. Judy then herself dies intestate and without children, a spouse or civil partner. Judy's closest relatives are first cousins through her mother's side of the family, and she has no surviving relatives on her father's side.
 - e. If Judy had bought a house (an *acquêt*) then that could pass to Judy's cousins on the maternal side. However, as the house inherited from David is a paternal *propre* it will not pass to the cousins, but will escheat to the Crown.
14. The customary rules of law set out above align with historic principles of the Jersey law of succession, including that its purpose was to conserve property within a family. This principle of *la conservation du bien dans la famille* (keeping property in the family), traditionally underpinned Jersey's law of succession. However, over time legislative reform has created much greater testamentary freedoms which have eroded the principle so far as immoveables are concerned. Retaining the distinction between *propres* and *acquêts* has therefore lost its purpose and adds an unnecessary layer of complexity to the law in this area. Further, the rules in relation to the devolution of *propres* can have an iniquitous effect and one that is not compatible with CEDAW.

Determining the closest relative

15. The distinction between *propres* and *acquêts* also affects the method of determining the closest relative who will inherit the property on a collateral succession. The method of calculating the closest relative is determined in terms of generations, normally referred to as degrees. Calculating the number of degrees from a potential claimant to the deceased is important to determine whether the claimant is capable of inheriting and to decide the priority between rival claimants.
16. On a collateral succession to moveable property and for an *acquêt*, the general rule is that the closest relative will inherit regardless of which side of the family they come from. The closest relative is determined using the "civil method"⁶. *Propres* are inherited by the closest relatives who are members of the correct branch of the family, and the closest relatives on that branch are determined using the "canonical method".⁷
17. To avoid adding undue complexity to this report the operation of the civil and canonical methods is not analysed in detail. At a high level, the application of the canonical method, on its own, may mean that there are a larger number of relatives of an equal degree of relationship to the deceased. However, that rule is not applied in isolation. In practice the general rule that the closest relative will inherit on a collateral succession is qualified for

⁶ This method has two steps. The first is to identify a common ancestor between the deceased and the person who wishes to participate in the succession (the claimant). The second is to count the number of generations from the deceased to the common ancestor and then down from the common ancestor to the claimant. The proximity of the relationship is then the number of generations (degrees). For example, a between siblings there will be two degrees (one degree going up to a parent and one degree going back down to the sibling), uncles and aunts will be three degrees, first cousins will be four degrees.

⁷ This method has three steps. The first is to identify a common ancestor between the deceased and the person who wishes to participate in the succession (the claimant). The second is to count the number of generations from the deceased to the common ancestor. The third is to make a separate count the number of generations from the common ancestor to the claimant. The proximity of the relationship is then the larger of the two numbers of generations (degrees). This method tends to give rise to a larger number of people with the same proximity of relationship. For example, siblings will each be one degree (there is one generation up to a parent and one degree from the parent to the sibling), but uncles and aunts of the deceased, and first cousins will all be two degrees.

both *propres* and *acquêts* by rules concerning *représentation*. Those rules enable a claimant in a succession to *propres* or *acquêts* to stand in the shoes of his deceased ascendant. Those rules enable, for example, the cousins of a person whose estate is in issue to assume the place of an uncle or aunt of the deceased who is closer in degree than the cousins are, but unable to claim. In practice the rules of *représentation* reduce the difference between the effect of the civil and canonical methods⁸.

18. The civil method of determining the nearest relative is already used for *acquêts* and moveables without difficulty in practice. Using the civil method for all forms of moveable and immoveable property would simplify the law with little prejudice to claimants on an estate.

The effect of the draft Law

19. Considering the issues above, the Panel recommended, and the Chief Minister agreed that to ensure compliance with CEDAW it is appropriate to abrogate the customary law to abolish the rules relating to *propres* and provide that any immoveable property will be treated as *acquêts* on an intestate collateral succession.
20. The draft Law will amend the 1993 Law to add provisions abrogating the customary law for this purpose. The new Article 3A(1) of the 1993 Law, as inserted by Article 2 of the draft Law, states that for the purposes of any intestate collateral succession, all immoveable property are treated as *acquêts*. The new Article 14C(1) of the 1993 Law, inserted by Article 3 of the draft Law then clarifies that the customary law in relation to *propres* and the related maxims are abolished.
21. The effect of abolishing *propres* will be to change who may participate in an intestate collateral succession. Applying the canonical method, in theory the number of remote relatives who might have been able to participate in a succession to a *propres* from the ‘correct’ (maternal or paternal) side of the family could be greater than under the civil method. However, abolishing *propres* (and the canonical method) and treating intestate collateral successions of immoveable estate as *acquêts*, opens the succession to close family members on both sides of a deceased’s family.
22. The new Articles 3A(2) and 14C(2) of the 1993 Law provide that the abrogation only has effect in respect of the estate of a person who dies after the coming into force of the draft Law. The draft Law will not then affect the claim of any person to participate in an intestate collateral succession arising from a death occurring before the draft Law is in force.
23. In summary, abrogating the customary law in this way will remove the need for the CEDAW reservation and it will reduce the complexity of the customary law, because on a collateral succession both moveable and immoveable property will devolve using the same method for determining the nearest blood relative and without the need to consider whether property has come from the maternal or paternal line.

