

# STATES OF JERSEY



## **DRAFT PROBATE (AMENDMENT) (JERSEY) LAW 202- (P.16/2023): COMMENTS**

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**Presented to the States on 26th April 2023  
by the Corporate Services Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Introduction

1. The Chief Minister lodged the proposition Draft Probate (Amendment) (Jersey) Law 202- [\[P.16/2023\]](#) (hereafter the “draft Law”) on 31st March 2023. If adopted, the draft Law will allow for new arrangements relating to the management of movable estate of the deceased in certain limited circumstances by bringing forward changes to the [Probate \(Jersey\) Law 1998](#) (hereafter the “principal Law”).
2. The Corporate Services Scrutiny Panel (hereafter “the Panel”) notes that the Draft Probate (Amendment) (Jersey) Law 202- [\[P.42/2022\]](#) was originally lodged on 7th March 2022 by the former Chief Minister. The Panel that served from 2018 – 2022 (hereafter “the previous Panel”) undertook a review of the draft Law and published Comments ([P.42/2022 Com](#)), which led to the withdrawal of P.42/2022.
3. The Panel was briefed in private on the draft Law by Government Officers on 29th November 2022 (hereafter “the Briefing”) and received a further Officer update on 23rd February 2023, which confirmed further minor amendments to the draft Law.

### Background

4. The principal Law stipulates that a grant of probate or grant of administration is required for the transfer of movable estate valued at more than £10,000.
5. It was explained in the briefing that these conditions were deemed too restrictive and so adopting the draft Law would allow the holder (e.g. banks or care providers) of a deceased person’s personal property (movable estate), where that property is in Jersey, to release that property to another person (e.g. a family member), in certain limited circumstances.
6. The draft Law achieves this by providing exemptions for specific circumstances in which the holder of the movable estate (the holder) may pass items of relatively low value to another person (the applicant) without the requirement of a grant of probate or grant of administration in order to establish their right to recover or receive the movable estate.
7. The Panel was informed that the draft Law would provide five exemptions as follows:

**Exemption One:** exception for small estates (Article 19A) increases the exemption threshold from £10,000 to £30,000 where the deceased dies domiciled in Jersey, their gross value of estate held by the holder does not exceed £30,000 and the applicant declares the value of the deceased’s worldwide estate does not exceed £30,000.

**Exemption Two:** exception for particular holders of movable estate (Article 19B) applies wherein a person has died in hospital or a care home and the Chief Nurse or care home manager would become the holder. This exemption would

allow the holder to release the moveable estate (of value up to £30,000) to the deceased's family without a grant of probate, subject to certain conditions being met.

**Exemption Three:** exception for items worn by the deceased person (Article 19C) allows a funeral director to bury or cremate the deceased with items (worn by or with the deceased) valued at less than £1,000 without a grant of probate. It further provides that a funeral director may release an item valued less than £10,000 to be buried or cremated with a deceased person, on application by the person who appears to be entitled to receive the item, subject to certain conditions being met.

**Exemption Four:** exception for the Viscount acting as court-appointed delegate (Article 19D) applies wherein the Viscount was acting as a court appointed delegate under Capacity Law at the time of a person's death. This exemption would allow the Viscount as the holder of the movable estate (where the gross value of the person's worldwide estate does not exceed £30,000) to release the estate to pay genuine bills owed without requiring a grant of probate.

**Exemption Five:** exception for bona vacantia (Article 19E) applies wherein there was no claimant to the movable estate and the Receiver-General would become the holder. This exemption would allow banks to release any funds held in bank accounts to the Receiver-General and the Receiver-General would be able to receive and hold the moveable estate on behalf of the Crown without a grant of probate.

8. The Panel noted that each exemption is permissive, not mandatory, and as such the holder may release property if the conditions are met but is not required to do so. A grant of probate is still required where the deceased person had a valid will in place and a grant of administration is still required if there was no valid will in place, should none of the five exemptions apply.
9. The Panel was satisfied to observe that the draft Law provides protection for holders releasing the deceased's estate from action being brought on behalf of the estate when the holder has acted in good faith and in accordance with the draft Law. The Panel was informed that the requirement for the applicant to declare that the gross value of the deceased's worldwide estate was less than £30,000, permitted the holder to rely on the applicant's declaration of value.
10. Further to this, the Panel was informed that the draft Law introduces a new offence of providing false information in relation to the new exemptions.

### **Previous Panel's Concern**

11. The previous Panel presented [Comments](#) on the draft Law on 21st April 2022 which identified one concern and a number of observations to aid in the implementation of the legislation.
12. The concern identified that there was insufficient evidence within P.42/2022 to support the small estate exemption threshold of £30,000 as being the correct value. The previous Panel advised that further evidence be collected to support the validity of the threshold value.

13. Aside from the points raised, the Panel was broadly in agreement with the sentiment of the draft Law and recognised that the amendments aid in managing a deceased person’s effects.
14. As a result of the previous Panel’s Comments the draft Law was withdrawn.

### Panel’s observations

15. During the briefing on 29th November 2022, the Panel received an update on the draft Law since its withdrawal.
16. The Panel understood that, as a consequence of the previous Panel’s Comments, an investigation into the small estate exemption threshold value was undertaken.
17. The investigation involved consultation with the Law Society of Jersey, care homes, banks, the Chief Nurse, and members of the public.
18. Additionally, a comparative exercise was undertaken to understand the small estate exemption threshold values of similar jurisdictions. The Panel understood that the United Kingdom’s threshold was £50,000, however most financial institutions typically set much lower thresholds with the average value being £27,000 dependant on individual business appetite risk.
19. As a result of the investigation, the Government Officer was confident that sufficient evidence had been collected to support the proposed small estate exemption threshold value of £30,000.
20. The Panel was satisfied that the concerns of the previous Panel had been sufficiently addressed.
21. In the period between the briefing and lodging of the draft Law, the Government Officer notified the Panel of two further minor changes to Article 19D (2) and Article 19D (2)(a).
22. Within Article 19D (2) the words “at the time of death” had been added and within Article 19D (2)(a) the word “gross” had been added, as illustrated below:

Article 5	Draft Probate (Amendment) (Jersey) Law 202-
<b>19D Exception for Viscount acting as court-appointed delegate</b>	
(1)	This Article applies if, at the time of death, the Viscount is appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016 as delegate for the deceased person in respect of that person’s property and affairs.
(2)	If, <b>at the time of death</b> , the Viscount is the holder of the whole or a part of the deceased person’s estate the Viscount may, without producing a grant, release that estate if –
(a)	the Viscount is satisfied that the <b>gross</b> value of the deceased person’s worldwide movable estate does not exceed £30,000; and
(b)	the estate is released in order to –

23. The Panel understood that these changes had been made at the request of the Viscount in order to eliminate the possibility of misinterpretation and that the changes had no impact on the effect of the legislation.

24. The Panel agreed with the changes made and no other concerns were raised.

### **Conclusion**

25. Having examined P.16/2023 and given that the concerns raised by the previous Panel have been addressed, the Panel has concluded that it is satisfied the draft Law sufficiently fulfils its intended purpose. Moreover, that the draft Law will improve the management of a deceased person's effects and positively impact families during a time of difficulty.

26. The Panel is appreciative of the briefing received and in light of the above is in full support of the proposition.