

INHERITANCE LAW REVIEW COMMITTEE

The Inheritance (Guernsey) Law, 2011 comes into force on 2nd April 2012

The Inheritance Law Review Committee is pleased to announce that the Inheritance (Guernsey) Law, 2011 (“the new Law”), was registered in the Royal Court on 5th December 2011, and is scheduled to come into force on 2nd April 2012.

The Law will only apply in Guernsey. Alderney and Sark have their own laws of inheritance which are not affected by the new Law.

The new Law is important for people in Guernsey because it affects how inheritance of real and personal property works. Real property consists principally of land and houses. Personal property includes people’s savings and investments and other personal possessions such as cars and furniture.

The Committee recommends that anyone who feels that they may be affected by the provisions of the new Law should consult an advocate.

The Committee also recommends that owners of real and/or personal property should make wills so that there is no doubt who will inherit.

The main changes introduced by the new Law are set out below. The new Law applies to a person who dies on or after 2nd April and whose will was made on or after that date or who dies intestate (that is, he has not made a will which is still valid). For persons whose will was made before 2nd April, see paragraph 4.

1. Abolition of restrictions on leaving property by will (freedom of testamentary disposition)

At present, Guernsey's inheritance laws restrict the categories of people to whom an individual can leave his or her real property by will, and permit only a proportion of a person's personal property to be left to persons other than certain family members. Under the new Law, there will be no such restrictions - a person will be able to leave his or her property, in principle, to whomever he or she wishes.

2. New rules on intestacy

Where a person dies on or after 2nd April without having made a will, his or her property will pass to his or her relatives according to new rules set out in the Schedule to the new Law. Individuals should seek legal advice if they wish to know how these rules would apply in their personal circumstances. However, the main purpose of the rules is to make provision for cases where a person has for some reason been unable to make a will before his or her death; and the Committee recommends that people do not regard the existence of the rules as a reason not to make a will.

3. Introduction of a scheme of provision for family and dependants

The new Law enables a relative of a person who has died, or a person who was dependent upon the deceased at the time of death, to apply to the Court for reasonable provision to be made for him or her out of the estate where the effect of the will or the intestacy was that he or she was not properly provided for.

The classes of person who may apply under these provisions, and the grounds for granting such an application, are restricted and in the vast majority of cases, where the deceased person will have made adequate provision for those who might reasonably have been expected to benefit, it is unlikely that any application will be made or, if made, will be successful. However, when a person is making a will after 2nd April, he or she should be aware that it is possible that a family member or dependant who has not been properly provided for might make an application challenging the terms of that will, and should discuss the matter with his or her advocate.

4. Transitional provisions

The new rules set out in paragraphs 1 and 2 do not apply, generally speaking, to the estate of a person who made a will before 2nd April 2012. This means that, where a person has made or makes a will before that date, and does not make a new one, the property will pass according to the terms of the will as if the new Law had not been made, that is to say, the restrictions as to whom he or she can leave his or her property will still apply, and there will be no possibility of any application against the estate as mentioned in paragraph 3.

This means that a person who wishes to avoid the effects of the new Law may make a new will, or amend his or her existing will, before 2nd April, and if the will is still in force at the date of death the provisions of the new Law will be disregarded in distributing the estate.

However, if a person wishes the new Law to apply to his or her estate, but does not want to wait until 2nd April before making his or her will, that can also be done by making a new will stating the wish for the new provisions to apply when the new Law comes into force.

Any person who wishes to ascertain how the new Law might affect his or her personal circumstances, and whether or not, and if so when, to make a new will, should seek advice from an advocate as soon as possible, particularly if he or she wishes to avoid the effects of the new Law by making a will prior to commencement of the new Law.