

ORDER IN COUNCIL

**XIII
2011**

ratifying a Projet de Loi

ENTITLED

The Inheritance (Guernsey) Law, 2011

(Registered on the Records of the Island of Guernsey
on the 5th December, 2011.)



2011

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5th day of December, 2011 before Sir Geoffrey Rowland, Bailiff; present:- Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Esquires, Susan Mowbray, David Osmond Le Conte, John Ferguson, Esquires, Claire Helen Le Pelley, Peter Sean Trueman Girard, Terry George Snell, Niall David McCathie, Terry John Ferbrache, David Allan Grut, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 16th November, 2011 approving and ratifying a Projet de Loi entitled “The Inheritance (Guernsey) Law, 2011”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island.



At the Court at Buckingham Palace

THE 16th DAY OF NOVEMBER 2011

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolutions of 29th April 2009 and 27th January 2010, the States of Deliberation at a meeting on 29th June 2011 approved a *Projet de Loi* entitled the Inheritance (Guernsey) Law, 2011 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Inheritance (Guernsey) Law, 2011, and to order that it shall have force of law in the Island of Guernsey.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Inheritance (Guernsey) Law, 2011

ARRANGEMENT OF SECTIONS

PART I

PRINCIPLE OF FREEDOM OF TESTAMENTARY DISPOSITION

1. Abolition of forced heirship.
2. Consequential repeals.
3. Savings in relation to certain contracts, settlements and deeds.

PART II

PROVISION FOR FAMILY AND DEPENDANTS

4. Application for financial provision.
5. Powers of the Court to make orders.
6. Matters to which the Court is to have regard.
7. Time limit for applications.
8. Interim orders.
9. Variation, discharge, etc of orders for periodical payments.
10. Payment of lump sum by instalments.
11. Property treated as "net estate".
12. Jointly-owned property.
13. Dispositions intended to defeat applications for financial provision.
14. Contracts to leave property by will.
15. Provisions supplementary to sections 13 and 14.
16. Provisions as to trustees in relation to sections 13 and 14.
17. Provisions as to cases where no financial relief was granted in divorce proceedings etc.
18. Restriction imposed in divorce proceedings etc.
19. Variation and discharge of secured periodical payments.
20. Variation and revocation of maintenance agreements.
21. Effect, duration and form of orders.
22. Provisions as to personal representatives.
23. Interpretation of Part II.

PART III
RULES OF INTESTATE SUCCESSION

- 24. Intestate succession to property.
- 25. Consequential repeals.

PART IV
COMMORIENTES AND SURVIVORSHIP

- 26. Presumption as to survivorship in certain circumstances.
- 27. Conditions as to survivorship.

PART V
MISCELLANEOUS AND GENERAL

- 28. General provisions as to Ordinances.
- 29. Rules of Court.
- 30. Interpretation.
- 31. Citation.
- 32. Commencement.

SCHEDULE: Rules of intestate succession.

PROJET DE LOI

ENTITLED

The Inheritance (Guernsey) Law, 2011

THE STATES, in pursuance of their Resolutions of the 29th April, 2009^a and the 27th January, 2010^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

PRINCIPLE OF FREEDOM OF TESTAMENTARY DISPOSITION

Abolition of forced heirship.

1. (1) The provisions of this Part shall, subject to subsections (4), (5) and (6), apply to the testamentary succession to the estate, whether real or personal, of a person whose will is executed on or after the date of commencement.

(2) In relation to any succession to which this Part applies, any rule of law (whether statutory or otherwise) or custom by or pursuant to which any person is entitled to a share in that succession by virtue of his relationship with the deceased as -

(a) the spouse ("droit du conjoint"), or

^a Article XII of Billet d'État No. XI of 2009.

^b Article XVIII of Billet d'État No. I of 2010.

(b) a descendant ("légitime"),

or by or pursuant to which it is unlawful for a person of full capacity to dispose testamentarily of the whole or any part of his real or personal estate, is abolished.

(3) In relation to any succession to which this Part applies, any rule of law (whether statutory or otherwise) or custom prohibiting, or restricting, the creation of a testamentary trust (including a trust for sale), whether in relation to real or personal property, is abolished.

(4) For the avoidance of doubt, and subject to subsection (6), the provisions of this Part do not apply to the testamentary succession to the estate, whether real or personal, of a person whose will was executed before the date of commencement, notwithstanding, subject to subsection (5), that any codicil to that will may have been executed after that date.

(5) Notwithstanding that his will was executed before the date of commencement, a person may, by a codicil executed after that date, declare that it is his intention that this Part shall apply to the testamentary succession to his estate; and in such a case his will, together with any other codicils thereto, shall be deemed to have been executed, for the purposes of this Part, after the date of commencement.

(6) Notwithstanding the foregoing provisions of this section, a person may, after the 29th day of June, 2011 but before the date of commencement-

(a) execute a will, or

(b) execute a codicil altering the terms of an existing will,

declaring his intention that the provisions of the said will or codicil (as the case may be), or certain specified provisions thereof, shall not have effect until the date of commencement; and in such a case (provided that he dies on or after the date of commencement) such will, or codicil, or such specified provisions thereof, shall be deemed to have been executed, for the purposes of this Part, on the date of commencement.

Consequential repeals.

2. The following provisions and enactments are repealed -

- (a) the Law entitled "Loi supplémentaire à la Loi des Successions", registered on the 4th January 1890^c,
- (b) the Law entitled "Loi relative à la Portion Disponible des Biens Meubles des Pères et Mères", registered on the 20th January 1930^d,
- (c) in Article 44 of the Matrimonial Causes Law (Guernsey), 1939^e, the comma and words after "the real or personal estates of the deceased",
- (d) sections 3 and 4 of the Law of Inheritance, 1954^f,

^c Ordres en Conseil Vol. II, p. 323.

^d Ordres en Conseil Vol. VIII, p. 390.

^e Ordres en Conseil Vol. XI, page 318; there are amendments not relevant to this Article.

^f Ordres en Conseil Vol. XVI, p. 10.

(e) the Law of Inheritance (Guernsey) Law, 1979^g.

Savings in relation to certain contracts, settlements and deeds.