Financial and staffing implications

24. There are no additional financial or staffing implications for the public sector, and more widely, it is likely that this Law will simplify matters for the public and private practitioners, saving them costs.

⁸ Under the civil method, representation is allowed in favour of the surviving descendants of a deceased brother, sister, uncle or aunt of the deceased (Article 2 of the 1993 Law). Under the canonical method representation is allowed up to the 7th degree pursuant to customary law.

Human rights notes

25. The Law Officers have confirmed that the draft Wills and Successions (Amendment No. 3 – Collateral Succession of Immoveable Estate) (Jersey) Law 202- (the “**draft Law**”) raises no issues of compliance with the European Convention on Human Rights.
26. The draft Law, if passed, would abrogate the customary law of Jersey so that in every collateral succession of immoveable estate on intestacy, all immoveable property will be treated as *acquêts* and so that the law relating to *propres* is abolished. This would apply to the estate of a person who dies after the commencement of the draft Law.
27. The reasons for abrogating the customary law in this way and the effects of doing so are set out in detail in the Minister’s Report. One of the principal reasons for making this law change is to comply with the Convention on the Elimination of All Forms of Discrimination against Women (“**CEDAW**”), which is a United Nations multilateral convention which was extended to Jersey in 2021. The purpose of CEDAW is the elimination of discrimination against women and girls. This includes the elimination of discrimination in all matters relating to marriage and family relations, including in respect of the “*ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration*” (Article 16 of CEDAW).
28. When CEDAW was extended to Jersey, it was necessary for the UK to enter a reservation in respect of Jersey’s compliance with Article 16, because of the customary law relating to *propres* is such that in certain circumstances, succession may favour the paternal side of the family. The draft Law would abolish the customary rules of law that have that effect, bringing Jersey further into compliance with CEDAW and allowing this reservation to be removed.

EXPLANATORY NOTE

The Wills and Successions (Amendment No. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202-, if adopted, will amend the Wills and Successions (Jersey) Law 1993 (the “1993 Law”), to in turn amend the customary law.

Article 1 provides that this Law amends the 1993 Law.

Article 2 inserts new Article 3A into the 1993 Law. New Article 3A provides that an asset forming part of an immovable estate that is subject to a collateral succession on intestacy is to be treated as an *acquêt*. Under the current law, such an immovable asset would be a *propre* if the deceased had themselves acquired it by virtue of a succession on intestacy.

Article 3 inserts new Article 14C into the 1993 Law. New Article 14C abolishes two rules of customary law which related to collateral successions of *propres* on intestacy. As the relevant immovables are to be treated as *acquêts*, from the commencement of this Law, these rules are no longer required.

New Articles 3A and 14C both contain provisions stating that they do not apply to estates of people who die before this Law comes into force. Given Jersey's 40-year prescription period for immovable estate, it is likely that the old rules will continue to be used for some time for those estates.

Article 4 gives the citation and provides that the Law commences 7 days after it is registered.



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Jersey

DRAFT WILLS AND SUCCESSIONS (AMENDMENT No. 3 – COLLATERAL SUCCESSION OF IMMOVABLE ESTATE) (JERSEY) LAW 202-

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

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her 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

This Law amends the [Wills and Successions \(Jersey\) Law 1993](#).

2 Article 3A inserted

After Article 3 there is inserted –

“3A Assets forming part of immovable estate treated as *acquêts*

- (1) In every collateral succession of immovable estate on intestacy, an asset forming part of the immovable estate (whether acquired by the deceased person on inheritance or by other means) is treated as an *acquêt*.
- (2) This Article does not apply to the estate of a person who dies before the commencement of the Wills and Successions (Amendment No. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202-.”

3 Article 14C inserted

After Article 14B, there is inserted –

“14C Abolition of rules relating to collateral succession of immovable estate

- (1) The following rules of customary law, which relate to *propres*, are abolished –
 - (a) *paterna paternis, materna maternis*;
 - (b) *le côté paternel l’emporte par dignité.*”.
- (2) The abolition in paragraph (1) does not apply to the estate of a person who dies before the commencement of the Wills and Successions (Amendment No. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202-.”.

4 Citation and commencement

This Law may be cited as the Wills and Successions (Amendment No. 3 – Collateral Succession of Immovable Estate) (Jersey) Law 202- and comes into force 7 days after it is registered.