

# PROJET DE LOI

ENTITLED

## **The Inheritance (Alderney) Law, 2015 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

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\* No. XII of 2015. See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122).

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## **The Inheritance (Alderney) Law, 2015**

**THE STATES OF ALDERNEY**, in pursuance of their Resolution of the 17<sup>th</sup> June, 2015, 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 Alderney.

### 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 that person's relationship with the deceased as –

- (a) husband ("franc veuvage"),
- (b) wife ("droit douaire" and "légitime"), or
- (c) 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 that person's 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) A person whose will was executed before the date of commencement may, by a codicil executed after that date, declare an intention that this Part shall apply to the testamentary succession to the estate; and in such a case the 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 17<sup>th</sup> day of June, 2015 but before the date of commencement –

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

declaring the 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 the person who has executed the will 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.

## PART II

### REMOVAL OF DISCRIMINATION AGAINST ILLEGITIMATE PERSONS

#### **Removal of discrimination against illegitimate persons.**

2. (1) The provisions of this section shall apply to –

- (a) the intestate succession to the estate, whether real or personal, of a person dying on or after the date of commencement ("**the said date**"),
- (b) the testamentary succession to the estate, whether real or personal, of a person whose will is executed on or after the said date, and
- (c) the provisions of any relevant instrument.

(2) Any rule of law (whether statutory or otherwise) or custom by or pursuant to which, for the purposes of succession to any property, whether real or personal, an illegitimate person is, by reason of that person's illegitimacy, distinguished from a legitimate person, is abolished.

(3) Any reference in any will or relevant instrument, however expressed, to any relationship between two persons shall be construed, unless the contrary intention appears, without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(4) For the purposes of this section the father of an illegitimate person, and any person related to that illegitimate person through the father, shall be presumed to have predeceased the illegitimate person, unless the contrary is shown.

(5) For the purposes of this section –

- (a) the fact that a person is named as the father of an illegitimate person in that person's birth certificate or in an official register of births shall constitute prima facie evidence of paternity,
- (b) subject to paragraph (c), a finding in affiliation proceedings that a person is the father of an illegitimate child shall constitute conclusive evidence of paternity,

- (c) the Court may make a declaration as to paternity on the application of a person claiming to be entitled to succeed to any property or, with the leave of the Court, any other interested person, provided that no such application shall, except with the leave of the Court (which shall only be granted in exceptional circumstances), be commenced after the expiration of six years beginning on the date of the death of the person in respect of whose property the application is made,
- (d) the burden of proving paternity shall be on the person seeking to establish the fact.

(6) Nothing in this section shall affect the succession to the property of a person who has died prior to the commencement of this Part.

(7) In this section –

**"affiliation proceedings"** means proceedings in a court of competent jurisdiction by or as a result of which a person is declared by the court to be the father of an illegitimate child, whether or not the principal purpose of those proceedings was to establish the paternity of the child, but excluding proceedings the recognition or enforcement of which would be contrary to public policy,

**"illegitimate child"** and **"illegitimate person"** shall mean a person whose father and mother were not married to each other at the time of the person's birth and who has not been legitimated or adopted and who is not otherwise treated in law as legitimate, and **"illegitimate"** shall be construed accordingly,

**"official register of births"** means –

- (a) the register of births kept by the Registrar of Births



and Deaths of the Island of Alderney, or

- (b) a register of births kept elsewhere by an authority with functions comparable to those of the Registrar-General,

**"relevant instrument"** means an instrument executed after the said date and which is –

- (a) an instrument by which a trust is created, whether immediately or with effect from a future date, or
- (b) a policy of insurance effected by any person for the benefit of that person's children, whether or not the person's spouse is also a beneficiary, pursuant to the provisions of section 12 of the Married Women's Property Law, 1928, as amended<sup>a</sup>, and

and includes any instrument which is made pursuant to, or for the purposes of, any instrument or policy of insurance referred to in paragraphs (a) or (b) above.

(8) For the avoidance of doubt, the provisions of this section do not apply to the testamentary succession to the estate, whether real or personal, of a person whose will was executed before the said date notwithstanding that one or more codicils to that will were executed after the said date.

(9) For the purposes of this section, the time of a person's birth shall be taken to include any time during the period beginning with –

- (a) the insemination resulting in the birth, or
- (b) where there was no such insemination, the conception,

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<sup>a</sup> Ordres en Conseil Vol. VIII, p. 215. The Law was applied to Alderney by Ordres en Conseil Vol. XIV, p. 67.

and (in either case) ending with the birth.

**Power to make Ordinances in respect of Part II.**

3. The States may, by Ordinance –

- (a) amend the provisions of section 2(5),
- (b) make provision for proof of paternity,
- (c) amend the definition of "affiliation proceedings" in section 2(7), and
- (d) amend the definition of "relevant instrument" in section 2(7) so as to amend or add to the classes of instrument included in that definition.