3. (1) Subject to subsection (2), the provisions of this Part shall not apply so as to alter the effect of any contract, settlement or deed, including (without limitation) any renunciation of inheritance rights or any ante-nuptial or post-nuptial contract, executed before the date of commencement.

(2) Subsection (1) shall not apply so as to exclude the application of this Part where a contrary intention is expressed, whether such contrary intention is expressed in the contract or deed itself or in any variation or addition thereto validly executed before or after the date of commencement.

PART II

PROVISION FOR FAMILY AND DEPENDANTS

Application for financial provision.

4. (1) Subject to subsection (9), where, on or after the date of commencement, a person who dies was, at the time of his death, domiciled in the Island of Guernsey and he is survived by any person ("the applicant") included in a class set out in subsection (2), the applicant may apply to the Court for an order under section 5 on the ground that the disposition of the deceased's estate effected by his will, or by the law relating to intestacy, or by a combination of his will and that law, is not such as to make reasonable financial provision for the applicant.

(2) The classes of person referred to in subsection (1) are -

^g Ordres en Conseil, Vol. XXVII, p. 164.

- (a) the spouse or civil partner of the deceased,
- (b) a former spouse or former civil partner of the deceased, who has not formed a subsequent marriage or civil partnership,
- (c) a person who (not being a person included in paragraph (a) or (b) above), during the whole of the period of two years ending immediately before the date of death of the deceased, was living -
 - (i) in the same household as the deceased, and
 - (ii) as the spouse, or as the civil partner, of the deceased,
- (d) a child of the deceased,
- (e) any person (not being the child of the deceased) who, in the case of any marriage or civil partnership to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage or civil partnership,
- (f) any person (not being a person included in any of the previous paragraphs) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased.

(3) In this Part "reasonable financial provision" -

- (a) in the case of an application by a person included in subsection (2)(a), by the spouse or civil partner of the deceased (except where the marriage was the subject of a judicial separation or the civil partnership was the subject of a separation order, and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a spouse or civil partner to receive, whether or not that provision is required for his or her maintenance,
- (b) in the case of any other application made by virtue of subsection (2) (including an application by the spouse or civil partner of the deceased where the marriage was the subject of a judicial separation or the civil partnership was the subject of a separation order, and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances for the applicant to receive for his or her maintenance.

(4) For the purposes of subsection (2)(f), a person shall be treated as being maintained by the deceased, either wholly or partly, as the case may be, if the deceased, otherwise than for full valuable consideration, was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

(5) No person shall be precluded from making any application under section 5, nor shall the making of any order thereunder be precluded, by

reason only that he stands convicted of the unlawful killing, other than the murder, of the deceased.

(6) The States may by Ordinance amend the provisions of subsection (2) so as to amend or add to the classes set out therein.

(7) The respondents to any application made under section 5 shall include (without limitation) -

- (a) except where he is an applicant under that section, any personal representative of the deceased, and
- (b) any beneficiary of the estate of the deceased who may be affected by the order sought.

(8) Where a person who is included in any class set out in subsection (2), or any person who is a respondent to any application under section 5, is subject to a legal disability, whether as to age or otherwise, such person may be represented in any proceedings under this Part by his legal guardian.

(9) No application under section 5 shall be made in respect of the estate of a person whose will was executed before the date of commencement (notwithstanding that any codicil to that will may have been executed after the date of commencement) unless -

- (a) pursuant to a declaration made by him under section 1(5), or
- (b) pursuant to the provisions of section 1(6),

his will is deemed to have been executed, for the purposes of Part I, on or after the date of commencement.

Powers of the Court to make orders.

5. (1) Subject to the provisions of this Part, where an application is made for an order under this section, the Court may, if it is satisfied that the disposition of the deceased's estate effected by his will, or by the law relating to intestacy, or by a combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any order which it thinks fit, including (without limitation) -

- (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments, for such term, as may be specified in the order,
- (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be specified,
- (c) an order for the vesting in or transfer to the applicant of such property comprised in that estate as may be so specified,
- (d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified,
- (e) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will or conveyance) made during or in anticipation of a

marriage to which the deceased was a party, provided that such variation shall be for the benefit of the surviving party to that marriage, or of any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage,

- (f) an order creating, extinguishing or varying a usufruit, droit d'habitation, lease, licence or other right of occupation in relation to any real property comprised in that estate,

and in making any such order the Court may impose such terms and conditions as it thinks fit.

(2) An order under subsection (1)(a) providing for the making out of the net estate of the deceased of periodical payments may provide for -

- (a) payments of such amount as may be specified in the order,
- (b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified,
- (c) payments equal to the whole of the income of such part of the net estate as the Court may direct to be set aside for that purpose,

or may provide for the amount of the payments or any of them to be determined in

any other way the Court thinks fit.

(3) An order under this section may contain such consequential and supplementary provisions as the Court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another including (without limitation) -

- (a) requiring any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified,
- (b) varying the disposition of the estate of the deceased, whether by his will, or by the law relating to intestacy, or by a combination of his will and that law, in such manner as the Court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case,
- (c) conferring on the trustees of any property which is the subject of an order under this section such powers as appear to the Court to be necessary or expedient.

Matters to which the Court is to have regard.

6. (1) Where an application is made for an order under section 5, the Court shall, in determining whether the disposition of the deceased's estate by his will, or by the law relating to intestacy, or by a combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the Court considers that reasonable financial provision has not been made, in

determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters -

- (a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future,
- (b) the financial resources and financial needs which any other applicant under section 5 has or is likely to have in the foreseeable future,
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future,
- (d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 5 or towards any beneficiary of the estate of the deceased,
- (e) the size and nature of the net estate of the deceased,
- (f) any physical or mental disability of any applicant for an order under section 5 or any beneficiary of the estate of the deceased,
- (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the Court may consider relevant.

(2) Without prejudice to the generality of subsection (1)(g), where an application for an order under section 5 is made by virtue of section 4(2)(a) or (b), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard to -

- (a) the age of the applicant and the duration of the marriage or civil partnership,
- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family,

and in the case of an application by the spouse of the deceased, the Court shall also, except where the marriage was the subject of a judicial separation and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce.

