



CHANGE IN THE CHANNEL

Upcoming legislation in Jersey is set to empower the island's vulnerable population, writes Donna Withers

Although Jersey enjoys a highly developed legal system facilitating its offshore finance industry, its laws in relation to vulnerable individuals have been somewhat neglected. However, new laws are now in the pipeline that will radically change the approach to estate planning for vulnerable islanders: the *Capacity and Self Determination (Jersey) Law 2016* (the Capacity Law) and a draft *Signing of Instruments (Miscellaneous Provisions) (Jersey) Law* (the Signing Law).

The Capacity Law is a substantial piece of legislation that will bring the principles of autonomy and best interests to the fore when making decisions on behalf of vulnerable clients. The subordinate regulations are soon to be lodged for debate in Jersey's parliament, the States Assembly, and it is hoped that the Capacity Law and its regulations will be in force by autumn 2018. In relation to estate planning, highlights of the Capacity Law include lasting powers of attorney (LPAs) and statutory wills.

LPAs

For the first time, a Jersey resident will be able to grant an LPA, which, in addition to health and welfare issues, can be used to deal with the donor's property and financial affairs. The new regime for LPAs will empower Jersey residents to plan ahead and afford flexibility to prescribe how they would wish for their affairs to be organised, in the event that they are unable to do so for themselves.

The Capacity Law expressly provides for the recognition and enforcement of

LPAs that have been validly created and registered elsewhere in the 'British Islands'. The Royal Court of Jersey has always taken a pragmatic approach to such powers given by non-Jersey residents and has registered them for use in the island as a matter of comity. I would expect this approach to continue for similar powers and individuals resident outside the British Islands.

The States Assembly expressed the intention that all Jersey residents should create LPAs. Wishing to learn from the experience in England and Wales, the Jersey LPAs are intended to be much simpler than those introduced in that jurisdiction. An online system is currently under construction and will be available for user testing shortly. Although simplification and accessibility are to be welcomed, they must not be at the cost of safeguards against abuses of LPAs and taking professional advice on the creation of LPAs.

STATUTORY WILLS

For the first time, statutory wills will be available in Jersey. The Royal Court will be empowered to direct that a will may be executed on behalf of a person lacking testamentary capacity. Jersey has adopted the common-law principles of private international succession law, in that the *lex situs* is applied to questions of immovable property, and the *lex domicilii* to questions concerning movables. Therefore, any such applications to the Royal Court for a statutory will could not include immovable property outside the island.

EXECUTION OF DOCUMENTS

In addition to the Capacity Law, the Signing Law is currently before the States Assembly for debate. The Signing Law is the result of uncertainty in Jersey law as to the efficacy of signatures put to documents on behalf of physically incapacitated persons. In a recent case,¹ it was found that a will signed by someone on the testator's behalf could not be admitted to probate, notwithstanding that the testator had testamentary capacity and that the will was made at his direction with full knowledge and approval. Following this decision, the worst-case scenario might be that a physically incapacitated person is deprived of the right to make a will. The Signing Law will ensure that vulnerable islanders, by reason of physical incapacity, are not deprived of their rights and will ensure that they can execute wills, powers of attorney, LPAs and affidavits.

Such measures are a welcome addition to Jersey legislation and the tools available to practitioners for estate planning for its vulnerable population. These are positive developments that will empower the vulnerable in the island's population and those who support them.

¹ *In the matter of the Representation of Nicola Maria Le Couilliard (née Perks) as Executrix of the late Anthony Yves Le Couilliard* (unreported)



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