

CONSULTATION

Probate Law (Jersey) 1998 Amendment

The purpose of this consultation

The Government of Jersey is seeking to amend the Probate (Jersey) Law 1998 to provide new arrangements for the management of movable estate in Jersey, where the total value of that estate does not exceed more than £30,000 and subject to certain conditions.

The aim is to allow people (for example, care providers or banks) who are holding the moveable estate of deceased people (for example, cash or jewellery) to release that moveable estate to another person (for example, a family member) where that other person has agreed to be accountable for the estate.

We would welcome comments from members of the public and other professional stakeholders, for example care providers, funeral directors and members of the banking and legal community.

Why your views matter

The probate consultation is in response to concerns previously expressed about how to best manage the movable estate of deceased individuals, where that moveable estate is held in Jersey and is relatively small in value. Concern has been expressed that individuals may unintentionally commit the offence of 'intermeddling' by giving family members or friends a deceased person's personal property (for example; jewellery, cash) where that family member or friend is not entitled to receive it.

The key changes are summarised below. This report should be read alongside the draft amendments to the 1998 Law which are available via www.gov.je/consultations.

CONSULTATION PROCESS

Public consultation	19 October 2021 to 14 December 2021
Publication of feedback report summarising the responses to consultation	January 2022

You can comment by mail or post using the details below-

Email: probateconsultation@gov.je
Post: Strategic Policy, Planning and Performance Department
Government of Jersey
19-21 Broad Street
St Helier
JE2 3RR

Closing date for comments:

14th December 2021

Data Protection

A full privacy notice is available on the Probate Law consultation page on www.gov.je.

Your personal information will not be shared outside of the team developing this legislation or published online as part of the consultation, but we may use it to notify you of progress and/or further consultations relating to development of the Law. Under Jersey's Data Protection Law you have the right to ask us not to contact you again (withdraw your consent to the further processing of your information). This will, however, mean that we will be unable to keep you informed throughout the various stages of the project. Should you wish to exercise this right please email us at probateconsultation@gov.je

We may quote or publish responses to this consultation including information being sent to the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, listed on a consultation summary, but will not publish the names and contact details of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it, but no personal data may be released.

For further information on how we handle personal data please visit gov.je/howweuseyourinfo.

Q1. Do you give permission for any comments you submit to this consultation to be quoted?

- No
- Yes, anonymously
- Yes, attributed

If yes, name to attribute comments to:

Email address:

Organisation to attribute comments to, where applicable:

Proposed changes to the Probate (Jersey) Law 1998

The Government of Jersey is seeking to amend the Probate (Jersey) Law 1998 to provide new arrangements for the management of movable estate in Jersey, where the total value of that estate does not exceed more than £30,000 and subject to certain conditions.

The aim is to allow people (for example, care providers or banks) who are holding, in Jersey, the moveable estate of deceased people (for example, cash or jewellery) to release that moveable

estate to another person (for example, a family member) where that person has agreed to be accountable for the estate.

‘Moveable estate’ means personal property that can be moved, such as cash, jewellery, clothes, furniture and paintings, as distinct from property that cannot be moved, such as a house. Moveable estate may be a single item (i.e. a watch) or may be multiple items (i.e. all the possessions in the deceased person’s room in a Care Home).

These changes are proposed in response to concerns previously expressed about how to best manage the movable estate of deceased clients, where that moveable estate is held in Jersey and is relatively small in value. In particular, representatives of the care sector have expressed concern that they may unintentionally commit the offence of ‘intermeddling’ by giving family members or friends a deceased person’s personal property (for example; jewellery, cash) where that family member or friend is not entitled to receive it.

Moveable estate is also referred to as personal property which is the term used in this paper for ease of understanding.

In order to resolve these concerns, the Government of Jersey is proposing bringing forward a number of amendments to the 1998 Law. The **key** changes are summarised below. This report should be read alongside the draft amendments to the 1998 Law which are available via www.gov.je/consultations.

Summary of key proposed amendments to the 1998 Law

The law will continue to provide that a grant of probate or administration is necessary to recover or receive any part of a deceased person’s movable estate, where that personal property is in Jersey, however, a number of exceptions are proposed, as described below.

Exception for small estates

1. This exemption provides that a person does not need to provide a grant of probate or administration to a person who is holding (“the holder”) the personal property (moveable estate) of a deceased person for the holder to release the personal property to them, providing the personal property is held in Jersey, and
 - a. the deceased person is domiciled in Jersey when they died, and the total value of their worldwide moveable estate does not exceed £30,000, OR
 - b. the deceased person dies not domiciled in Jersey, and the total value of the person’s moveable estates in Jersey does not exceed £30,000.
2. The **conditions** that must be met before a deceased person’s personal property can be given to another person are:

- a. the person requesting the deceased person's property agrees to be held accountable for personal property which is moved to them
 - b. the holder must be reasonably satisfied the person is entitled to the personal property under the terms of the deceased person's will or under laws relating to intestate succession
 - c. there is no caveat in force. A caveat prevents a grant of probate from being made. A grant of probate formally allows someone to administer the personal property of someone who has died if that person has left a will. If there is a caveat preventing a grant of probate, no-one can distribute the deceased person's property.
3. It is envisaged that this exemption will be of assistance to banks and other similar institutions or services. Further exemptions have been made, as described below, which are intended to be of assistance to care providers and funeral directors.