(3) Without prejudice to the generality of subsection (1)(g), where an application for an order under section 5 is made by virtue of section 4(2)(c), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard to -

- (a) the age of the applicant and the length of the period during which the applicant lived as the spouse or civil partner of the deceased and in the same household as the deceased,

- (b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

(4) Without prejudice to the generality of subsection (1)(g), where an application for an order under section 5 is made by virtue of section 4(2)(d) or (e), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 4(2)(e) the Court shall also have regard to -

- (a) whether the deceased had assumed any responsibility for the applicant's maintenance and, if so, to the extent to which and the basis upon which the deceased assumed that responsibility and to the length of time for which the deceased discharged that responsibility,
- (b) whether in assuming and discharging that responsibility the deceased did so knowing that the applicant was not his own child, and
- (c) the liability of any other person to maintain the applicant.

(5) Without prejudice to the generality of subsection (1)(g), where an application for an order under section 5 is made by virtue of section 4(2)(f), the Court shall, in addition to the matters specifically mentioned in

paragraphs (a) to (f) of subsection (1), have regard to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant, and to the length of time for which the deceased discharged that responsibility.

(6) In considering the matters to which the Court is required to have regard under this section, the Court shall take into account the facts as known to the Court at the date of the hearing.

(7) In considering the financial resources of any person for the purposes of this section, the Court shall take into account his earning capacity, and in considering the financial needs of any person for the purposes of this section, the Court shall take into account his financial obligations and responsibilities.

Time limit for applications.

7. An application for an order under section 5 shall not, except with the permission of the Court, be made after the end of the period of six months from the date of death of the deceased.

Interim orders.

8. (1) Where on an application for an order under section 5 it appears to the Court -

- (a) that the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made under that section, and
- (b) that property forming part of the net estate of the deceased is or can be made available to meet the need of the applicant,

the Court may order that, subject to such conditions or restrictions, if any, as the Court may impose and to any further order of the Court, there shall be paid to the applicant out of the net estate of the deceased such sum or sums and (if more than one) at such intervals, as the Court thinks reasonable; and the Court may order that, subject to the provisions of this Part, such payments are to be made until such date as the Court may specify, not being later than the date on which the Court either makes an order under section 5 or decides not to exercise its powers under that section.

(2) Section 5(2) and (3) shall apply in relation to an order under this section as they relate to an order under section 5.

(3) In determining what order, if any, should be made under this section the Court shall, so far as the urgency of the case permits, have regard to the same matters as those to which the Court is required to have regard under section 6.

(4) An order made under section 5 may provide that any sum paid to the applicant by virtue of this section shall be treated to such an extent and in such manner as may be provided by that order as having been paid on account of any payment provided for by that order.

Variation, discharge, etc of orders for periodical payments.

9. (1) Subject to the provisions of this Part, where the Court has made an order under section 5(1)(a) (in this section referred to as "the original order") for the making of periodical payments to any person (in this section referred to as "the original recipient"), the Court, on an application under this section, shall have power by order to vary or discharge the original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended.

(2) Without prejudice to the generality of subsection (1), an order made on an application for the variation of the original order may -

- (a) provide for the making out of any relevant property of such periodical payments, for such term as may be specified in the order, to any person who has applied, or would but for section 7 be entitled to apply, for an order under section 5 (whether or not, in the case of any application, an order was made in favour of the applicant),
- (b) provide for the payment out of any relevant property of a lump sum of such amount as may be so specified to the original recipient or to any such person who is mentioned in paragraph (a),
- (c) provide for the transfer of the relevant property, or such part thereof as may be so specified, to the original recipient or to any such person as is so mentioned.

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner) or on the expiration of a period so specified, then, if, before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period ("the said date"), an application is made for an order under this section, the Court shall have power to make any order which it would have had power to make

if the application had been made before the said date (whether in favour of the original recipient or any such person as is mentioned in paragraph (2)(a) and whether having effect from the said date or from such later date as the Court may specify).

(4) Any reference in this section to the original order shall include a reference to an order made under this section and any reference in this section to the original recipient shall include a reference to any person to whom periodical payments are required to be made by virtue of an order under this section.

(5) An application under this section may be made by any of the following persons -

- (a) any person who by virtue of section 4(1) has applied, or would but for section 7 be entitled to apply, for an order under section 5,
- (b) a personal representative of the deceased,
- (c) the trustees of any relevant property,
- (d) any beneficiary of the estate of the deceased.

(6) An order under this section may only affect -

- (a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for an order under this Part, or

- (b) in the case of an application under subsection (3) in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be,

and any such property as is mentioned in paragraph (a) or (b) is in subsections (2) and (5) referred to as "relevant property".

(7) In exercising the powers conferred by this section the Court shall have regard to all the circumstances of the case, including any change in any of the matters to which the Court was required to have regard when making the order to which the application relates.

(8) Where the Court makes an order under this section, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order.

(9) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order (other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner) or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the expiration of that period or the occurrence of that event.

Payment of lump sum by instalments.

10. (1) An order under section 5(1)(b) or 9(2)(b) for the payment of a lump sum may provide for the payment of that sum by instalments of such amounts as may be specified in the order.

(2) Where an order is made by virtue of subsection (1), the Court shall have power, on an application made by the person to whom the lump sum is payable, by a personal representative of the deceased or by the trustees of the property out of which the lump sum is payable, to vary that order by varying the number of instalments payable, the amount of any instalment and the date on which any instalment becomes payable.

Property treated as "net estate".

11. (1) Where a deceased person has in accordance with the provisions of any enactment, or in accordance with the provisions of any pension scheme or policy of insurance, nominated any person to receive any sum of money or other property on his death and that nomination is in force at the time of his death, that sum of money or that other property, to the extent of the value thereof at the date of death of the deceased, shall be treated for the purposes of this Part as part of the net estate of the deceased; but this subsection shall not render any person liable for having paid that sum or transferred that other property to the person named in the nomination in accordance with the directions given in the nomination.