PART III

RULES OF INTESTATE SUCCESSION

**Intestate succession to property.**

4. (1) The provisions of Schedule 1 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 that person's relationship with the deceased is abolished.

PART IV

REAL PROPERTY: INTESTACY AND UNASCERTAINED HEIRS

**Administration orders.**

5. (1) Where a person ("**the deceased**") dies and at the time of death the deceased was the owner of Alderney real property ("**the property**") and died either –

- (a) intestate as to Alderney real property, or
- (b) having made a will of real property,

and the heirs to the property, or one or more of them, cannot be identified or found, or for any reason ownership of the property after the death of the deceased is, for any reason, uncertain, the Court may grant an administration order in accordance with the provisions of this Part.

(2) An administration order under this section may be made at the instance of any person included in the following classes –

- (a) Her Majesty's Procureur,
- (b) any heir to the property, whether presumptive or absolute, who is of full age and capacity,
- (c) the legal guardian of a person who would be included in the class described in paragraph (b) but who is subject to a legal disability, whether as to age or otherwise, or
- (d) such other class or classes of persons whom the States may by Ordinance prescribe,

and, where the applicant is a person within paragraphs (b), (c) or (d), then Her Majesty's Procureur shall have the right to make representations at the hearing of the application.

(3) An administration order made under this section shall appoint as the administrator of the property one or more of the following –

- (a) Her Majesty's Procureur,
- (b) the applicant for the administration order, provided

that that person is ordinarily resident in Alderney,

- (c) an advocate of the Royal Court,
- (d) the Public Trustee, or
- (e) with the approval of Her Majesty's Procureur, any other person who is ordinarily resident in Alderney,

and any such order which appoints more than one administrator may empower the survivor of them to act alone.

- (4) Only a natural person may be appointed as an administrator.

**Duration of administration order.**

6. (1) Subject to the following provisions of this section, an administration order shall remain in force until the proceeds of sale have been distributed in accordance with this Part of this Law or otherwise as the Court may direct.

(2) An administrator may apply to the Court to be discharged as administrator and the Court, before discharging the administrator, may require an account of the administration of the property or its proceeds of sale, or both, as the case may be.

(3) An administrator may be removed by the Court if, in the opinion of the Court, the administrator becomes incapable of acting, or refuses, neglects, or is unfit, to act.

(4) An application for removal of an administrator under subsection (3) may be made by any person at whose instance an administration order could have been made in respect of the property pursuant to section 5(2).

**Appointment of replacement administrator.**

7. (1) Where an administrator dies, is discharged pursuant to section 6(2), or is removed by the Court pursuant to section 6(3), and no other person is

empowered to act as administrator of the property, the Court shall appoint one or more persons included in the categories set out in section 5(3) to carry out the functions of administrator in place of the administrator who has died, been so discharged or removed.

(2) Where an administrator who was acting jointly with another person or persons dies or is so discharged or removed the Court may appoint one or more additional persons to act jointly with the continuing administrator or administrators as it thinks fit.

**Oath.**

8. An administrator appointed by the Court shall take an oath or affirmation in the form set out in Schedule 2.

**Remuneration and expenses of administrator.**

9. An administrator shall be entitled to reimbursement of all reasonable expenses properly incurred during the course of the administration and to such reasonable fees for acting as administrator as the Court may approve, all such reasonable expenses and fees to be recoverable from, and which shall constitute a charge against, the proceeds of sale of the property in priority to all other claims.

**Powers and duties of administrator.**

10. (1) Where the Court grants an administration order pursuant to section 5, the property shall thereupon vest in the administrator to hold the same as trustee for the benefit of the heirs, whether or not yet identified ("**the heirs**"), and the administrator shall –

- (a) subject to subsection (5), sell the property and distribute the proceeds of sale,
- (b) pending the sale of the property, administer the property, and
- (c) pending distribution of the proceeds of sale, administer the said proceeds,

in accordance with the provisions of this Part.

- (2) An administrator shall, in the exercise of those functions –
  - (a) observe the utmost good faith,
  - (b) act only in the interests of the heirs,
  - (c) act "en bon père de famille",
  - (d) keep accurate accounts and records of the administration of the property and of the proceeds of sale, and
  - (e) at any time, at the written request of any of the heirs, or at the direction of the Court, provide full and accurate information as to the state of the property and any income received and expenditure incurred in relation thereto and, after the sale of the property, provide full and accurate accounts in relation to the proceeds of sale.
- (3) An administrator, in acting "en bon père de famille", shall –
  - (a) so far as is reasonable, preserve the value, and
  - (b) so far as may be appropriate in the circumstances, enhance the value,

of the property pending its sale and, thereafter, of the proceeds of sale thereof.

