

PROJET DE LOI

ENTITLED

The Successions (Personal Estates of Married Persons) (Sark) Law, 1975 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXV, p. 75. See also the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (Sark Ordinance No. II of 2020).

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The Successions (Personal Estates of Married Persons) (Sark) Law, 1975

ARRANGEMENT OF SECTIONS

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The Successions (Personal Estates of Married Persons) (Sark) Law, 1975

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the third day of October, nineteen hundred and seventy-three, 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 Sark.

Disposal of personal estate by will.

1. Subject to the provisions of section seven and section twelve of this Law, it shall be lawful for every person to dispose testamentarily of the personal estate belonging to him at the time of his death, other than that part thereof which his surviving spouse is entitled to take by virtue of the next following section and the *légitime* which his surviving issue are entitled to take by virtue of section three of this Law.

Right of surviving spouse.

2. Where a person dies leaving a husband or wife, the surviving husband or wife shall be entitled to take absolutely –

- (a) if the deceased is survived by any issue, one-third of the personal estate of the deceased, or
- (b) if the deceased is not survived by any issue, one-half of the personal estate of the deceased.

Légitime of issue.

3. (1) Where a person dies leaving issue, they shall be entitled to take absolutely –

- (a) if the deceased is survived by a husband or wife, one-third of the personal estate of the deceased, which shall be taken after the surviving spouse has taken his share by virtue of the last foregoing section, or
- (b) if the deceased is not survived by a husband or wife, one-half of the personal estate of the deceased,

so, however, that no issue shall be entitled to take by virtue of this section whose parent is living at the death of the deceased.

Division of *légitime* and representation of predeceased children.

4. (1) Where a person (hereafter in this section referred to as "**the deceased**") dies leaving two or more children surviving him and no other issue having right by virtue of the last foregoing section to take the *légitime* in the succession to the personal estate of the deceased, the *légitime* shall be divided equally among those children.

(2) Where the deceased dies predeceased by his only child, who has left issue who survive the deceased, such issue who have the right by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased shall take, through all degrees per stirpes, in equal shares if more than one, the whole of the *légitime*.

(3) Where the deceased is predeceased by any children (hereafter in this subsection referred to as "**the predeceased children**"), who have left issue who survive the deceased and who have the right by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased together with any children of the deceased who have survived the deceased (hereafter in this subsection referred to as "**the surviving children**"), the *légitime* shall be divided equally into a number of shares equal to the aggregate of the number of the

predeceased children and the number of the surviving children and, of those shares, one shall be taken by each of the surviving children and one shall be taken, through all degrees *per stirpes*, by such issue of each of the predeceased children, if more than one in equal shares.

(4) Where the deceased dies predeceased by all his children, two or more of whom have left issue who survive the deceased and who have the right among them by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased, the *légitime* shall be divided equally into a number of shares equal to the number of such predeceased children who have left such issue as aforesaid and, of those shares, one shall be taken, through all degrees *per stirpes*, by such issue of each of the predeceased children, if more than one in equal shares.

Making and choosing of lots.

5. (1) Where the *légitime* in the succession to the personal estate of any person is to be divided between two or more persons, lots shall be chosen by the children of that person in order of seniority, first by the sons and then by the daughters; and the lots shall be made by the heir who comes last in such order of precedence.

(2) For the purposes of subsection (1) of this section the issue of any predeceased child representing that child by virtue of any of the provisions of the last foregoing section in the succession to the personal estate of any person shall take the same precedence which such child would have taken if he had survived that person; and if more than one and they fail to agree on the choice of lot, the elder or eldest of them shall make the choice of lot.

(3) The provisions of subsection (1) of this section shall apply in relation to the division of a *légitime* or any part thereof between the issue of any predeceased child as aforesaid as those provisions apply in relation to the division of

a *légitime* between children.

Power to direct by will that *légitime* or part thereof be held upon certain trusts.