(2) Where any sum of money or other property is received by any person as a donation à cause de mort (donatio mortis causa) made by a deceased person, that sum of money or that other property, to the extent of the value thereof at the date of the death of the deceased, shall be treated for the purposes of this Part as part of the net estate of the deceased; but this subsection shall not render any person liable for having paid that sum or transferred that other property in order to give effect to that donation à cause de mort.

Jointly-owned property.

12. (1) Where a deceased person was immediately before his death the owner, jointly with any other person or persons, of any property, then, if, before the end of the period of six months from the date of death of the deceased, an application is made for an order under section 5, the Court for the purpose of facilitating the making of financial provision for the applicant under this Part may order that the deceased's interest in that property, valued in accordance with subsection (2), shall, to such an extent as appears to the Court to be just in all the circumstances of the case, and subject to subsection (3), be treated for the purposes of this Part as part of the net estate of the deceased.

(2) For the purposes of subsection (1), the value of the deceased's interest in any property shall be determined by the Court with reference to its value immediately before his death.

(3) Where an order is made under subsection (1), the provisions of this section shall not render any person liable for anything done by him before the order was made.

Dispositions intended to defeat applications for financial provision.

13. (1) Where an application is made to the Court for an order under section 5, the applicant may apply to the Court for an order under subsection (2).

(2) Where on an application under subsection (1) the Court is satisfied -

- (a) that, less than six years before the date of death of the deceased, the deceased with the intention of defeating an application for financial provision under this Part

made a disposition, and

- (b) that full valuable consideration for that disposition was not given by the person to whom or for the benefit of whom the disposition was made (in this section referred to as "the donee") or by any other person, and
- (c) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Part,

then, subject to the provisions of this section and of sections 15 and 16, the Court may order the donee (whether or not at the date of the order he holds any interest in the property disposed of to him or for his benefit by the deceased) to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order.

(3) Where an order is made under subsection (2) as respects any disposition made by the deceased which consisted of the payment of money to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that subsection shall not exceed the amount of the payment made by the deceased.

(4) Where an order is made under subsection (2) as respects any disposition made by the deceased which consisted of the transfer of property (other than a sum of money) to or for the benefit of the donee, the amount of any sum of money or the value of any property ordered to be provided under that subsection shall not exceed the value at the date of the death of the deceased of the property disposed of by him to or for the benefit of the donee (or if that property has been disposed of by the person to whom it was transferred by the deceased, the value at

the date of that disposal thereof).

(5) Where an application (in this subsection referred to as "the original application") is made for an order under subsection (2) in relation to any disposition, then, if on an application under this subsection by the donee or by any applicant for an order under section 5 the Court is satisfied -

- (a) that, less than six years before the date of the death of the deceased, the deceased with the intention of defeating an application for financial provision under this Part made a disposition other than the disposition which is the subject of the original application, and
- (b) that full valuable consideration for that other disposition was not given by the person to whom or for the benefit of whom that other disposition was made or by any other person,

the Court may exercise in relation to the person for whom or for the benefit of whom that other disposition was made the powers which the Court would have had under subsection (2) if the original application had been made in respect of that other disposition and the Court had been satisfied as to the matters set out in paragraphs (a), (b) and (c) of that subsection; and where any application is made under this subsection, any reference in this section (except in subsection (2)(b)) to the donee shall include a reference to the person to whom or for the benefit of whom that other disposition was made.

(6) In determining whether and in what manner to exercise its powers under this section, the Court shall have regard to the circumstances in which any disposition was made and any valuable consideration which was given therefor,

the relationship (if any) of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(7) In this section "disposition" does not include -

- (a) any provision in a will, any such nomination as is mentioned in section 11(1) or any donation à cause de mort (donatio mortis causa), or
- (b) any appointment of property made, otherwise than by will, in the exercise of a special power of appointment,

but, subject to these exceptions, includes any payment of money (including the payment of a premium under a policy of assurance) and any conveyance, assurance, appointment or gift of property of any description, whether made by an instrument or otherwise.

(8) The provisions of this section do not apply to any disposition made before the date of commencement.

Contracts to leave property by will.

14. (1) Where an application is made to the Court for an order under section 5, the applicant may apply to the Court for an order under this section.

(2) Where on an application under subsection (1) the Court is satisfied -

- (a) that the deceased made a contract by which he agreed to leave by his will a sum of money or other property to any person or by which he agreed that a sum of

money or other property would be paid or transferred to any person out of his estate, and

- (b) that the deceased made that contract with the intention of defeating an application for financial provision under this Part, and
- (c) that when the contract was made full valuable consideration for that contract was not given or promised by the person with whom or for the benefit of whom the contract was made (in this section referred to as "the donee") or by any other person, and
- (d) that the exercise of the powers conferred by this section would facilitate the making of financial provision for the applicant under this Part,

then, subject to the provisions of this section and of sections 15 and 16, the Court may make any one or more of the following orders -

- (i) if any money has been paid or any other property has been transferred to or for the benefit of the donee in accordance with the contract, an order directing the donee to provide, for the purpose of the making of that financial provision, such sum of money or other property as may be specified in the order,
- (ii) if the money or all the money has not been

paid or the property or all the property has not been transferred in accordance with the contract, an order that such payment or transfer of property should not be made, or that no further payment or transfer should be made, as the case may be, in accordance therewith, or that only such payment or transfer as may be specified in the order should be made.

(3) Notwithstanding anything in subsection (2), the Court may exercise its powers thereunder in relation to any contract made by the deceased only to the extent that the Court considers that the amount of any sum of money paid or to be paid, or the value of any property transferred or to be transferred, in accordance with the contract exceeds the value of any valuable consideration given or to be given for that contract, and for this purpose the Court shall have regard to the value of the property at the date of the hearing.

(4) In determining whether and in what manner to exercise its powers under this section, the Court shall have regard to the circumstances in which the contract was made, the relationship (if any) of the donee to the deceased, the conduct and financial resources of the donee and all the other circumstances of the case.

(5) Where an order has been made under subsection (2) in relation to any contract, the rights of any person to enforce that contract or to recover damages or to obtain other relief for the breach thereof shall be subject to any adjustment made by the Court under section 15(3) and shall survive to such extent only as is consistent with giving effect to the terms of that order.