- (4) An administrator, in the exercise of those functions –
  - (a) shall have, subject to the provisions of subsection (5)(b), in relation to the property, all the powers vested in the deceased immediately before death,

including (where appropriate and without limitation) the power to let the property and, in connection with the exercise of those powers, the power to incur liabilities,

- (b) may sue and be sued as administrator,
- (c) may consult professional persons in relation to the administration and sale of the property and the administration of the proceeds of sale, but may not (subject to section 13 and to any order of the Court) delegate the functions of the administrator, and
- (d) may apply to the Court for directions in relation to the administration of the property or its proceeds of sale.

(5) The administrator –

- (a) may postpone, but shall not unreasonably delay, the sale of the property, but
- (b) may not, pending the sale of the property, borrow against the security of the property, or otherwise cause any charge to be attached to the property, without the prior approval of the Court.

(6) The administrator selling, letting or otherwise dealing with real property in accordance with this Law shall be deemed to have, and to be able to convey, all such right, title and interest in the property as was vested in the deceased immediately before death, to the exclusion of any other person and for all purposes.

(7) The administrator shall take all such steps as are reasonably practicable to identify the heirs entitled to the property and their respective interests therein.

(8) Following the sale of the property, which may be by private treaty or public auction, the administrator shall –

- (a) hold the proceeds of sale, and any income accrued in relation to the property prior to the sale, less any fees and expenses properly deductible pursuant to section 9, separate from the administrator's own money and separately identifiable from any money which is the subject of a different administration order, for a minimum period, subject to subsection (9), of six years commencing on the date of the sale, and
- (b) as soon as reasonably practicable after the expiration of the said period of six years, apply to the Court for permission to distribute the proceeds of sale, less any further fees and expenses properly deductible pursuant to section 9, to the persons whom the administrator has identified as the heirs entitled to the proceeds of sale or, if no such heirs have been identified, or the administrator has reason to believe that some only have been identified, apply to the Court for directions.

(9) Notwithstanding the provisions of subsection (8), the Court may, on application by the administrator, order the distribution of the proceeds of sale of the property, less any further fees and expenses properly deductible pursuant to section 9, before the expiration of the said period of six years.

(10) Where the Court has ordered distribution of the proceeds of sale before the expiration of the said period of six years –

- (a) such distribution shall be made without prejudice to any claim during the remainder of that period by any heir to whom distribution has not been made against the heirs to whom distribution was made, and
- (b) any such heir to whom distribution has not been made



shall, until the expiration of the said period of six years, have a lien on the proceeds of sale, but

- (c) the administrator, having made the distribution in accordance with the order of the Court, shall be discharged from personal liability in respect of the distribution.

(11) An application made under subsection (8)(b) or (9) shall –

- (a) describe, by affidavit, the steps taken by the administrator to identify the heirs, and state whether or not, and to what extent, the administrator is satisfied that all the heirs have been identified, and identify the heirs to whom the administrator proposes to distribute the proceeds of sale, or
- (b) make such application for directions as the administrator thinks fit.

**Liability for breach of trust.**

**11.** (1) Subject to the provisions of this Law, an administrator who commits or concurs in a breach of trust is liable for –

- (a) any loss or depreciation in value of the property or the proceeds of sale resulting from the breach, and
- (b) any profit which would have accrued had there not been a breach.

(2) An administrator is not liable for a breach of trust committed by another person prior to the appointment of that administrator.

(3) An administrator is not liable for a breach of trust committed by a co-administrator unless –

- (a) the administrator was aware, or becomes or ought to have become aware, of the breach, or of the intention of the co-administrator to commit the breach, and
- (b) the administrator actively conceals the co-administrator's breach or intention, or fails within a reasonable time to take proper steps to protect or restore the property or the proceeds of sale or to prevent the breach.

(4) Where co-administrators are liable for a breach of trust, they are liable jointly and severally.

(5) An administrator who becomes aware of a breach of trust to which subsection (3) applies shall take all reasonable steps to remedy the breach.

**Non-disclosure of deliberations etc.**

**12.** Subject to an order of the Court to the contrary, an administrator is not obliged to disclose any documents which reveal –

- (a) the administrator's deliberations as to the exercise of the functions as administrator,
- (b) the reasons for any decision made in the exercise of those functions, or
- (c) the material upon which such a decision was or might have been based.

**Appointment of attorney.**

**13.** An administrator may appoint any person as attorney for the purpose of executing any document (including a document creating or evidencing any charge on the property) or attending in court to consent to a sale of the property, but, in any such case, subject to the prior approval of the administrator to the terms of the document or the sale: and nothing in this section shall relieve the administrator from any liability therefor.

