

Changes to Jersey law to look out for in 2018

Insights - 02/01/2018

In this Q&A, Ogier counsel and probate manager Henry Wickham looks at some of the key changes due to come into force in Jersey law this year, alongside the areas of law most likely to be discussed in 2018.

What changes in Jersey law can we expect to see in 2018?

One big change will be brought about by the Capacity and Self Determination (Jersey) Law 2016, which is due to come into effect in April 2018. This will make a welcome and long overdue update to the old customary laws currently in place.

This new law will give people the opportunity, while they still have capacity, to make decisions regarding their financial and personal affairs and welfare, which will take effect should they lose capacity.

At the moment, there is no mechanism in place in Jersey for a person to do this and to put into place the equivalent of an English Lasting Power of Attorney. Currently, a Power of Attorney can be drafted and signed, giving your Attorney the ability to do certain things on your behalf, however as soon as you lose your mental capacity, this Power of Attorney is immediately invalidated. There is therefore no way for a person to appoint, while they have capacity, someone to look after their affairs when they don't.

The new law will enable anyone that is over the age of 18 and who currently has mental capacity to put in place two different types of Lasting Power of Attorney, one will deal with health and welfare matters such as medical treatment and wishes in relation to life sustaining treatment and the other will cover property and financial affairs, enabling the person to name someone to assist with the management of their assets.

What do you expect to be discussed in 2018?

The concept of *légitime*, which is Jersey's forced heirship regime, might be reviewed in detail once more.

Under current Jersey succession laws, only a spouse or a child of a deceased person can make a claim against the deceased's Will covering their movable estate if the Will doesn't make sufficient provision for them as determined by the law. Removing this concept of forced heirship would bring Jersey in line with both England and Guernsey - the latter replaced their forced heirship regime in 2011 with a system of full testamentary freedom.

This may also pave the way for relatives other than a spouse or children to be able to make a claim against a person's Will should the need arise. While it could be seen that this will increase litigation around the distribution of a person's estate, thereby eating into the estate assets, it would also offer more flexibility and is more in step with the diverse family set-ups that we see today. Jersey succession law does not make any provision for a common law spouse or for dependent parents, which, with Jersey's aging population and the popularity of families living in two generation homes, is more prevalent now than ever.

Are there any areas that you anticipate will come up this year?

I expect we may see a change to the Wills and Succession (Jersey) Law 1993, which was the subject of an independent report back in 2015 by Professor Meryl Thomas. The report surrounded the issue that prevents people who cannot write, due to a physical disability, being able to make a valid Will - currently you have to be able to sign a Will, or make your mark upon it, in order for it to be binding under Jersey Law. This report followed the decision taken in the local case of a man who was deemed to have died intestate because he was unable to sign his Will, which the report stated breaches the European Convention of Human Rights. The man in this case drew up a Will in accordance with his wishes but was unable to physically sign it, however he instructed an independent person to sign on his behalf. There is law which allows this in both Guernsey and England but nothing similar here in Jersey. I would hope and expect the law to be changed in this regard as soon as possible.

Another area that could do with review is the historical requirement that a Will of Jersey Immovable Property be read out loud to the person making the Will, by a qualified person, prior to them signing it. This is a customary law requirement stemming from the time when illiteracy was more common in Jersey, and it is much less relevant these days.

Anything else to add?

I would like to see Jersey's succession law brought more into line with what has been introduced in other jurisdictions such as Guernsey and England and I do think that the above shows that there are steps being taken in this direction.

From a personal point of view, I also think that a more flexible approach to how maternity and paternity leave is taken and offered by employers should be reviewed. New legislation was introduced in the UK in 2015 allowing parents to take up to 50 weeks off between them, following the first two weeks after birth, and to receive statutory pay. I understand that this is

currently being looked at in Jersey which is great news.

This article first appeared in Business Life Global.

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