(6) The provisions of this section do not apply to a contract made before the date of commencement.

Provisions supplementary to sections 13 and 14.

15. (1) Where the exercise of any of the powers conferred by section 13 or 14 is conditional on the Court being satisfied that a disposition or contract was made by a deceased person with the intention of defeating an application for financial provision under this Part, that condition shall be fulfilled if the Court is of the opinion that, on a balance of probabilities, the intention of the deceased (though not necessarily his sole intention) in making the disposition or contract was to prevent an order for financial provision being made under this Part or to reduce the amount of the provision which might otherwise be granted by an order thereunder.

(2) Where an application is made under section 14 with respect to any contract made by the deceased and no valuable consideration was given or promised by any person for that contract then, notwithstanding anything in subsection (1), it shall be presumed, unless the contrary is shown, that the deceased made that contract with the intention of defeating an application for financial provision under this Part.

(3) Where the Court makes an order under section 13 or 14 it may give such consequential directions as it thinks fit (including directions requiring the making of any payment or the transfer of any property) for giving effect to the order or for securing a fair adjustment of the rights of the persons affected thereby.

(4) Any power conferred on the Court by section 13 or 14 to order the donee, in relation to any disposition or contract, to provide any sum of money or other property shall be exercisable in like manner in relation to a personal representative of the donee, and

- (a) any reference in section 13(4) to the disposal of property by the donee shall include a reference to disposal by a personal representative of the donee, and
- (b) any reference in section 13(5) to any application by the donee under that subsection shall include a reference to an application by a personal representative of the donee,

but the Court shall not have power under section 13 or 14 to make an order in respect of any property forming part of the estate of the donee which has been distributed by a personal representative, and a personal representative shall not be liable for having distributed any such property before he has notice of the making of an application under section 13 or 14 on the ground that he ought to have taken into account the possibility that such an application would be made.

Provisions as to trustees in relation to sections 13 and 14.

16. (1) Where an application is made for -

- (a) an order under section 13 in respect of a disposition made by the deceased to any person as a trustee, or
- (b) an order under section 14 in respect of any payment made or property transferred in accordance with a contract made by the deceased, to any person as a trustee,

the powers of the Court under the said section 13 or 14 to order that trustee to provide a sum of money or other property shall be subject to the following

limitation, namely that the amount of any sum of money or the value of any property ordered to be provided -

- (i) in the case of an application in respect of a disposition which consisted of the payment of money or an application in respect of the payment of money in accordance with a contract, shall not exceed the aggregate of so much of that money as is at the date of the order in the hands of the trustee and the value at that date of any property which represents that money or is derived therefrom and is at that date in the hands of the trustee,
- (ii) in the case of an application in respect of a disposition which consisted of the transfer of property (other than a sum of money) or an application in respect of the transfer of property (other than a sum of money) in accordance with a contract, shall not exceed the aggregate of the value at the date of the order of so much of that property as is at that date in the hands of the trustee and the value at that date of any property which represents the first mentioned property or is derived therefrom and is at that date in the hands of the trustee.

(2) Where any such application is made in respect of a disposition made to any person as a trustee or in respect of any payment made or property

transferred in pursuance of a contract to any person as a trustee, the trustee shall not be liable for having distributed any money or other property on the ground that he ought to have taken into account the possibility that such an application would be made.

(3) Where any such application is made in respect of a disposition made to any person as a trustee or in respect of any payment made or property transferred in accordance with a contract to any person as a trustee, any reference in the said section 13 or 14 to the donee shall be construed as including a reference to the trustee or trustees for the time being of the trust in question and any reference in subsection (1) or (2) to a trustee shall be construed in the same way.

Provision as to cases where no financial relief was granted in divorce proceedings etc.

17. Where, within twelve months from the date on which a final order in relation to a decree of divorce or nullity of marriage is made, or from the date on which a decree of judicial separation is made, a party to the marriage dies and -

- (a) an application for the vesting or division of property or for financial provision under Part VIII of the Matrimonial Causes Law (Guernsey), 1939, as amended, has not been made by the other party to that marriage, or
- (b) such an application has been made but the proceedings thereon have not been determined at the time of the death of the deceased,

then, if an application for an order under section 5 is made by that other party, the Court shall, notwithstanding anything in section 4 or 6, have power, if it thinks it

just to do so, to treat that party for the purpose of that application as if the decree of divorce or nullity of marriage had not been made final or the decree of judicial separation had not been made, as the case may be.

(2) This section shall not apply to a decree of judicial separation unless at the date of death of the deceased the decree was in force and the separation was continuing.

Restriction imposed in divorce proceedings etc.

18. (1) On the grant of a decree of divorce, a decree of nullity of marriage or a decree or pronouncement of judicial separation, or at any time thereafter, the Matrimonial Causes Division (or, in the case of a pronouncement of judicial separation by the Court, the Court) may, if it considers it just to do so, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 5.

(2) In the case of a decree of divorce or nullity of marriage, an order may be made under subsection (1) before or after the decree is made final, but if it is made before the decree is made final it shall not take effect until the decree is made final.

(3) Where an order made under subsection (1) above has come into force with respect to a party to the marriage, then, on the death of the other party, the Court shall not entertain any application for an order under section 5 made by the first-mentioned party provided, in the case of a judicial separation, that the decree or order is, at the date of death, in force and the separation is continuing.

Variation and discharge of secured periodical payments.

19. (1) Where an application for an order under section 5 is made to the Court by a person who was at the time of the death of the deceased entitled to payments from the deceased under an order for secured periodical payments made under Part VIII of the Matrimonial Causes Law (Guernsey), 1939, as amended, then, in the proceedings on that application, the Court shall have the power, if an application is made under this section by that person or by a personal representative of the deceased, to vary or discharge that order for periodical payments.

(2) In exercising the powers conferred by this section, the Court shall have regard to all the circumstances of the case, including any order which the Court proposes to make under section 5 or section 8 and any change, whether resulting from the death of the deceased or otherwise, in any of the matters to which the Matrimonial Causes Division was required to have regard when making the order for secured periodical payments.

(3) The powers exercisable by the Court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

Variation and revocation of maintenance agreements.

