

ORDER IN COUNCIL

XVI
1994

ratifying a Projet de Loi

ENTITLED

The Execution of Wills (Bailiwick of Guernsey) Law, 1994

(Registered on the Records of the Island of Guernsey
on the 23rd August, 1994.)



1994

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 23rd day of August, 1994 before Sir Graham Dorey, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Stanley Walter John Jehan, Raymond Arthur Heaume, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, John Richard Rowe Henry, David Charles Lowe, Esquires and Mrs. Eileen May Glass, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of May, 1994, approving and ratifying a *Projet de Loi* entitled “The Execution of Wills (Bailiwick of Guernsey) Law, 1994”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the S  n  schal of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 18th day of May 1994

PRESENT.

The Queen's most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 19th day of April 1994, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of the States of the Island of Guernsey setting forth:—

“1. That, in pursuance of their Resolution of the 29th day of September 1993, the States of Deliberation at a meeting held on the 25th day of November 1993, approved a Bill or “Projet de Loi” entitled “The Execution of Wills (Bailiwick of Guernsey) Law, 1994”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 2nd day of March 1994, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 19th day of January 1994, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is set in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Execution of Wills (Bailiwick of Guernsey) Law, 1994”, and to order that the same shall have force of Law in the Bailiwick of Guernsey.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(No.XVI - 1994)

PROJET DE LOI

ENTITLED

The Execution of Wills (Bailiwick of Guernsey) Law, 1994

THE STATES, in pursuance of their Resolution of the 29th day of September, 1993(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Formal validity of wills.

1. A will, whether disposing of real or personal property or both, shall be regarded as properly executed if its execution conforms to the internal law in force-

- (a) in the territory where it was executed;
- (b) in the territory where, at the time of its execution or of the testator's death, the testator was domiciled or had his habitual residence;
- (c) in a state of which, at either of those times, the testator was national; or
- (d) in so far as the will disposes of real property, in the territory where the property is situated.

Additional rules.

2. (1) Without prejudice to section 1, the following shall be regarded as properly executed-

- (a) a will executed on board a vessel or aircraft, if the execution conforms to the internal law in force in the territory with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) a will so far as it revokes-

(i) a will which under this Law would be regarded as properly executed; or

(ii) a provision which under this Law would be regarded as comprised in a properly executed will,

if the execution of the later will conforms to any law by reference to which the revoked will or provision would be so regarded;

(c) a will so far as it exercises a power of appointment, if the execution of the will conforms to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be regarded as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

Certain requirements to be regarded as formal.

3. Where, whether in pursuance of this Law or not, a law in force outside the Bailiwick falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators of a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Construction of wills.

4. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

Interpretation.

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

"internal law", in relation to any territory or state, means the law which would apply in a case in relation to which there arises no question as to the law in force in any other territory or state;

"state" means a territory or group of territories having its own law of nationality;

"will" includes any testamentary instrument or act, and **"testator"** shall be construed accordingly.

(2) Where under this Law the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows-

- (a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be applied; or
- (b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, being-
 - (i) the time of the testator's death, where the matter is to be determined by reference to circumstances prevailing at his death;
 - (ii) the time of execution of the will, in any other case.

(3) In determining for the purposes of this Law whether or not the execution of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be regarded as properly executed.

(4) The provisions of the Interpretation (Guernsey) Law, 1948(b) shall apply to the interpretation of this Law throughout the Bailiwick as they apply in Guernsey to the interpretation of an enactment.

Application of Law.

6. This Law shall not apply to the will of a testator who died before the date of commencement of this Law but shall apply to the will of a testator who dies after that time whether the will was executed before or after that time.

Commencement.

7. This Law shall come into force on the 28th day after the date of its registration on the records of the Island of Guernsey.

Citation.

8. This Law may be cited as the Execution of Wills (Bailiwick of Guernsey) Law, 1994.