**Court may relieve administrator of liability.**

**14.** The Court may relieve an administrator wholly or partly of liability for a breach of trust if the Court is satisfied that the administrator –

- (a) has acted honestly and reasonably, and
- (b) ought fairly to be excused –
  - (i) for the breach, and
  - (ii) for failing to obtain the directions of the Court in the matter in respect of which the breach arose.

**Power of Court in event of default.**

**15.** If an administrator does not comply with an order of the Court requiring the administrator to do anything, then without prejudice to its other powers, the Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person nominated for the purpose by the Court, at the personal expense of the administrator or otherwise as the Court directs; and a thing so done has effect in all respects as if done by the administrator.

**Dealings by administrator with third parties.**

**16.** (1) Where, in a transaction or matter affecting the property or the proceeds of sale, an administrator informs a third party that the administrator is acting as trustee, a claim by the third party in respect of the transaction or matter shall, subject to subsection (3), extend only to the value of the property at the time of the transaction, or the amount of the proceeds of sale from time to time, as the case may be.

(2) If an administrator fails to inform the third party that the administrator is acting as trustee and the third party is otherwise unaware of the fact, the administrator –

- (a) incurs personal liability to the third party in respect of

the transaction or matter, and

- (b) has a right of indemnity against the property or the proceeds of sale in respect of the administrator's personal liability, unless the administrator acted in breach of trust.

(3) Nothing in this section prejudices an administrator's liability for breach of trust or any claim for breach of warranty of authority.

(4) In this section "**third party**" means a person other than any person mentioned in section 5(2), except where the administrator is transacting with such a person.

**Applications for directions.**

**17.** An administrator may apply to the Court for directions as to how the administrator should or might act in the course of the administration, and the Court may make such order as it thinks fit.

**General powers of the Court.**

**18.** (1) On the application of any person mentioned in subsection (2), the Court may –

- (a) make an order in respect of –
  - (i) the execution or enforcement of the administration of the property,
  - (ii) the administrator, including (without limitation) an order as to the exercise by the administrator of the functions of administrator, the removal of the administrator, the appointment, remuneration or conduct of the administrator, the keeping and submission of accounts, and the making or payments, whether into court or otherwise,

- (iii) the heirs, or any person connected or concerned with the administration,
  - (iv) any property, real or personal, subject to the administration, including an order as to its vesting, preservation, application or recovery,
- (b) rescind or vary an order or direction, or make a new or further order or direction.

(2) An application under subsection (1) may be made by Her Majesty's Procureur, the administrator, or an heir, or, with leave of the Court, any other person.

(3) Where the Court appoints or removes an administrator under this Part, it may impose such requirements and conditions as it thinks fit, including (without limitation) requiring an administration bond to be given in any case.

**Power to make Ordinances in respect of Part IV.**

**19.** The States may by Ordinance amend the provisions of this Part.

**Interpretation of Part IV.**

**20.** In this Part, unless the context otherwise requires –

"**administrator**" shall include more than one administrator acting jointly, and

"**Her Majesty's Procureur**" shall include Her Majesty's Comptroller.

PART V  
PRESCRIPTION

**Amendment of prescription period in certain cases.**

**21.** (1) Notwithstanding the provisions of the Law entitled "Loi

relative à la Prescription Immobilière" registered on the 23<sup>rd</sup> April 1909<sup>b</sup> ("**the 1909 Law**"), and subject to subsection (2), any action, proceeding, claim or right in respect of any real property by or vested in any person claiming to be an heir to that real property against a person who has acquired it, whether for value or otherwise, in good faith from the heirs, or persons purporting to be the heirs (which would otherwise be prescribed by the lapse of twenty years), shall be prescribed by the lapse of six years from the date of the acquisition.

(2) If it appears to the court in the circumstances of any case that it would be equitable to allow an action to proceed notwithstanding that the action would otherwise, pursuant to the provisions of subsection (1), be prescribed, the court may at its discretion extend the period within which the action may be brought provided that such extended period shall not exceed twenty years.

(3) Where, at the date of commencement ("**the operative date**"), a period of prescription has already commenced to run under the 1909 Law, and that period would, under the 1909 Law, expire more than six years after the operative date, that period of prescription shall be reduced to six years commencing on the operative date, subject to the court's discretion to extend the period pursuant to subsection (2).

(4) Nothing in this section shall affect any period of prescription which, at the operative date, has already commenced to run under the 1909 Law and which at that date has six years or less still to run.

(5) In this section "**the court**" means the court in which the action has been brought.

## PART VI LAW RELATING TO WILLS

### **Will disposing of real property.**

**22.** (1) A will of real property may be made in the same document as

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<sup>b</sup> Ordres en Conseil Vol. IV, p. 281.

a will of personal property.