20. (1) Where an application for an order under section 5 is made to the Court by any person who was at the time of the death of the deceased entitled to payments from the deceased under a maintenance agreement which provided for the continuation of payments under the agreement after the death of the deceased, then, in the proceedings on that application, the Court shall have power, if an application is made under this section by that person or by a personal representative of the deceased, to vary or revoke that agreement.

(2) In exercising the powers conferred by this section the Court

shall have regard to all the circumstances of the case, including any order which the Court proposes to make under section 5 or 8 and any change (whether resulting from the death of the deceased or otherwise) in any of the circumstances in the light of which the agreement was made.

(3) If a maintenance agreement is varied by the Court under this section, the like consequences shall ensue as if the variation had been made immediately before the death of the deceased by agreement between the parties and for valuable consideration.

(4) In this section "maintenance agreement", in relation to a deceased person, means any agreement made, whether in writing or not and whether before or after the date of commencement, by the deceased with any person with whom he formed a marriage or civil partnership, being an agreement which contained provisions governing the rights and liabilities towards each other when living separately of the parties to that marriage or the civil partners (whether or not the marriage or civil partnership has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the deceased or a person who was treated by the deceased as a child of the family in relation to that marriage or civil partnership.

Effect, duration and form of orders.

21. (1) Where an order is made under section 5 then for all purposes the will or the law relating to intestacy, or both the will and the law relating to intestacy, as the case may be, shall have effect and be deemed to have had effect as from the deceased's death subject to the provisions of the order.

(2) Any order made under section 5 or 8 in favour of -

- (a) an applicant who was the former spouse or former civil partner of the deceased, or
- (b) an applicant who was the spouse of the deceased in a case where the marriage with the deceased was the subject of a judicial separation, or a civil partner in a case where the civil partnership was the subject of a separation order, and the separation in either case was continuing,

shall, in so far as it provides for the making of periodical payments, cease to have effect on the formation by the applicant of a subsequent marriage or civil partnership, except in relation to any arrears due under the order on the date of the formation of the subsequent marriage or civil partnership.

Provisions as to personal representatives.

22. (1) The provisions of this Part shall not render a personal representative of a deceased person who has not had notice of any application under section 5 liable for having distributed any part of the net estate of the deceased on the ground that he ought to have taken into account the possibility -

- (a) that an application might be made for an order under section 5, or
- (b) that, where an order has been made under section 5, the Court might exercise in relation thereto the powers conferred on it by section 9,

but this subsection shall not prejudice any power to recover, by reason of the making of an order under this Part, any part of the estate so distributed.

(2) Where a personal representative of a deceased person pays any sum directed by an order under section 8 to be paid out of the net estate of the deceased, he shall not be under any liability by reason of that estate (after payment of funeral, testamentary and administration expenses, debts and liabilities) not being sufficient to make the payment, unless at the time of the making of the payment he has reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract by which he agreed to leave by his will any sum of money or other property to any person or by which he agreed that a sum of money or other property would be paid or transferred to any person out of his estate, then, if a personal representative of the deceased has reason to believe that the deceased entered into the contract with the intention of defeating an application for financial provision under this Part, he may, notwithstanding anything in that contract, postpone the payment of that sum of money or the transfer of that property until the expiration of six months from the date of death of the deceased or, if during that period an application is made for an order under section 5, until the determination of the proceedings on that application.

Interpretation of Part II.

23. (1) In this Part, unless the context otherwise requires -

"**beneficiary**", in relation to the estate of a deceased person, means -

- (a) a person who under the will of the deceased, or under the law relating to intestacy, is beneficially interested in the estate or would be so interested if an order had not been made under this Part, and

- (b) a person who has received any sum of money or other property which by virtue of section 11 is treated as part of the net estate of the deceased or would have received that sum or other property if an order had not been made under this Part,

"civil partner" and **"civil partnership"** has the meaning given in section 30(1),

"the Court" has the meaning given in section 30(1),

"date of commencement" has the meaning given in section 30(1),

"dissolved or annulled" has the meaning given in section 30(1),

"former civil partner" means a person whose civil partnership or registered overseas relationship with the deceased was during the lifetime of the deceased dissolved or annulled,

"former spouse" means a person whose marriage with the deceased was during the lifetime of the deceased dissolved or annulled,

"Matrimonial Causes Division" means the Matrimonial Causes Division of the Royal Court of Guernsey constituted in accordance with the Matrimonial Causes Law (Guernsey), 1939, as amended,

"net estate", in relation to a deceased person, means, subject to subsections (2), (3) and (4) -

- (a) all property of which the deceased had power to dispose by his will (otherwise than by virtue of a special power of

appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities,

- (b) any property in respect of which the deceased held a general power of appointment (not being a power exercisable by will) which has not been exercised,
- (c) any sum of money or other property which is treated for the purposes of this Part as part of the net estate of the deceased by virtue of section 11(1) or (2) or by virtue of an order made under section 12,
- (d) any sum of money or other property which is, by reason of a disposition or contract made by the deceased, ordered under section 13 or 14 to be provided for the purpose of the making of financial provision under this Part,

"personal representative", in relation to the personal estate of a deceased person, means an executor, original or by representation, or an administrator for the time being of the personal property of that deceased person; and, in relation to the real estate of a deceased person, means an administrator for the time being of the real property of that deceased person, acting in accordance with Part II of the Law Reform (Inheritance and Miscellaneous Provisions (Guernsey) Law, 2006^h,

"property" has the meaning given in section 30(1),

^h

Order in Council No. IV of 2008.

"reasonable financial provision" has the meaning given in section 4(3),

"registered overseas relationship" has the meaning given in section 30(1),

"relevant property" has the meaning given in section 9(6),

"separation order", in relation to a civil partnership, means a separation order within the meaning of the Civil Partnership Act 2004ⁱ, or an overseas legal separation entitled to recognition in the United Kingdom by virtue of that Act,

"valuable consideration" does not include marriage or a promise of marriage.

(2) For the purposes of paragraph (a) of the definition of "net estate" in subsection (1), a person who is not of full age or capacity shall be treated as having power to dispose by will of all property of which he would have had power to dispose by will if he had been of full age and capacity.