Exception for particular holders of movable estate (for example, care providers)

4. This exemption provides that certain types of people who are holding the personal property of a deceased person (the "holder") may give that personal property to another person providing they meet the conditions set out below.
5. The types of "holders" who may give the deceased person's personal property to another person is to be determined by the Minister, but is intended to include care home managers, the Chief Nurse or the Chief Nurse's delegates and may also include others.
6. The **conditions** that must be met before a deceased person's personal property can be given to another person are:
 - A. The person who wants to receive the personal property (the "applicant"), who is most usually, but not always, a family member or friend of the deceased:
 - i. must complete an application form which they must provide to the holder (i.e. the care provider). In the application form - which will be available on-line - the applicant must agree to be held accountable for the moveable estate that is released to them by the holder (i.e. the holder is no longer accountable for the movable property providing the holder accords with the conditions below)
 - ii. must check, before completing the application form, that there is no caveat in place preventing a grant of probate from being made. A grant of probate formally allows someone to administer the personal property of someone who has died if that person has left a will. If there is a caveat preventing a grant of probate, no-one can distribute the deceased person's property.

The applicant will need to declare on the application form that they have checked there is no caveat in place. They do this by checking on www.gov.je or on the physical notice posted outside the Royal Court Building.

B. The holder must check the application form that the applicant gives them to see if it is complete. If it is, they may give the applicant the deceased person's personal providing the holder is **reasonably satisfied** that:

- I. the total value of the personal property they are holding is not worth more than **£30,000**. They may be reasonably satisfied on the basis that, for example:
 - common sense tells them the property is obviously worth no more than £30,000
 - they have seen receipts or have looked at similar items on-line
 - the applicant has arranged to have the property valued, and it has been confirmed as being no more than £30,000.

If the holder is satisfied the total value of personal property they hold is no more than £30,000 they may give all of it to the applicant. They should not give just some of it to the applicant.

If the holder believes the total value of personal property, they hold to be more than £30,000, they must not give any of it to the applicant, even if the applicant is only requesting one item.

- II. that the applicant they are giving the property to is entitled to the property. They may be reasonably satisfied on the grounds that, for example, the applicant has declared on the application form that:
 - the applicant knows the deceased person has set out in their will that they should receive the property, or
 - the applicant declares they are entitled to property as they are, for example, the deceased person's spouse, parent, child or sibling and no other person has a stronger claim to the property **and** the holder knows or reasonably believes them to be the spouse, parent, child or sibling
- III. the applicant has met any other requirement set out on the application form, for example, they have confirmed they have checked that there is no caveat in place

C. The holder must keep the application form for at least for one year and one day after the person is deceased, as peoples' estates can be subject to challenge for this period.

- D. If the holder acts in accordance with the conditions set out above, they will not be committing an offence when they give the property to the applicant.
- E. If the holder is presented with a number of different application forms from a number of different people, or if the holder is not satisfied with any of the information included in the application form, they should not release the personal property. They should hold onto the personal property until they are represented with a grant of probate or letters of administration as issued by the Viscount Department.

Items worn by the deceased person

7. In addition to allowing holders of a deceased person's personal property to give that personal property to another person, the law will also be amended to allow a funeral director to authorise that a deceased person may be buried or cremated with an item or items of their personal property subject to the conditions below.
8. The item or items must have been worn by the person, or with the person at the time of their death (for example, a ring or a teddy bear).
9. The funeral director must have received a completed application form from an applicant who wishes the deceased to be buried or cremated with the item. As, above, in the application form the applicant must agree to be held accountable for the item which is to be buried or cremated (i.e. the funeral director is no longer accountable for the item providing the funeral director accords with the conditions below).
10. The funeral director must be reasonably satisfied that:
- a. the item or items is not worth more than **£10,000**. They may be reasonably satisfied on the grounds that, for example:
 - common sense tells them the property is obviously worth no more than £10,000
 - they have seen receipts or have looked at similar items on-line
 - the applicant has arranged to have the item valued, and it has been confirmed as being no more than £10,000
 - b. that the applicant they are giving the property to is entitled to the property. They may be reasonably satisfied on the grounds that, for example, the applicant has declared on the application form that:
 - the applicant knows the deceased person has set out in their will that they should receive the property, or

- the applicant declares they are entitled to property as they are, for example, the deceased person's spouse, parent, child or sibling and no other person has a stronger claim to the property **and** the holder knows or reasonably believes them to be the spouse, parent, child or sibling
- c. the applicant has met any other requirement set out on the application form, for example, they have confirmed they have checked whether there is a caveat in place
11. As set out above, the item or items must not be worth more than £10,000 and must have been worn by the person or be with the person at the time of their death. If these conditions are met, the item or items do not form part of personal property that continues to be held by the 'holder'. For example, if a person dies wearing rings worth up to £10,000, the rings may be buried or cremated with them, even if the property held elsewhere is worth more than £30,000, providing the conditions set out above have been met.
12. The funeral director must keep the application form for at least for one year and one day after the person is deceased, as peoples' estates can be subject to challenge for this period.
13. In making this amendment, it is understood that the crematorium has rules about the types of items that may, or may not, be cremated and those rules still stand.