6. Notwithstanding the foregoing provisions of this Law, the parent, grandparent or remoter ancestor (hereafter in this section referred to as "**the testator**") of any person may by will direct –

- (a) that the *légitime* or such part thereof as that person may be entitled to take in the succession to the personal estate of the testator by virtue of section three of this Law shall be held in trust to the intent that the net income thereof shall be paid to that person during his lifetime and that upon his death the capital shall be distributed between his heirs or legatees in all respects as if the *légitime* or such part thereof, as the case may be, had not been placed in trust, and
- (b) that the *légitime* or such part thereof as that person, being a married woman, may be entitled to take in the succession to the personal estate of the testator by virtue of the said section three shall be held in trust to the intent that the net income thereof shall be paid to her during her marriage and that the capital be –
 - (i) if she survives her husband, transferred to her upon the death of her husband, or
 - (ii) if she predeceases her husband, distributed between her heirs or legatees upon her death.

NOTE

In accordance with the provisions of the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020, section 2, Schedule 2, with effect from 23rd April, 2020, section 1(2) and section 2 of the Same-Sex Marriage (Sark) Law, 2020 do not apply in respect of paragraph (b) of this section.

Renunciation of right of surviving spouse.

7. (1) Where any person has by any settlement, contract or other instrument made before or after their marriage renounced the right which he may have to any part of the personal estate of his spouse by virtue of section two of this Law, it shall be lawful for his spouse to dispose testamentarily of that part of his personal estate.

(2) Where a wife has by any settlement, contract or other instrument made before the commencement of this Law (whether made before or after their marriage) renounced the right which she may have had to any part of the personal estate of her husband by virtue of the law in force in the Island of Sark before the commencement of this Law, it shall be lawful for her husband to dispose testamentarily of that part of his personal estate.

Adopted persons.

8. For the purposes of this Law, an adopted person shall be treated as the child of the adopter born in lawful wedlock and not as the child of any other person.

Divorced persons.

9. For the purposes of this Law, a person whose marriage has been dissolved or annulled by a decree granted under the Matrimonial Causes Law (Guernsey), 1939^a, or by a decree recognised as valid in the Bailiwick of Guernsey, shall not be treated as the husband or wife of the other party of the marriage.

Interpretation.

10. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"adopted person" means a person adopted under an adoption order recognised as valid in the Island of Guernsey for the purposes of any enactment for the time being in force in that Island relating to successions to the personal estates of married persons,

"child", in relation to any person, means the lawful descendants of that person in the first degree; **"issue"**, in relation to any person, means the lawful issue of that person however remote,

"légitime" means, in relation to the succession to the personal estate of any person who dies leaving issue, that part of his personal estate which his issue are entitled to take by virtue of section three of this Law,

"personal estate" means, in relation to the succession to the personal estate of any person, so much of the personal estate belonging to him at the time of his death as remains after provision is made for the satisfaction of all funeral, testamentary and administration expenses, debts and other liabilities of the estate of that person.

^a Ordres en Conseil Vol. XI, p. 318.

(2) Except where the context otherwise requires, any reference in this Law to any other enactment includes a reference to that enactment as amended, repealed or replaced by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948^b, shall apply to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

NOTE

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Repeal.

11. The Loi entitled "Loi relative à la Portion Disponible des Biens Meubles des Pères et Mères" registered on the records of the Island of Guernsey on the twenty-sixth day of October, eighteen hundred and seventy-two^c, shall cease to have effect in the Island of Sark.

Savings.

12. (1) This Law shall not apply in relation to the succession to the personal estate of any person who died before the commencement of this Law.

(2) Nothing in this Law contained shall interfere with or affect any settlement, contract or other instrument made before the commencement of this Law respecting the property of a married woman.

^b Ordres en Conseil Vol. XIII, p. 355.

^c Ordres en Conseil Vol. II, p. 127.

Citation and commencement.

13. (1) This Law may be cited as the Successions (Personal Estates of Married Persons) (Sark) Law, 1975.

(2) This Law shall come into force on the seventh day next following the date of the registration of this Law on the records of the Island of Guernsey.

NOTE

The Law was registered on the Records of the Island of Guernsey on 3rd June, 1975.