(3) Any reference in this Part to provision out of the net estate of a deceased person includes a reference to provision extending to the whole of that estate.

(4) Notwithstanding the provisions of this Part, a person who is the heir to any real property comprised in the net estate of a deceased person, or

ⁱ An Act of Parliament (2004 c. 33).

who is the administrator for the time being of any such real property (acting in accordance with Part II of the Law Reform (Inheritance and Miscellaneous Provisions (Guernsey) Law, 2006), may sell that real property to a bona fide purchaser for full valuable consideration; and in such a case the proceeds of sale, and not the property disposed of, shall form part of the net estate of the deceased for the purposes of this Part.

(5) For the purposes of this Part, and for the avoidance of doubt, any rule of law whereby a claim against the estate of a deceased person is to be satisfied primarily out of the personal estate of the deceased shall be disregarded.

PART III

RULES OF INTESTATE SUCCESSION

Intestate succession to property.

24. (1) The provisions of the Schedule shall apply to the intestate succession to the estate of a person dying on or after the date of commencement.

(2) In relation to any succession to which this section applies, any existing rule of law (whether statutory or otherwise) or custom by or pursuant to which any person is entitled to a share in that succession by virtue of his relationship with the deceased is abolished.

Consequential repeals.

25. Articles 2, 10, 11, 12 and 13 of the Law entitled "Loi sur les

Successions", registered on 3rd August, 1840^j, are repealed.

PART IV COMMORIENTES AND SURVIVORSHIP

Presumption as to survivorship in certain circumstances.

26. (1) Subject to subsection (2), in all cases where, on or after the date of commencement, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, for all purposes affecting the title of property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

(2) The presumption in subsection (1) may be excluded -

- (a) by an express contrary provision in a will, whether executed before or after the date of commencement, or
- (b) by order of the Court, having heard evidence in rebuttal of such presumption.

Conditions as to survivorship.

27. Where, whether under the provisions of any will or by the law relating to intestacy, any gift or inheritance of property ("the property") is conditional upon the legatee or heir surviving the deceased for a prescribed period after the date of death of the deceased -

^j Ordres en Conseil Vol. I, p. 51; Article 12 was substituted by Ordres en Conseil Vol. II, p. 323.

- (a) for the avoidance of doubt, the property shall vest in the legatee or heir upon the death of the deceased, but
- (b) should the legatee or heir not survive the deceased for the prescribed period, the property shall vest, upon the death of such legatee or heir, according to the provisions of the will of the deceased, or according to the law relating to intestacy as it applies to the estate of the deceased (as the case may be), and in such circumstances the will of the legatee or heir, or the law relating to intestacy as it applies to the estate of that legatee or heir, shall not apply to the succession to the property.

PART V

MISCELLANEOUS AND GENERAL

General provisions as to Ordinances.

28. (1) Any power conferred by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(2) An Ordinance made under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit.

Rules of Court.

29. (1) The Royal Court may make rules of court dealing with all procedural matters arising under this Law.

(2) Rules made under this section -

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient,

- (b) may be amended or repealed by subsequent rules of Court, and
- (c) may make different provision in relation to proceedings before different courts in the Island of Guernsey.

Interpretation.

30. (1) In this Law, unless the context otherwise requires -

"**beneficiary**" has the meaning given in section 23(1),

"**child**" shall be construed in accordance with subsection (4),

"**civil partner**" means a person who has registered as the civil partner of the deceased under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" shall be construed accordingly,

"**the Court**" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,

"**date of commencement**" means the date when the relevant provision comes into force in accordance with any Ordinance made under section 32,

"**descendants**" shall be construed in accordance with paragraph 9 of the Schedule,

"**dissolved or annulled**" means -

- (a) in relation to a marriage -
 - (i) dissolved by a decree of divorce recognised in the Bailiwick of Guernsey by virtue of the Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972^k, or
 - (ii) annulled by a decree of nullity of marriage in the Island of Guernsey, or annulled under the law of any other part of the British Islands, or in any country or territory outside the British Islands, by an annulment which is entitled to be recognised as valid by the law of England and Wales, and
- (b) in relation to a civil partnership, dissolved or annulled by an order made under the law of any part of the British Islands, or dissolved or annulled in any country or territory outside the British Islands by a dissolution or annulment which is entitled to be recognised as valid by the law of England and Wales,

^k Ordres en Conseil Vol. XXIII, p. 336; Ordres en Conseil Vol. XXVII, p.

and "**dissolved**" and "**annulled**" shall be construed accordingly,

"**enactment**" means any Law, Ordinance or subordinate legislation and includes (without limitation) an enactment of the Parliament of the United Kingdom, of the Scottish Parliament and of the Northern Ireland Assembly, and a Measure of the National Assembly for Wales,

"**estate**", in relation to a deceased person, means his real or personal estate,

"**former civil partner**" has the meaning given in section 23(1),

"**former spouse**" has the meaning given in section 23(1),

"**intestate**" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate,

"**Matrimonial Causes Division**" has the meaning given in section 23(1),

"**net estate**" has the meaning given in section 23(1),

"**personal representative**" has the meaning given in section 23(1),

"**property**" means real and personal property and includes a chose in action,

"**registered overseas relationship**" means an overseas relationship within the meaning of the Civil Partnership Act 2004 which, having been

registered in accordance with that Act, is treated for the purposes of that Act as a civil partnership,

"separation order" has the meaning given in section 23(1),

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"valuable consideration" shall be construed in accordance with section 23(1),

"will", except in Part I, includes a codicil.

(2) References to a spouse, or civil partner, shall be treated as including a reference to a person who in good faith entered into a void marriage, or void civil partnership, as the case may be, unless either -

- (a) the marriage, or civil partnership, of the deceased and that person was dissolved or annulled during the lifetime of the deceased, or
- (b) that person has during the lifetime of the deceased formed a subsequent marriage or civil partnership.

(3) Any reference to the formation of, or to a person who has formed, a subsequent marriage or civil partnership includes (as the case may be) a reference to the formation of, or to a person who has formed, a marriage or civil partnership which is by law void or voidable; and the formation of a marriage or civil partnership shall be treated as the formation of a subsequent marriage or civil

partnership, in relation to either of the spouses or civil partners, notwithstanding that the previous marriage or civil partnership of that spouse or civil partner was void or voidable.