(2) A will disposing of real property shall be registered on the records of the Island of Alderney if the Court is satisfied, by the evidence produced to the Court, that the testator has died.

(3) Where the testator has disposed of real property as well as personal property by the same will, the Court may grant permission to register a copy of the will, duly authenticated by the court which has granted probate thereof, on the records of the Island of Alderney and such copy, when registered, shall have the same effect as if the original will had been so registered.

(4) For the purposes of this section the Court may be constituted by a Jurat sitting alone.

**Signing and attestation of wills and codicils.**

**23.** (1) No will or codicil shall be valid unless –

- (a) it is in writing and signed by the testator or by some other person in the testator's presence and by the testator's direction,
- (b) it appears that the testator intended by the signature to give effect to the will,
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and
- (d) each witness attests and signs, or acknowledges the witness's own signature on, the will in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation is necessary.

(2) Any person who has attained the age of 18 years, and who is not the spouse or civil partner or a descendant of the testator, is competent to attest the execution of a will in accordance with the provisions of subsection (1).

(3) Any gift in a will to a person, or to the spouse or civil partner of a person, who attested the execution of the will, shall be void and of no effect.

(4) No person shall, on account of that person's being an executor of a will, be incompetent to attest the execution of such will.

**Will not to be void on account of incompetence of attesting witness.**

24. Where any person who attests the execution of a will is, whether at the time of such execution or at any time thereafter, incompetent as a witness to prove the execution of that will, such will shall not for that reason be invalid.

**Revocation of wills.**

25. A will or codicil may be revoked –

- (a) by another will or codicil executed in accordance with the formalities set out in this Part,
- (b) by a declaration in writing of the testator's intention to revoke such will or codicil, executed in accordance with the said formalities, or
- (c) by the physical destruction of such will or codicil, by the testator or by some other person in the testator's presence and by the testator's direction, with the intention of revoking the same.

**Alterations after execution.**

26. (1) Subject to subsection (2), no alteration made in a will after execution shall be valid, except so far as the words, or the effect, of the will before alteration are not apparent.

(2) Where an alteration is made in a will after execution, the



altered will shall be deemed to be duly executed if the signatures of the testator and the witnesses are appended –

- (a) in the margin or on some other part of the will near such alteration, or
- (b) at the foot or end of, or opposite to, a memorandum referring to such alteration, written at the end of some other part of the will.

**Revival of revoked will.**

27. No will or codicil, or any part thereof, which has been revoked, shall be revived except by the re-execution thereof, or by a codicil executed in accordance with the formalities set out in this Part and showing an intention to revive the same; and when any will or codicil which has been partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to that part as had been revoked before the revocation of the whole, unless an intention to the contrary is shown.

**Gift to testator's issue.**

28. (1) Where –

- (a) a will contains a gift to a child or remoter descendant of the testator,
- (b) the intended beneficiary dies before the testator, leaving issue, and
- (c) issue of the intended beneficiary are alive at the date of the testator's death,

then, unless a contrary intention appears by the will, the gift shall take effect as a gift to the issue alive at the testator's death.

(2) Where –

- (a) a will contains a gift to a class of person consisting of children or remoter descendants of the testator,
- (b) a member of the class dies before the testator, leaving issue, and
- (c) issue of that member are alive at the date of the testator's death,

then, unless a contrary intention appears by the will, the gift shall take effect as if the class included the issue of its deceased member alive at the testator's death.

(3) This section shall apply to issue in all degrees but such issue shall receive, in equal shares if more than one, any gift or share which their parent would have taken, and shall not take if such parent is alive at the date of the testator's death.

#### **Interpretation of Part VI.**

**29.** In this Part of this Law, except where the context otherwise requires –

**"testator"** includes "testatrix",

**"will"** shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to an appointment by will of a guardian of a child, and to any other testamentary disposition.

#### **Application of Part VI.**

**30.** This Part of this Law shall apply to any will, or to any alteration to any will, executed on or after the date of commencement.

### **PART VII COMMORIENTES AND SURVIVORSHIP**

#### **Presumption as to survivorship in certain circumstances.**

**31.** (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.**

**32.** 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 –

- (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 VIII  
PROVISION FOR FAMILY AND DEPENDANTS

**Referral to Ordinary Court.**

**33.** (1) In this Part, **"the Court"** shall mean the Court of Alderney except where an application, or any point of law arising in the action, has been referred to the Royal Court in accordance with subsection (2) or (3), in which case, in relation to the hearing and determination of such application or issue, **"the Court"** shall mean the Royal Court of Guernsey (**"the Royal Court"**).

(2) The Court of Alderney may, at any time prior to or during the hearing of an application under this Part, refer the application to the Royal Court for hearing and determination if it is of the opinion that it is desirable to do so in all the circumstances and in the interests of justice.

(3) The Court of Alderney may, at any time prior to or during the hearing of an application under this Part, refer any point of law arising in the application to the Royal Court for determination.

(4) A referral under subsection (2) or (3) may be made on such terms and conditions, and may contain such ancillary and consequential directions, whether as to costs or otherwise, as the Court of Alderney thinks fit.

**Application for financial provision.**

**34.** (1) Subject to subsection (9), where, on or after the date of commencement, a person who dies was, at the time of death, domiciled in the Island of Alderney and 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 35 on the ground that the disposition of the deceased's estate effected by the will, or by the law relating to intestacy, or by a combination of the 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 –

- (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 relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family,
- (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) The reference in subsection (2)(e) to a family in which the deceased stood in the role of a parent includes a family of which the deceased was the only member (apart from the applicant).

(4) 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 the spouse or civil partner's 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 the applicant's maintenance.

(5) 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, only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a contribution made for full valuable consideration pursuant to an arrangement of a commercial nature.

(6) No person shall be precluded from making any application under section 35, nor shall the making of any order thereunder be precluded, by reason only that the person stands convicted of the unlawful killing, other than the murder, of the deceased.

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

(8) The respondents to any application made under section 35 shall include (without limitation) –

- (a) any personal representative of the deceased, except where that personal representative is an applicant under that section, and

- (b) any beneficiary of the estate of the deceased who may be affected by the order sought.

(9) 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 35, is subject to a legal disability, whether as to age or otherwise, such person may be represented in any proceedings under this Part by that person's legal guardian.

(10) No application under section 35 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 that person 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.**

**35.** (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 the will, or by the law relating to intestacy, or by a combination of the 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,
- (g) an order varying for the applicant's benefit the trusts on which the deceased's estate is held,

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 the will, or by the law relating to intestacy, or by a combination of the 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.**

- 36.** (1) Where an application is made for an order under section 35,

the Court shall, in determining whether the disposition of the deceased's estate by the will, or by the law relating to intestacy, or by a combination of the 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 35 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 35 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 35 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 35 is made by virtue of section 34(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 (but nothing requires the Court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 35).

(3) Without prejudice to the generality of subsection (1)(g), where an application for an order under section 35 is made by virtue of section 34(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 35 is made by virtue of section 34(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 might expect to be educated or trained, and where the application is made by virtue of section 34(2)(e) the Court shall also have regard to –

- (a) whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance,
- (b) whether and, if so, to what extent the deceased assumed responsibility for maintaining the applicant,
- (c) whether in maintaining or assuming responsibility for maintaining the applicant the deceased did so knowing that the applicant was not the deceased's own child, and
- (d) 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 35 is made by virtue of section 34(2)(f), the Court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection (1), have regard –

- (a) to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance,
- (b) to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.

(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 the person's earning capacity, and in considering the financial needs of any person for the purposes of this section, the Court shall take into account the person's financial obligations and responsibilities.

**Time limit for applications.**

**37.** An application for an order under section 35 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.**

**38.** (1) Where on an application for an order under section 35 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 35 or decides not to exercise its powers under that section.

(2) Section 35(2) and (3) shall apply in relation to an order under

this section as they relate to an order under section 35.

(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 36.

(4) An order made under section 35 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.**

**39.** (1) Subject to the provisions of this Part, where the Court has made an order under section 35(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 37 be entitled to apply, for an order under section 35 (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 34(1) has applied, or would but for section 37 be entitled to apply, for an order under section 35,
- (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.**

40. (1) An order under section 35(1)(b) or 39(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'.**

41. (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 the death of the deceased and that nomination is in force at the time of 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.**

42. (1) Where a deceased person was, immediately before death, the owner, jointly with any other person or persons, of any property, then, if an application is made for an order under section 35, 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 at the date of the hearing of the application for an order under section 35, unless the Court orders that the share is to be valued at a different date.

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

**Dispositions intended to defeat applications for financial provision.**

**43.** (1) Where an application is made to the Court for an order under section 35, 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 45 and 46, the Court may order the donee (whether or not at the date of the order the donee holds any interest in the property disposed of to or for the benefit of the donee 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 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 35 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 41(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.**

**44.** (1) Where an application is made to the Court for an order under section 35, 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 the deceased agreed to leave by will a sum of money or other property to any person, or agreed that a sum of money or other property would be paid or transferred to any person out of the deceased's 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 45 and 46, 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 45(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 43 and 44.**

**45.** (1) Where the exercise of any of the powers conferred by section 43 or 44 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 the 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 44 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 43 or 44 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 43 or 44 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 43(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 43(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 43 or 44 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 receiving notice of the making of an application under section 43 or 44 on the ground that the personal representative ought to have taken into account the possibility that such an application would be made.

**Provisions as to trustees in relation to sections 43 and 44.**

- 46.** (1) Where an application is made for –
- (a) an order under section 43, in respect of a disposition made by the deceased to any person as a trustee, or
  - (b) an order under section 44, 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 43 or 44 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 the trustee 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 43 or 44 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.**

**47.** 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<sup>c</sup>, 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 35 is made by that other party, the Court shall, notwithstanding anything in section 34 or 36, 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.**

**48.** (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 35.

(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

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<sup>c</sup> Ordres en Conseil Vol. XI, p. 318; there are amendments not relevant to this Article.

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 35 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.**

**49.** (1) Where an application for an order under section 35 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 35 or section 38 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.**

**50.** (1) Where an application for an order under section 35 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 35 or 38 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 the deceased 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.**

**51.** (1) Where an order is made under section 35 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 35 or 38 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.**

**52.** (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 35 liable for having distributed any part of the net estate of the deceased on the ground that the personal representative ought to have taken into account the possibility –

- (a) that an application might be made for an order under section 35, or
- (b) that, where an order has been made under section 35, the Court might exercise in relation thereto the powers conferred on it by section 39,

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 38 to be paid out of the net estate of the deceased, the personal representative 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 the personal representative has reasonable cause to believe that the estate is not sufficient.

(3) Where a deceased person entered into a contract agreeing to leave by will any sum of money or other property to any person or agreeing that a sum of money or other property would be paid or transferred to any person out of

the 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, the personal representative 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 35, until the determination of the proceedings on that application.

**Interpretation of Part VIII.**

**53.** (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 41 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 56(1),

**"the Court"** has the meaning given in section 33,

**"date of commencement"** has the meaning given in section 56(1),

**"dissolved or annulled"** has the meaning given in section 56(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 will (otherwise than by virtue of a special power of appointment) less the amount of 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 41 or by virtue of an order made under section 42,
- (d) any sum of money or other property which is, by reason of a disposition or contract made by the deceased, ordered under section 43 or 44 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 IV of this Law,

**"property"** has the meaning given in section 56(1),

**"reasonable financial provision"** has the meaning given in section 34(4),

**"registered overseas relationship"** has the meaning given in section 56(1),

**"relevant property"** has the meaning given in section 39(6),

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

**"separation order"**, in relation to a civil partnership, means a separation order within the meaning of the Civil Partnership Act 2004<sup>d</sup> or the Civil Partnership (Jersey) Law 2012<sup>e</sup>, or an overseas legal separation entitled to recognition in the United Kingdom by virtue of that Act,

**"spouse"** – see section 56(1),

**"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 the person would have had power to dispose by will if the person had been of full age and capacity.

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<sup>d</sup> An Act of Parliament (2004 c. 33).

<sup>e</sup> Ch. 12.260.



(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 who is the administrator for the time being of any such real property (acting in accordance with Part IV of this Law), 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.

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**NOTE**

*In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.*

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**PART IX**  
**MISCELLANEOUS AND GENERAL**

**General provisions as to Ordinances.**

**54.** (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.**

**55.** (1) Subject to subsection (2), the Court may, from time to time, make rules of court dealing with all procedural matters arising under this Law.

(2) The Royal Court may, from time to time, make rules of court dealing with any procedural matters concerning proceedings before that Court which have been referred from the Court under section 33.

(3) Rules made under this section –

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient, and
- (b) may be amended or repealed by subsequent rules of Court.

**Interpretation.**

**56.** (1) In this Law, unless the context otherwise requires –

**"child"** shall be construed in accordance with subsection (5),

**"civil partner"** means a person who has registered as the civil partner of the deceased under the Civil Partnership Act 2004 (**"the 2004 Act"**), or under the Civil Partnership (Jersey) Law 2012, or who is treated under the 2004 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 Court of Alderney, except for the purposes of Part VIII when it shall have the meaning given in section 33,

**"date of commencement"** means the date when the relevant provision comes into force in accordance with any Ordinance made under section 59,

**"descendants"** shall be construed in accordance with paragraph 9 of Schedule 1,

**"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<sup>f</sup>, or

- (ii) annulled by a decree of nullity of marriage in the Bailiwick 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,

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

**"enactment"** means any Law, Ordinance or subordinate legislation and includes (without limitation) an enactment of the States of Jersey, 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 the real or personal estate of the deceased person,

**"former civil partner"** has the meaning given in section 53(1),

**"former spouse"** has the meaning given in section 53(1),

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<sup>f</sup> Ordres en Conseil Vol. XXIII, p. 336; Vol. XXVII, p. 92.

**"heir"** means a person who is a beneficiary pursuant to the will of a person who dies testate, or a person entitled to benefit in the estate of a person who dies (whether wholly or partially) intestate, but does not include the Crown,

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

**"marriage"** shall be construed in accordance with subsection (2),

**"Matrimonial Causes Division"** has the meaning given in section 53(1),

**"net estate"** has the meaning given in section 53(1),

"personal representative" has the meaning given in section 53(1),

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

**"real property"** means real property situate in the Island of Alderney and includes (without limitation) any right or interest which by the law of Alderney is or is deemed to be real property,

**"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 53(1),

**"spouse"** means a party to a marriage and shall be construed in accordance with subsection (2),

**"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 53(1),

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

(2) For the purposes of this Law, a marriage under the law of any country or territory is not prevented from being recognised only because it is the marriage of a same sex couple, and **"spouse"** shall be interpreted accordingly.

(3) 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.

(4) 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.

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

- (a) an illegitimate child or other illegitimate 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.

(6) For the purposes of paragraph 13 of Schedule 1, 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.

(7) The Interpretation (Guernsey) Law, 1948<sup>g</sup> applies to the interpretation of this Law.

(8) 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.

### **Repeals.**

57. The following provisions and enactments are repealed –

- (a) the Law entitled "Loi sur les Successions en l'île d'Auregny", registered on the 22<sup>nd</sup> May 1841<sup>h</sup>,
- (b) Articles 2, 4 to 6 and 8 to 10 of the Law entitled "Des Formalités requises pour les Testaments

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<sup>g</sup> Ordres en Conseil Vol. XIII, p. 355.

<sup>h</sup> Ordres en Conseil Vol. I, p. 77.

d'Immeubles", registered on the 26<sup>th</sup> June 1852<sup>i</sup>, so far as they apply to the Island of Alderney,

- (c) the Law entitled "Loi supplémentaire à la Loi des Successions", registered on the 14<sup>th</sup> February 1893<sup>j</sup>,
- (d) the Law entitled "Loi relative à la Portion Disponible des Biens Meubles des Pères et Mères", registered on the 16<sup>th</sup> April 1930<sup>k</sup>,
- (e) in Article 44 of the Matrimonial Causes Law (Guernsey), 1939, the words after "the real or personal estates of the deceased",
- (f) in the Alderney Land and Property, etc., Law, 1949<sup>l</sup> –
  - (i) in section 16(2)(c), the words "or upon application made in virtue of a right of dower or franc veuvage,"
  - (ii) in section 16(2)(d), the words ", not being an interest which by any provision of this Law has vested in the Clerk of the Court,"
  - (iii) section 16(3),
  - (iv) in section 21(1), the words after "or by documentary evidence,"

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<sup>i</sup> Ordres en Conseil Vol. I p. 212; Order in Council No. IV of 2008.

<sup>j</sup> Ordres en Conseil Vol. II, p. 400.

<sup>k</sup> Ordres en Conseil Vol. VIII, p. 403.

<sup>l</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XIII, p. 416; Vol. XV, p. 271; Vol. XVI, p. 202, Vol. XXVIII, p. 576; Vol. XXIX, p. 156; Vol. XXXI, p. 306; Vol. XXXV(1), p. 171; Vol. XLIII(1), p. 152.



- (v) section 54,
- (vi) in section 56, the words "subject to any right of dower or franc veuvage" in subsection (1), and the whole of subsection (2),
- (vii) sections 57 to 65,
- (g) the Wills (Alderney) Law, 1981<sup>m</sup>.

**Citation.**

**58.** This Law may be cited as the Inheritance (Alderney) Law, 2015.

**Commencement.**

**59.** 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.

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**NOTE**

*The Law was brought into force on 1st January, 2016 by the Inheritance (Alderney) Law, 2015 (Commencement) Ordinance, 2015, section 1.*

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<sup>m</sup> Ordres en Conseil Vol. XXVII, p. 294.

SCHEDULE 1

Section 4

**Rules of intestate succession**

General rules

1. In order for a person to inherit, the person 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 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 32) 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, when alive, have been capable of inheriting from the deceased, and
- (b) the representative must be a descendant of the person to be represented, and 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 that person 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 | - <b>"descendants"</b> , comprising the children and remoter issue of the deceased through all degrees,        |
| Class 2 | - <b>"privileged collaterals"</b> , comprising the brothers and sisters of the deceased and their descendants, |
| Class 3 | - <b>"ascendants"</b> , comprising those from whom the deceased is descended,                                  |
| Class 4 | - <b>"remaining collaterals"</b> , 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 56(6).

**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*.

SCHEDULE 2

Section 8

**Oath or affirmation for administrators**

"You swear and promise on the faith and truth that you owe to God {or  
"You promise"} that well and faithfully you will discharge the duties  
attaching to the office of administrator of the real estate of the late  
{name of deceased}.