(4) References to a child or other descendant alive at the death of any person include -

- (a) an illegitimate child or other descendant, and any descendant whose relationship with the deceased is deduced through a person who is illegitimate, and
- (b) a child or other descendant "en ventre sa mère" at the date of the death of the deceased.

(5) For the purposes of paragraph 13 of the Schedule, references to the matrimonial home are references to the dwelling-house in which the surviving spouse or civil partner was ordinarily resident together with the deceased at the time of the death of the deceased and shall include any garden or land attached to and usually occupied with the dwelling-house or otherwise required for the amenity of the dwelling-house and, where part of a building was, at the date of the death of the deceased, occupied as a separate dwelling, that dwelling shall for the purposes of this subsection be treated as a dwelling-house.

(6) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

31. This Law may be cited as the Inheritance (Guernsey) Law, 2011.

Commencement.

32. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

S. M. D. ROSS,
Her Majesty's Deputy Greffier.

SCHEDULE

Section 24

Rules of intestate successionGeneral rules.

1. In order for a person to inherit, he must be alive (including "en ventre sa mère") and, when born, capable of living ("né viable").

2. Inheritance is allowed up to, but not including, the seventh degree of relationship and where, in this Schedule, reference is made to a degree of relationship, that degree of relationship shall be calculated using the canonical mode.

3. Females rank equally with males in parity of degree.

4. Siblings of the half blood rank equally with siblings of the whole blood in parity of degree.

5. Where there is more than one heir in parity of degree, each shall be entitled to an equal share of the inherited property.

6. The provisions of this Schedule apply to the distribution of the estate of the deceased after payment of his funeral, testamentary and administration expenses, debts and liabilities.

Surviving spouse or civil partner.

7. Where the intestate's spouse or civil partner survived the intestate but died before the end of the period of twenty eight days beginning with the day on

which the intestate died, the provisions of this Schedule shall have effect (subject to section 27) as if the spouse or the civil partner, as the case may be, had not survived the intestate.

Representation.

8. (1) In succession to an estate, whether real or personal, representation is always allowed.

(2) For representation to apply -

- (a) the person to be represented must be dead and, in his lifetime, have been capable of inheriting from the deceased, and
- (b) the representative must be a descendant of the person to be represented, and himself must fulfil the condition in paragraph 1 above.

(3) Representation operates through all degrees of descent and *per stirpes*, that is to say, the representatives, if more than one, shall share equally the portion of the estate which would have been inherited by the person to be represented had he survived the deceased.

Classes of heir

9. For the purposes of determining the order of inheritance, the heirs of the deceased (excluding the surviving spouse or the surviving civil partner, if any) are classified as follows -

- Class 1- "**descendants**", comprising the children and remoter issue of the deceased through all degrees,
- Class 2- "**privileged collaterals**", comprising the brothers and sisters of the deceased and their descendants,
- Class 3- "**ascendants**", comprising those from whom the deceased is descended,
- Class 4- "**remaining collaterals**", comprising persons who are not included in Class 2 but who are descendants, together with the deceased, from a common ascendant,

and references in the following provisions of this Schedule to "descendants", "privileged collaterals", "ascendants" and "remaining collaterals" shall be construed accordingly.

10. Subject to the provisions of this Schedule -

- (a) in any Class, the person or persons nearest in degree, inherit, if more than one in equal shares, and
- (b) a person in Class 2, 3 or 4 cannot inherit when there is a person in any preceding Class, or a representative of such a person, who is capable of inheriting and who fulfils the condition in paragraph 1.

Intestate succession to real property.

11. For the purposes of succession to real property, any distinction between propres, acquêts and conquêts is abolished.

12. If there are no descendants, the surviving spouse or the surviving civil partner of the deceased shall inherit the whole of the real property of the deceased absolutely.

13. If there are descendants, the surviving spouse or the surviving civil partner of the deceased shall inherit -

- (a) an undivided one-half share of the matrimonial home, absolutely, and
- (b) an undivided one-half share of any real property (other than the matrimonial home) of the deceased, absolutely,

together with the enjoyment (usufruit), until the formation of a subsequent marriage or civil partnership, of the remaining undivided one-half share of the matrimonial home, and, for the purposes of this paragraph, "matrimonial home" shall have the meaning given in section 30(5).

14. Subject to the rights of inheritance and of enjoyment conferred on any surviving spouse or surviving civil partner by paragraph 13, the heirs to the real property of the deceased shall be the descendants.

15. If there is no surviving spouse and no surviving civil partner, and there are no descendants, the heirs to the real property of the deceased shall be the

privileged collaterals.

16. If there are no privileged collaterals, the heirs to the real property of the deceased shall be the ascendants.

17. If there are no ascendants, the heirs to the real property of the deceased shall be the remaining collaterals.

18. In default of any person taking an absolute interest under the foregoing provisions, the real property of the deceased shall escheat to the Crown.

Intestate succession to personal property.

19. If there are no descendants, the surviving spouse or the surviving civil partner of the deceased shall inherit the whole of the personal estate of the deceased absolutely.

20. If there is no surviving spouse and no surviving civil partner, the descendants shall inherit the whole of the personal estate of the deceased absolutely.

21. If there are descendants and there is also a surviving spouse or a surviving civil partner, the surviving spouse or the surviving civil partner, as the case may be, of the deceased shall inherit a one-half share of the personal estate of the deceased absolutely, and the descendants shall inherit a one-half share of the said estate absolutely.

22. If there is no surviving spouse and no surviving civil partner, and there are no descendants, the heirs to the personal estate of the deceased shall be the privileged collaterals.

23. If there are no privileged collaterals, the heirs to the personal estate of the deceased shall be the ascendants.

24. If there are no ascendants, the heirs to the personal estate of the deceased shall be the remaining collaterals.

25. In default of any person taking an absolute interest under the foregoing provisions, the personal estate of the deceased shall vest in the Crown as bona vacantia.

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PRICE £25.00

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE