

# PROJET DE LOI

ENTITLED

## **The Children (Guernsey and Alderney) Law, 2008 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XIV of 2009; as amended by the Children (Guernsey and Alderney) Law, 2008 (Amendment) Ordinance, 2009 (No. XI of 2009); the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (No. XLVIII of 2009); the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015 (No. XX of 2016); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Law is prospectively amended by the Population Management (Guernsey) Law, 2016 (No. \*\* of 2016).

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## **The Children (Guernsey and Alderney) Law, 2008**

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## **The Children (Guernsey and Alderney) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> October 2004<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Guernsey, Alderney, Herm and Jethou.

### **PART I PRELIMINARY**

#### **Purpose and objects.**

**1.** (1) The principal purpose of this Law is to reform, in respect of Guernsey and Alderney, the law relating to children and their families, in order that suitable provision may be made –

- (a) to protect children from harm, and
- (b) to promote their proper and adequate health, welfare and development.

(2) Without limiting the generality of the principal purpose under subsection (1), this Law has the following specific objects –

- (a) the creation of obligations concerning the provision of services for children in need and for children who require care, protection, guidance or control,
- (b) the prescription of the duties, powers and rights of parents and others caring for children,
- (c) the establishment of a Child, Youth and Community Tribunal, and

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<sup>a</sup> Billet d'État No. XVII of 2004.

- (d) the setting of standards, and creation of conditions, which will enable there to be ratified on behalf of Guernsey and Alderney, such international agreements concerning children as the States or the States of Alderney, as the case may be, may resolve.

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**NOTE**

*The following cases have referred to this Law:*

*In re the S children* (2010) (Unreported, Juvenile Court, 17th March) (Guernsey Judgment No 13/2010);

*In re T (a minor)* (2010) (Unreported, Royal Court, 15th April) (Guernsey Judgment No 22/2010);

*In re V (a minor)* (2010) (Unreported, Royal Court, 15th June) (Guernsey Judgment No 25/2010);

*In re U and U (minors)* (2010) (Unreported, Magistrate's Court, 16th July) (Guernsey Judgment No 26/2010);

*The States of Guernsey and T* (2012) (Unreported, Royal Court, 14th November) (Guernsey Judgment No 40/2012);

*In the matter of "C"* (2013) (Unreported, Royal Court, 3rd January) (Guernsey Judgment No. 20/2013);

*In the matter of "K" (a minor)* (2014) (Unreported, Royal Court, 16th July) (Guernsey Judgment No. 34/2014).

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**Key definitions.**

2. (1) Unless the context requires otherwise, the following provisions of this section have effect for the interpretation of this Law and (subject to any adaptation contained in such an Ordinance or subordinate legislation) any Ordinance or subordinate legislation made under this Law.

(2) "**Child**" means a person under the age of 18 years.

(3) Subject to any provisions to the contrary of, or made under, this Law (including, for the avoidance of doubt, the provisions of any Ordinance made under section [109] relating to assisted reproduction and surrogacy) or any other enactment –

(a) the "**father**" of a child means –

(i) the genetic father of that child (whether or not



he has parental responsibility in respect of the child), or

- (ii) where an adoption order has been made in respect of the child, any man who is authorised under the order to adopt the child, and

(b) the **"mother"** of a child means –

- (i) the woman who gave birth to that child, or
- (ii) where an adoption order has been made in respect of the child, any woman who is authorised under the order to adopt the child.

(4) **"Parent"** means, in relation to a child, a father or mother who has parental responsibility in respect of the child.

(5) **"Parental responsibility"** has the meaning given under section 5.

(6) **"Guardian"** means an individual appointed under Part III to fulfil the role of a parent in the place of a parent who has died.

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**NOTE**

*In section 2, the figures in square brackets in subsection (3) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 48, with effect from 4th January, 2010.*

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**Welfare of the child and the child welfare principles.**

**3.** (1) Subject to subsection (3), when a public authority carries out, in respect of a child, any function under this Law, that authority shall –

- (a) take into consideration such of the child welfare principles set out in subsection (2) as may be relevant

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to the circumstances or matter in relation to which the function is being carried out, and

- (b) having taken those principles into account, carry out the function, having regard to the overriding principle that the child's welfare is the paramount consideration.

(2) The principles (the "**child welfare principles**") for the purpose of subsection (1) are –

- (a) that a child's welfare is normally best served by being brought up within his own family and community,
- (b) that, where it is not possible for a child to be brought up within his own family or community, his welfare is normally best served by maintenance of regular contact with his family and community,
- (c) that no compulsory intervention shall be made in respect of a child, unless it is necessary for the effective provision to the child of care, protection, guidance or control,
- (d) that any delay in determining a question about a child's upbringing is likely to be prejudicial to the child's welfare,
- (e) that irrespective of age, development or ability, a child should be given an opportunity to express his wishes, feelings and views in all matters affecting him,
- (f) that, except where it is shown to the contrary, it is presumed that a child is capable of forming a considered view from the age of 12 years,
- (g) that a child in the care of the States is entitled to be

provided with, and may expect to be subject to, insofar as is practicable, similar levels of care, protection, guidance and control as would be expected to be provided or exercised in respect of a child by reasonable parents,

- (h) that in any case involving criminal activity, or the risk of criminal activity, by a child, the primary purpose of any compulsory intervention shall be the prevention of such activity in both the short and long terms,
  - (i) that it is expected that parents and any others responsible for a child's welfare will consult and co-operate with one another, and where possible resolve matters by agreement, in an atmosphere of openness and non-confrontation, with recourse to formal proceedings (whether court or tribunal) only as a last resort,
  - (j) that it is normally in the best interests of a child to have ongoing contact with both parents and it is the responsibility of the parents and any public authority to take reasonable steps to promote such contact, and
  - (k) that in determining any issue under this Law there shall be no discrimination by any public authority on the grounds of gender, marital status, ethnic or cultural origin, religion, disability, age or sexual orientation.
- (3) Subsection (1) does not apply –
- (a) where the carrying out of a function in accordance with subsection (1) is likely to cause an immediate risk to the health and safety of any person, in which case the public authority by whom the function may be

carried out, shall carry out the function, in such manner, as appears to the authority in question to be reasonable in all the circumstances, having regard to –

- (i) the requirements of subsection (1), and
  - (ii) the need to minimise that immediate risk,
- (b) where a relevant court makes a variation order under section 97, or
  - (c) where the function is a decision relating to the prosecution of any criminal offence.

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**NOTE**

*The following case has referred to section 3:*

*In the matter of "C" (2013) (Unreported, Royal Court, 3rd January) (Guernsey Judgment No. 20/2013).*

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**The child welfare checklist.**

- 4. (1) When determining any issue concerning –
  - (a) the upbringing of a child under this Law, or
  - (b) the application of the child welfare principles,

a public authority shall, in particular, have regard to the matters set out in subsection (2) (the "**child welfare checklist**").

- (2) The matters for the purposes of subsection (1) are –
  - (a) the child's wishes and feelings (in the context of his age and understanding),
  - (b) the age, gender, ethnicity, cultural background,

language, religion and any other relevant characteristics of the child,

- (c) any harm the child has suffered or is at risk of suffering,
- (d) the child's physical, emotional and educational needs,
- (e) how capable each of the parents (or any other person looking after or having parental responsibility for the child) is of meeting the child's needs,
- (f) the importance and likely effect of contact between the child and his parents, siblings, relatives and any other people significant to the child, and
- (g) the effect or likely effect of any change in the child's circumstances, including the effect of the child's removal from Guernsey or Alderney.

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**NOTE**

*The following case has referred to section 4:*

*In re T (a minor)* (2010) (Unreported, Royal Court, 15th April)  
(Guernsey Judgment No 22/2010).

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**PART II**  
**PARENTAL RESPONSIBILITY**

**Definition of "parental responsibility".**

5. Parental responsibility in relation to a child consists of –

- (a) the duties –
  - (i) to safeguard and promote the child's health, education, development and welfare,

*Consolidated text*

- (ii) to provide care, direction, guidance and control, in a manner appropriate to the age and understanding of the child,
  - (iii) to determine all aspects of the child's upbringing,
  - (iv) to provide a home for the child or otherwise regulate where the child shall live,
  - (v) to maintain regular relations and direct contact with the child, if not living with the child,
  - (vi) to act as the child's legal representative, and
  - (vii) to safeguard, preserve and otherwise deal with the child's property,
- (b) the obligation to perform the duties described in paragraph (a), but only so far as performance of the duties is –
- (i) practicable,
  - (ii) in the interests of the child, and
  - (iii) consistent with the evolving capacities of the child, and
- (c) the right to exercise such powers as are reasonably necessary to discharge the obligation described in paragraph (b), without interference from any person or public authority except in accordance with this Law or any other enactment.

**Acquisition of parental responsibility by mothers and fathers.**

6. (1) Subject to subsection (3), where a child's mother and father are married to each other at the time of the child's birth they shall each have parental responsibility in respect of that child.

(2) Subject to subsection (3), where a child's mother and father are not married to each other at the time of the child's birth –

(a) the mother shall have parental responsibility in respect of that child, and

(b) the father (referred to hereinafter as an "**unmarried father**") shall not have parental responsibility in respect of that child, unless he acquires it under section 7.

(3) Subsections (1) and (2) are without prejudice –

(a) to any order affecting parental responsibility made by –

(i) a relevant court pursuant to a power created under or deriving from –

(A) this Law, or

(B) any other enactment,

(ii) any other court in the British Isles, and

(b) to the provisions of this Law or any other enactment, or any rule of law, under which –

(i) a person may acquire, be granted, or deprived of, parental responsibility, or

(ii) parental responsibility is affected in some other

manner.

**Acquisition of parental responsibility by unmarried fathers.**

7. (1) The unmarried father of any child born before the commencement of this section who, before the commencement of this section –

- (a) married the child's mother, or
- (b) had parental responsibility, or its equivalent, under the law of any part of the British Isles, other than Guernsey or Alderney,

acquires parental responsibility in respect of that child upon the commencement of this section.

(2) After the commencement of this section, the unmarried father of a child acquires parental responsibility in respect of that child –

- (a) upon registration as that child's father under any enactment relating to the registration of births occurring within Guernsey or Alderney,
- (b) upon the making in his favour of –
  - (i) a parental responsibility order, or
  - (ii) a residence order,
- (c) by written agreement with that child's mother in such form as may be prescribed,
- (d) by marriage to the child's mother subsequent to the child's birth, or
- (e) if he acquires parental responsibility, or its equivalent, under the law of any part of the British Isles, other



than Guernsey or Alderney.

**Others who may acquire parental responsibility.**

8. For the avoidance of doubt, the following persons shall acquire parental responsibility in respect of a child in the following circumstances –

- (a) the Department, on the making in its favour of –
  - (i) a community parenting order,
  - (ii) an emergency child protection order, but only to the extent necessary to safeguard the welfare of the child (having regard to the duration of the order),
  - (iii) a care requirement but only to the extent necessary to give effect to the terms and conditions of the care requirement, or
  - (iv) a secure accommodation order (having regard to the duration of the order),
- (b) any person in whose favour a residence order is made,
- (c) a guardian, when his appointment as such takes effect under section 13, and
- (d) any person in whose favour a parental responsibility order is made.

**Shared parental responsibility.**

9. (1) A person who has shared parental responsibility in respect of a child may exercise the right under section 5(c) without the consent of any other person having shared parental responsibility in respect of the child, except in relation to the following issues –

- (a) naming, or changing the name of, the child,
- (b) subject to section [75], removing the child out of the jurisdiction of Guernsey and Alderney,
- (c) choosing the school or other educational institution which the child is to attend,
- (d) choosing the religion in which the child is to be brought up,
- (e) granting consent to the proposed marriage of the child, and
- (f) such other issue as the States may by Ordinance, made under this paragraph, specify.

(2) Where the consent of each person who has shared parental responsibility in respect of a child cannot be obtained in relation to –

- (a) any of the issues set out in subsections (1)(a) to (f), or
- (b) any other issue that arises under section 5,

an application may be made to the relevant court, by any one of those persons, to determine the issue under section 17(1)(c).

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**NOTE**

*In section 9, the figures in square brackets in paragraph (b) of subsection (1) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 49, with effect from 4th January, 2010.*

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**Further provisions relating to parental responsibility.**

**10.** (1) A person who has parental responsibility in respect of a child may not surrender, or transfer to any other person, any part of that responsibility,

but may arrange for some, or all, of it to be discharged by another person acting on his behalf.

(2) The making of any arrangement under subsection (1) shall not affect any liability of the person making it which may arise from any failure to discharge any part of his parental responsibility in respect of the child concerned.

(3) A person aged 16 years or more, who does not have parental responsibility in respect of a child who is in his care, is under a duty and has the right, whilst he has care of that child, to do what is reasonable in the particular circumstances of the case to safeguard or promote that child's welfare.

(4) A person named in any condition attached to a care requirement is under a duty and has the right, whilst the care requirement is in force, to do what is reasonable in the particular circumstances of the case to give effect to the care requirement.

(5) The fact that a person has, or does not have, parental responsibility in respect of a child shall not affect any obligation or duty which that person may have in relation to, or for, that child arising or imposed, under the general law or any enactment (such as, without limitation, any obligation or duty to maintain the child).

(6) A person who has parental responsibility in respect of a child is not entitled to act in any way which would be incompatible with any order of a relevant court or the Tribunal relating to or concerning –

- (a) the child, or
- (b) the child's property.

**Duration and termination of parental responsibility.**

**11.** (1) A person's parental responsibility in respect of a child ceases –

- (a) (for the avoidance of doubt) when that child reaches the age of 18 years,

- (b) upon that child's marriage, or
- (c) upon the making of any order by a relevant court which has the effect of terminating that person's parental responsibility.

(2) Parental responsibility in respect of a child acquired as the consequence of the making of –

- (a) a residence order,
- (b) a parental responsibility order,
- (c) an emergency child protection order,
- (d) a secure accommodation order, or
- (e) a community parenting order,

shall subsist only for such period as the order is in force.

PART III  
GUARDIANS APPOINTED TO FULFIL THE ROLE OF A PARENT IN PLACE  
OF A PARENT WHO HAS DIED

**Appointment of guardians.**

- 12.** (1) Subject to subsection (2) and section 13 –
- (a) a parent may appoint any individual to be the guardian of a child in respect of whom the parent has parental responsibility, and
  - (b) any individual who has been appointed as a guardian may himself appoint any other individual to take his place as guardian in the event of his death.

(2) An appointment under subsection (1)(a) or (b) shall not be valid unless –

(a) it is made in writing, and either –

(i) it is dated and signed by the appointer, or

(ii) it is dated and signed by some other person, in the presence, and acting upon the direction of, the appointer, in the presence of 2 witnesses who themselves sign the appointment, or

(b) it is made by will.

**Circumstances in which appointment takes effect.**

**13.** (1) Subject to subsection (2), the appointment of an individual as a guardian under section 12 takes effect upon the death of the appointer.

(2) Where a deceased appointer is survived by a parent of the child to whom the appointment relates, the appointment shall not take effect unless or until –

(a) one of the following events occurs –

(i) the surviving parent grants consent,

(ii) the surviving parent dies,

(iii) a relevant court makes an order giving effect to the appointment under section 14, or

(iv) a residence order relating to the child, in favour of a deceased appointer, was in force immediately before that appointer's death, and

- (b) the guardian accepts the appointment.

**Power of court to appoint guardians and ancillary powers.**

**14.** (1) A relevant court may by order exercise the powers under subsection (4) where –

- (a) a child has no parent with parental responsibility for him, or
- (b) a surviving parent refuses to grant consent to an appointment under section 13(2)(a)(i).

(2) The power conferred by subsection (1) may be exercised in any family proceedings if the relevant court considers that an appointment should be made, even if no application has been made for it.

(3) The following persons may apply to a relevant court for an order under subsection (1) –

- (a) any individual who has been appointed as a guardian of a child,
- (b) any person having parental responsibility in respect of a child,
- (c) the father of a child, and
- (d) with leave of the court, any other person.

(4) In any proceedings under this section or any other family proceedings, a relevant court may by order –

- (a) do any of the following –
  - (i) appoint, or revoke the appointment of, any individual as the guardian of a child,

- (ii) give effect to the appointment of any individual as the guardian of a child, subject to such limitations, conditions or other matters as it thinks fit,
  - (iii) make a section 17 order, or
  - (iv) make such other provision as it thinks fit, and
- (b) require any person to make financial provision for any child including, without limitation –
- (i) provision by way of periodical payments, or the payment of a lump sum, to the guardian of the child for the use or benefit of the child, and
  - (ii) such other provision as rules of court, made under this subsection, may provide.

**Revocation of appointment.**

**15.** (1) An appointment under section 12 –

- (a) subject to subsection (2), may be revoked by way of revocation made by, or at the direction of, the appointer, and
- (b) unless a contrary intention appears, is revoked –
  - (i) upon a subsequent appointment under that section, or
  - (ii) where the individual appointed under that section is married to the appointer, upon the making of –

- (A) a final order on decree of divorce or nullity of marriage,
- (B) a decree or pronouncement of judicial separation, or
- (C) a decree of presumption of death and dissolution of marriage,

relating to the marriage of the individual and the appointer, or

- (c) where the appointment is made by will, by revocation of that will.

(2) A revocation of an appointment under subsection (1)(a) shall not be valid unless it is made –

- (a) in writing, and
  - (i) it is dated and signed by the appointer, or
  - (ii) it is dated and signed by some other person, in the presence, and acting upon the direction, of the appointer, in the presence of 2 witnesses who themselves sign the revocation, or
- (b) by way of destruction of the instrument of appointment by –
  - (i) the appointer, or
  - (ii) some other person, in the presence, and acting upon the direction of, the appointer.

**Parental responsibility of guardians.**



**16.** A guardian whose appointment is effective under this Part shall have parental responsibility in respect of the child to whom his appointment relates, subject to such limitations, conditions or other matters (if any) as are ordered by the relevant court under section 14(4).

PART IV  
ORDERS WITH RESPECT TO CHILDREN IN FAMILY AND OTHER  
PROCEEDINGS

**Contact, residence, specific issue, prohibited steps and parental responsibility orders ('section 17 orders').**

**17.** (1) In any family proceedings, in which a question arises with respect to the welfare of any child, a relevant court may make any of the following orders, whether or not an application for any order has been made –

- (a) a residence order, being an order settling the arrangements as to the person with whom a child is to live,
- (b) a contact order, being an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the child and that named person otherwise to have contact with one another,
- (c) a specific issue order, being an order made for the purpose of determining a specific question that has arisen, or may arise, in connection with any aspect of parental responsibility for a child,
- (d) a prohibited steps order, being an order that no action of the kind specified in the order may be taken without the consent of the court,
- (e) a parental responsibility order, being an order granting a person parental responsibility for a child.

- (2) In this Law, a "**section 17 order**" means –
- (a) any order referred to in subsection (1), and
  - (b) any order varying or discharging any order under any of subsections (1)(a) to (e).

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**NOTE**

*The following cases have referred to section 17:*

*In re T (a minor)* (2010) (Unreported, Royal Court, 15th April)  
(Guernsey Judgment No 22/2010);

*In re V (a minor)* (2010) (Unreported, Royal Court, 15th June)  
(Guernsey Judgment No 25/2010).

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**Persons who may apply for a section 17 order.**

- 18.** (1) Subject to sections 19 and 20 –
- (a) the following persons are entitled to apply for a section 17 order in respect of a child –
    - (i) any person with parental responsibility for the child,
    - (ii) (where not entitled under subparagraph (i)) the father of the child, and
    - (iii) with leave of the relevant court, any person including, for the avoidance of doubt, the child himself, and
  - (b) the following persons (where not otherwise entitled under paragraph (a)) are entitled to apply for a residence order, a contact order or a parental responsibility order in respect of a child –

- (i) any person with whom the child has lived for a cumulative period of at least one year (the "**cumulative period**") in any continuous period, ending immediately upon the making of the application, of at least two years; provided that part of the cumulative period falls within the period of 3 months immediately preceding the making of the application,
- (ii) any person who has the written consent of all persons with parental responsibility for the child (including, for the avoidance of doubt, the Department where the child is subject to a care requirement, an emergency child protection order, a community parenting order or a secure accommodation order), and
- (iii) such other class or description of persons as rules of court, made under this subsection, may provide.

(2) A person not otherwise entitled to make an application without leave under this section is entitled to apply for the variation or discharge of a section 17 order if –

- (a) the order was made on his application, or
- (b) he is named in the order (but only in respect of that part of the order relating to him).

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**NOTE**

*The following case has referred to section 18:*

*In re U and U (minors)* (2010) (Unreported, Magistrate's Court, 16th July) (Guernsey Judgment No 26/2010).

**Further provisions as to applicants.**

**19.** (1) No person, other than an individual, may apply for or be granted –

- (a) a residence order,
- (b) a contact order, or
- (c) a parental responsibility order,

under this Part.

(2) Where a child is subject to a community parenting order, an application for contact with the child shall only be made and granted under Part VII.

**Special provisions in respect of Departmental foster carers.**

**20.** (1) Subject to subsection (2), a Departmental foster carer may not apply for –

- (a) a residence order,
- (b) a contact order, or
- (c) a parental responsibility order,

in respect of any child who is, or has been within the last 6 months, in the care of that person as a foster parent.

(2) Subsection (1) does not apply where –

- (i) the Department consents to the application,
- (ii) the foster carer is a relative of the child, or

- (iii) the child has been living with the carer for –
  - (A) a period of at least 18 months immediately preceding the application, or
  - (B) a cumulative period of at least 18 months in the 3 years immediately preceding the application,

and in those circumstances the carer may (with leave of the relevant court) apply for any of the orders referred to in subsection (1).

- (3) For the purposes of this section –

**"Departmental foster carer"** means a person who has been appointed as such by the Department, and

**"relative"** means a grandparent, sibling, uncle or aunt whether of the full or half blood, or by marriage, and includes the father of an illegitimate child and that father's relatives.

**Further provisions relating to section 17 orders.**

**21.** (1) Where a relevant court has power to make a section 17 order it may make –

- (a) an interim order at any stage of any proceedings even though it is not in a position to dispose finally of those proceedings, and
- (b) any order concerning financial provision for, or on behalf of, a child –
  - (i) in the case of the Royal Court, which it could make under Article 43 of the Matrimonial

Causes (Guernsey) Law, 1939<sup>b</sup>,

- (ii) in the case of the Magistrate's Court, which it could make under the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988<sup>c</sup>, and
- (iii) in the case of the Court of Alderney, which it could make under the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964<sup>d</sup>,

as if it were an order made under the enactment in question.

(2) A residence order may be made in favour of more than one person, who need not live together.

(3) Any section 17 order may contain such directions, conditions, limitations or provisions as the relevant court thinks fit.

(4) An Ordinance made under this subsection –

- (a) by the States, in relation to any Guernsey court, and
- (b) by the States of Alderney, in relation to the Court of Alderney,

may make provision enabling a Guernsey court, or the Court of Alderney, as the case may be, whenever it has power to make a section 17 order (or an interim

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<sup>b</sup> Ordres en Conseil Vol. XI, p. 318, Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XV, p. 422; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99 and Orders in Council No. IX of 1996; No. XIX of 1997 and No. XI of 2003.

<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 171; Orders in Council Nos. II of 1992 and XXIV of 1994.

<sup>d</sup> Ordres en Conseil Vol. XIX, p. 241 and Vol. XXIV, p. 150.

order) to make such orders concerning financial provision for, or on behalf of, a child as may be specified by that Ordinance.

**Duration and effect of section 17 orders.**

22. (1) Subject to any enactment, or relevant court order, to the contrary, a section 17 order (other than an interim order) shall have effect until the child to whom the order relates –

- (a) attains the age of 18 years, or
- (b) marries prior to attaining that age.

(2) A section 17 order shall cease upon the making, in respect of the child concerned, of –

- (a) a community parenting order, or
- (b) an adoption order.

(3) Where a residence order has been made with respect to a child and as result the child lives or is to live with one of the child's two parents, the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.

(4) A contact order which requires the parent with whom the child lives to allow the child to have contact with the other parent shall cease to have effect if the parents live together for a continuous period of more than six months.

(5) A section 17 order shall have no effect to the extent that it is inconsistent with a care requirement.

PART V  
SERVICES AND SUPPORT FOR CHILDREN AND FAMILIES

**"Children in need" and "children at risk".**

23. (1) For the purposes of this Part –
- (a) a child is in need if –
    - (i) he, or his family, requires the provision of additional services to enable him to achieve or maintain a reasonable standard of health or development,
    - (ii) his health or development is likely to be significantly impaired, or further impaired, without the provision of additional services,
    - (iii) he is disabled, or
    - (iv) he is, or is likely to be, adversely affected by the disability or illness of a parent or another member of his family without the provision of additional services, and
  - (b) a child is at risk if there is reasonable cause to believe that grounds exist in respect of that child for compulsory intervention under Part VII.

(2) For the purposes of subsection (1), "**additional services**" means services which are additional to the health, social, child care and educational services normally provided by the States to, or in respect of, any family or child.

**Duty of the States.**

24. (1) Subject to subsections (2) and (3), it shall be the duty of the States to provide services to any child in need, for whom they are responsible in accordance with subsection (4), so as to –
- (a) promote the upbringing of the child by the child's family, and



(b) prevent the child becoming a child at risk.

(2) Where the duty under subsection (1) conflicts with another duty imposed under any other enactment, the duty under subsection (1) shall be subject to the requirements and obligations imposed by that other duty.

(3) An Ordinance of the States made under this section, may specify –

(a) the extent of the duty under subsection (1),

(b) the department of the States, or other person, which, or who, shall be responsible for enabling the States to discharge the duty, and

(c) the nature and extent of the services to be provided under subsection (1) including, without limitation –

(i) conditions to which the discharge of the duty may be subject,

(ii) limitations upon the duty, and

(iii) the types of services including, without limitation, services involving the provision of financial assistance.

(4) For the purposes of this Part, the children for whom the States are responsible are the children of Guernsey and Alderney.

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**NOTE**

*The following Ordinance has been made under section 24:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**Duty to provide accommodation for children.**

25. (1) It shall be the duty of the Department to provide, or arrange for the provision of, accommodation for any child in accordance with regulations made under this section.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning –

- (a) the circumstances in which, and the children in relation to whom, the duty under this section shall arise,
- (b) conditions to which the discharge of the duty may be subject,
- (c) limitations upon the duty,
- (d) the type and standard of accommodation to be provided, and
- (e) any arrangements for the provision of accommodation which may be made, including, without limitation, arrangements involving accommodation –
  - (i) with foster carers,
  - (ii) in any residential establishment, and
  - (iii) by way of placement of any child with the child's parent or any other person.

**Duty to children and others in the care of the Department.**

26. (1) Subject to regulations made by the Department under this section, it shall be the duty of the States to provide services for –

*Consolidated text*

- (a) any child who is in the care of the Department, and
- (b) any person who has been in the care of the Department.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning –

- (a) the circumstances in which, and the individuals in relation to whom, the duty under this section shall arise,
- (b) conditions to which the discharge of the duty may be subject,
- (c) limitations upon the duty,
- (d) the department of the States, or other person, which, or who, shall be responsible for enabling the States to discharge the duty,
- (e) the types of services to be provided including, without limitation, services involving the provision of financial assistance and other benefits or support, and
- (f) the duties of any department of the States –
  - (i) to consult with a relevant individual who is being, or has been, in the care of the Department, and that individual's family,
  - (ii) to promote the educational achievement of a relevant individual,
  - (iii) to place a relevant individual with members of

that individual's family, and

- (iv) to review arrangements it has made in respect of any relevant individual in the performance of its duties.

(3) For the purposes of this section –

**"relevant individual"** means, subject to the provisions of any regulations made under this section, a person mentioned in subsection (1), and

a child is **"in the care of the Department"** where –

- (a) he is provided with accommodation by or on behalf of the Department for a continuous period of more than 24 hours,
- (b) he is subject to –
  - (i) a care requirement,
  - (ii) a community parenting order,
  - (iii) a secure accommodation order, or
  - (iv) an emergency child protection order, or
- (c) he falls within such other class or description of children as regulations under this section may specify.

**Duty to share information and work together.**

27. (1) It shall be the duty of –

- (a) each employee of the States, and

- (b) all other persons,

whilst they are working with any child whom they reasonably believe is in need, or at risk, to take such action in relation to that child, and his circumstances, as may be required of them under this Law.

(2) Where, in order to discharge a duty arising under subsection (1) an employee, or other person, is obliged –

- (a) to disclose information relating to an individual to any other person, or
- (b) to retain, or otherwise deal with, information relating to an individual,

that disclosure, retention or dealing is not unlawful and does not infringe any enactment, rule of law or rule of professional conduct relating to the disclosure or retention of, or other dealing with, information relating to an individual, provided that the conditions of subsection (3) are satisfied.

(3) The conditions for the purposes of subsection (2) are that –

- (a) the employee or other person is acting in good faith, and
- (b) the disclosure, retention or dealing is made, or undertaken, in accordance with the provisions of –
  - (i) this Law, or
  - (ii) any regulations or written guidance made, or issued, under this section.

**Department plan for service provision.**

**28.** (1) Within one year of the coming into force of this Part and at least once in every three years thereafter (or such other interval as the States may

by resolution provide) the Department shall prepare, and submit to the States, a plan setting out a strategy for the provision of services to promote and safeguard the welfare of –

- (a) the children of Guernsey and Alderney,
- (b) the families of those children, and
- (c) such other class or description of the population of Guernsey and Alderney, as may be prescribed,

in respect of the matters referred to in subsection (2).

(2) The matters for the purpose of subsection (1) are –

- (a) physical, emotional and mental health,
- (b) protection from harm and neglect,
- (c) education, training and recreation,
- (d) contribution to society,
- (e) social and economic well-being, and
- (f) such other matters as may be prescribed.

(3) Regulations may make such provision concerning preparation of the plan as the Department thinks reasonably necessary and, without limitation, may make provision concerning the following matters –

- (a) the duties, and extent of the duties, of –
  - (i) prescribed departments of the States, and
  - (ii) prescribed persons,

to contribute to the preparation of the plan, and

(b) the consultation to be undertaken during the preparation of the plan.

(4) The States shall consider the contents of a plan submitted under subsection (1) and, if they think fit, approve the contents.

(5) The Department shall publish a plan whose contents are approved under subsection (4).

(6) Each department of the States shall be under a duty to take such steps as are reasonably necessary to implement any recommendations made in a plan which are approved under subsection (4), including, without limitation –

(a) the identification, assessment and provision of services which may be reasonably necessary for –

(i) children in need (as defined in section 23(1)(a)), and

(ii) children at risk (as defined in section 23(1)(b)), and

(b) the sharing of financial and other resources.

**Islands Child Protection Committee.**

**29.** (1) There is established a body to be known as the Islands Child Protection Committee (the "**Child Protection Committee**").

(2) The membership of the Child Protection Committee shall consist of the following persons, or their representatives –

(a) the Chief Officer of the Department,

*Consolidated text*

- (b) the Chief Officer of Police,
- (c) the Director of the [Committee for Education, Sport & Culture],
- (d) the Chief Probation Officer,
- (e) the Children's Convenor,
- (f) the President of the Child, Youth and Community Tribunal,
- (g) the Governor of Guernsey Prison,
- (h) the Chief Executive of the States of Alderney,
- (i) a medical practitioner, and
- (j) nominees from at least two voluntary agencies working with children in Guernsey or Alderney,

provided that the Department may by regulations made under this subsection amend the membership of the Child Protection Committee.

(3) The principal objective of the Child Protection Committee shall be to co-ordinate what is done by each person or organisation represented on the Committee for the purpose of safeguarding and promoting the welfare of –

- (a) the children of Guernsey and Alderney, and
- (b) such other class or description of the population of Guernsey and Alderney, as may be prescribed under section 28(1)(c).

(4) Without limiting the generality of the principal objective set out in subsection (3), the Child Protection Committee shall have such other



functions as may be prescribed, including functions such as –

- (a) the promotion of effective co-operation between all persons involved in safeguarding and promoting the welfare of –
  - (i) the children of Guernsey and Alderney, and
  - (ii) such other class or description of the population of Guernsey and Alderney, as may be prescribed under section 28(1)(c),
- (b) the provision of guidance –
  - (i) to employees and persons working with children in Guernsey and Alderney further to section 27, or
  - (ii) in respect of any other matters falling within its remit, and
- (c) the review of any case, or incident, where a child has died or suffered serious harm.

(5) The procedure of the Child Protection Committee shall be prescribed by regulations made under this section.

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**NOTES**

*In section 29, the words in square brackets in paragraph (c) of subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 3, with effect from 1st May, 2016.*

*The following Regulations have been made under section 29:*

*Island Child Protection Committee Regulations, 2010.*

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PART VI

THE CHILDREN'S CONVENOR, [CHILDREN'S CONVENOR AND  
TRIBUNAL BOARD] AND CHILD, YOUTH AND COMMUNITY TRIBUNAL

**Office of the Children's Convenor.**

**30.** (1) There is established an office to be known as the Office of the Children's Convenor and the holder of that office –

- (a) shall be known as the Children's Convenor, and
- (b) shall carry out the functions conferred under this Law, or any other enactment, upon the Office of the Children's Convenor.

(2) Subject to subsection (3), appointment to the Office of the Children's Convenor shall be made by the [Children's Convenor and Tribunal Board].

(3) No appointment shall be made under subsection (2) other than of a person –

- (a) who is qualified for appointment as Magistrate under section 3 of the Magistrate's Court (Guernsey) Law, 1954, or
- (b) who, although not qualified for appointment as required under paragraph (a), possesses qualifications which, in the opinion of the Board, render the person fit for appointment to the Office of the Children's Convenor.

(4) The terms and conditions of the appointment of the Children's Convenor shall be such as may from time to time be agreed between the [Children's Convenor and Tribunal Board] and the Children's Convenor, provided that none of those terms and conditions shall be –

- (a) inconsistent with the provisions of any Ordinance made under section 34, or
- (b) construed so as to create a contract of employment or agency between the Board and the Convenor.

(5) The Children's Convenor is not a servant or agent of the States, but is a holder of public office and is under a duty to discharge the functions of that office fairly, impartially and independently.

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**NOTES**

*In section 30, and the heading thereto, the words in square brackets were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 50(1), with effect from 4th January, 2010.*

*In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the reference in this section to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.*

*The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.*

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**[Children's Convenor and Tribunal Board].**

**31.** (1) There is established a board to be known as the [Children's Convenor and Tribunal Board] (referred to in this Law as "**the Board**") the functions of which shall be –

- (a) to appoint the Children's Convenor under section 30(2),
- (b) to assist and support the Convenor with the carrying out of his functions, as and when requested by the Convenor, and
- [(c) to assist and support the President with the carrying

out of his functions, as and when requested,]

[(d)] to carry out such other functions as the States may, by Ordinance or any other enactment, confer upon it.

(2) The members of the Board shall be not fewer than 5, nor more than 8, persons who, subject to subsections (4) and (5), shall be appointed by resolution of the Department.

(3) The Department shall, by resolution, appoint a member of the Board to be chairman of the Board.

(4) No person shall be appointed under subsection (2) unless he is a person who appears to the Department to have knowledge and experience relevant to the functions of the Children's Convenor.

(5) No sitting member of the States of Deliberation or the States of Alderney may be appointed under subsection (2) as a serving member of the Board.

(6) The Board is not a servant or agent of the States or the Department, but is an independent body and under a duty to discharge its functions fairly, impartially and independently.

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**NOTES**

*In section 31,*

*the words in square brackets in, first, the marginal note thereto and, second, the first pair of square brackets in subsection (1) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 50(1), with effect from 4th January, 2010;*

*paragraph (d) of subsection (1) was re-lettered, and paragraph (c) thereof inserted, by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, respectively section 50(2)(b) and section 50(2)(a), with effect from 4th January, 2010.*

*The following Ordinance has been made under section 31:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney)*

Ordinance, 2009.

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**Office of the President of the Child, Youth and Community Tribunal.**

32. (1) There is established an office to be known as the Office of the President of the Child, Youth and Community Tribunal (referred to in this Law as "**the Office of the President**"), and the holder of that office –

- (a) shall be known as the President, and
- (b) shall carry out the functions conferred under this Law, or any other enactment, upon the Office of the President.

(2) Appointment to the Office of the President shall be made by the Royal Court from the members of the Child, Youth and Community Tribunal.

(3) The terms and conditions of the President's appointment shall be such as may from time to time be agreed between the Department and the President, provided that none of those terms and conditions shall be –

- (a) inconsistent with the provisions of any Ordinance made under section 34, or
- (b) construed so as to create a contract of employment or agency between the States and the President.

(4) The President is not a servant or agent of the States, but is a holder of public office and is under a duty to discharge the functions of that office fairly, impartially and independently.

**Child, Youth and Community Tribunal.**

33. (1) A tribunal to be called the Child, Youth and Community Tribunal (referred to in this Law as "**the Tribunal**") is established to carry out the functions conferred under this Law, or any other enactment, upon the Tribunal.

(2) The Tribunal shall consist of such number of members as in the opinion of the Royal Court is necessary for the purpose of enabling the Tribunal to carry out the functions conferred upon it under this Law, or any other enactment.

(3) The members of the Tribunal shall be appointed by the Royal Court.

(4) The following may not be members of the Tribunal –

- (a) a sitting member of the States of Deliberation,
- (b) a member of the States of Alderney,
- (c) a member of the Chief Pleas of Sark,
- (d) any person who holds appointment to any judicial office in the Bailiwick,
- (e) a Law Officer,
- (f) any Advocate, or lawyer, employed by the States,
- (g) any person who is aged under 21 years, and
- (h) any person who is aged 70 years or more, except in the case of such a person who has been appointed under subsection (3) before his seventieth birthday.

(5) In the exercise of its powers under this section, the Royal Court shall, wherever reasonably practicable, consult with the President and take his views into account.

**Ordinances for the purpose of Part VI etc.**

**34.** (1) The States may by Ordinance make such provision as they think fit for the purpose of giving effect to this Part and such other Parts of this Law as relate to, or concern, this Part.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or concerning –

- (a) the terms and conditions of any appointment made, or office held, under this Part,
- (b) the removal of any person from any appointment made, or office held, under this Part,
- (c) the functions that may, or shall, be exercised, performed or carried out by –
  - (i) any person under this Part, or Part VII, and
  - (ii) the Juvenile Court,
- (d) the appointment of a deputy President of the Child, Youth and Community Tribunal and the functions to be carried out by the holder of that appointment,
- (e) the obligations, rights and privileges to which any person under this Part or Part VII shall be subject or may exercise or enjoy,
- (f) the constitution, procedures and proceedings of, and other matters relevant to, the Board, the Tribunal and the Juvenile Court,
- (g) the remuneration, funding and provision of resources of, or for, any person under this Part or Part VII,
- (h) the right of any person to be heard before the Tribunal,

- (i) the referral of any matter to the Juvenile Court, and
- (j) the rules of practice and procedure governing hearings before the Tribunal.

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**NOTE**

*The following Ordinance has been made under section 34:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**PART VII**

**CHILDREN REQUIRING CARE, PROTECTION, GUIDANCE OR CONTROL**

*Compulsory intervention*

**Compulsory intervention.**

**35.** (1) The question of whether compulsory intervention may be needed in respect of a child shall only arise if –

- (a) there is, or appears to be, no person able and willing to exercise parental responsibility in such a manner as to provide the child with adequate care, protection, guidance or control, and
- (b) at least one of the conditions referred to in subsection (2) is satisfied, in respect of that child.

(2) The conditions for the purpose of subsection (1) are, that on a balance of probabilities –

- (a) the child has suffered, or is likely to suffer, significant impairment to his health or development,
- (b) the child has suffered, or is likely to suffer, sexual or physical abuse,



- (c) the child has –
  - (i) misused drugs or alcohol, or
  - (ii) deliberately inhaled a volatile substance,
- (d) the child is exposed, or is likely to be exposed, to moral danger,
- (e) the child –
  - (i) has displayed violent or destructive behaviour and is likely to become a danger, to himself, or others, or
  - (ii) is otherwise beyond parental control,
- (f) the child, being of 12 years of age or more, has committed –
  - (i) a criminal offence, or
  - (ii) what would be a criminal offence if the child had the necessary capacity, or
- (g) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.

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**NOTE**

*The following case has referred to section 35:*

*In the matter of "K" (a minor) (2014) (Unreported, Royal Court, 16th July) (Guernsey Judgment No. 34/2014).*

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*Notification and referral to and investigations by Children's Convenor*

**Notification and referral of matters to Children's Convenor.**

- 36.** (1) Any person who believes –
- (a) that the question of compulsory intervention arises under section 35, and
  - (b) that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child,

may refer the matter to the Children's Convenor.

(2) Without prejudice to subsection (1), the matters set out in subsection (3) shall be notified to the Children's Convenor –

- (a) by the persons prescribed by, or described in, and
- (b) in accordance with,

regulations and written guidance made, or issued, under this subsection.

(3) The matters for the purpose of subsection (2) are –

- (a) the detention of a child in secure accommodation,
- (b) the detention of a child by –
  - (i) a police officer, or
  - (ii) a customs officer,
- (c) the making of an emergency child protection order, or exclusion order, in respect of a child,

- (d) a recommendation to place a child outside the jurisdiction under Part X,
- (e) an application made by the Department for a community parenting order,
- (f) the detention of a child in youth detention,
- (g) an application for adoption, and
- (h) such other matters as may be prescribed.

(4) A notification, or referral, made in good faith under this section to the Children's Convenor is not to be taken to breach –

- (a) any restriction on the disclosure of information, or
- (b) any duty of confidentiality,

however imposed or arising.

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**NOTE**

*The following Regulations have been made under section 36:*

*Children (Children's Convenor) (Guernsey and Alderney) Regulations, 2010.*

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**Investigation by Children's Convenor.**

**37.** Where a matter is notified or referred to the Children's Convenor under section 36(1) or (2), the Convenor shall –

- (a) make such investigation, and
- (b) take such other action,

as is prescribed.

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**NOTE**

*The following Regulations have been made under section 37:*

*Children (Children's Convenor) (Guernsey and Alderney) Regulations, 2010.*

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**Disclosure of information.**

**38.** (1) Where the Children's Convenor reasonably believes that a person holds information that is relevant to an investigation he is carrying out under this Law, he may, by written notice served upon that person identifying the matter in respect of which he requires the information, request the person to disclose to him that information within such reasonable period as may be specified in the notice.

(2) Subject to section 39, a person who receives a notice under subsection (1) is under a duty to disclose to the Children's Convenor, within the period specified, all information which he holds relating to the matter identified in the notice.

(3) The duty under subsection (2) overrides any duty of confidentiality to which a person, who receives a notice under subsection (1), may be subject, however that duty arises.

**Disclosure orders.**

**39.** (1) Where a person fails to comply with a notice served under section 38(1), the Children's Convenor may apply to the relevant court for a disclosure order, being an order requiring the person to comply, within such period as the court may determine, with –

- (a) the terms of the notice, or
- (b) such other requirement to disclose information as the court thinks fit in the circumstances.

(2) A relevant court shall make a disclosure order where it is

satisfied that it is appropriate to do so, unless there are special circumstances which, in the opinion of the court, override the duty arising under section 38(2).

**Meaning of "information" for purposes of sections 38 and 39.**

**40.** (1) For the purposes of sections 38 and 39, **"information"** includes documents.

(2) For the purposes of subsection (2) **"documents"** includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its disclosure include references to producing a copy of the information in legible form.

**Offences of making false statement etc. and failure to comply with requirement.**

**41.** (1) A person who, in purported discharge of, or compliance with, a duty or requirement, to disclose information under section 38(2) or 39 –

- (a) makes a statement which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(2) Any person who, without reasonable excuse, fails to comply with a requirement imposed on him by a disclosure order is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

*Referral to Tribunal*

**Action after investigation by the Children's Convenor.**

42. (1) Where it appears to the Children's Convenor that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child, he shall refer the matter to the Tribunal for consideration and determination.

(2) If the Children's Convenor refers a matter to the Tribunal under subsection (1), he shall cause a meeting to be convened prior to the first occasion on which the Tribunal proposes to sit to consider the matter, between such people, and for the purpose of determining such issues as may be prescribed by an Ordinance made under section 34, except where –

- (a) it is impracticable, or
- (b) the matter is so urgent that it is not possible,

to cause such a meeting to be convened prior to that first occasion.

(3) Where any person of a class or description prescribed in an Ordinance made under section 34 ("**a prescribed person**") does not accept any –

- (a) [condition] for referral stated by the Children's Convenor [under section 35(2)], or
- (b) statement of fact made by the Children's Convenor in support of any such [condition],

the Convenor shall, unless he withdraws any such [condition] or statement, refer the matter for determination by the Juvenile Court, in accordance with the provisions of an Ordinance made under section 34.

(4) Where the Tribunal has begun to consider a case referred to it under subsection (1) and is satisfied that a prescribed person does not accept –

- (a) a [condition] for referral stated by the Children's Convenor, or
- (b) a statement of fact made by the Children's Convenor in support of any such [condition],

it shall, unless the Convenor withdraws the [condition] or statement, or the Tribunal determines to discharge the [condition] or statement, direct the Children's Convenor to consider referring any such [condition] or fact for determination by the Juvenile Court, in accordance with the provisions of an Ordinance made under section 34.

(5) Where the Children's Convenor has conducted an investigation under this Part and decides that compulsory intervention is not necessary –

- (a) he shall give such notice of his decision to such persons as may be prescribed, and
- (b) he may refer the matter to the Department, or any other person, if he determines that the child is, or may be, a child in need as defined in section 23(1)(a).

(6) Where the Children's Convenor has referred a matter under subsection (5)(b), he may make such investigation as he thinks fit in order to establish what measures have been taken further to the referral.

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**NOTES**

*In section 42,*

*the word "condition" in square brackets, wherever occurring, was substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 51(2), with effect from 4th January, 2010;*

*the words, figures and parentheses in the second pair of square brackets in paragraph (a) of subsection (3) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 51(1), with effect from 4th January, 2010.*

*The following Regulations have been made under section 42:*

*Children (Children's Convenor) (Guernsey and Alderney) Regulations, 2010.*

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*Care requirement*

**Meaning and purpose of a care requirement.**

**43.** (1) A care requirement is an order made by the Tribunal placing a child under the supervisory care of the States.

(2) The purpose of a care requirement is –

- (a) to protect the child from harm and promote his proper and adequate health, welfare and development, and
- (b) to assist the parent, or any other person who is for the time being caring for the child, to provide adequate care, protection, guidance and control for the child.

**Further provisions in respect of a care requirement.**

**44.** (1) A care requirement may only be made in respect of a child where –

- (a) after consideration of the child's case, the Tribunal is satisfied that –
  - (i) the question, of whether compulsory intervention may be needed, arises under section 35,
  - (ii) compulsory intervention is necessary to ensure the provision of adequate care, protection, guidance or control for the child,
  - (iii) the provisions of subsection (4) are met, and



- (b) the Tribunal has approved a child's plan for the child which sets out such arrangements for the child as may be specified by rules of the Tribunal.

(2) A care requirement may be made on an interim basis, for a period of not more than 28 days at any one time where the Tribunal –

- (a) is not in a position to make a final care requirement, and

[(b) either –

- (i) the condition for referral –

- (A) has been accepted by the prescribed person, or

- (B) has been determined by the Juvenile Court,

under section 42(3), or

- (ii) the condition has not been accepted or determined under subparagraph (i), but the Tribunal is satisfied that the welfare of the child requires immediate compulsory intervention to ensure the provision of adequate care, protection, guidance or control.]

(3) A care requirement may be made subject to such conditions as the Tribunal considers to be necessary including, without limitation, conditions concerning or relating to –

- (a) where the child shall, or shall not, live,

- (b) the persons with whom the child shall, or shall not, live,
- (c) the persons with whom the child shall, or shall not have, contact,
- (d) the circumstances in which a person may have contact with the child, and
- (e) placement of the child out of the jurisdiction.

(4) Except in an emergency (and then only on an interim basis under subsection (2)), a care requirement may only be made where the Tribunal is satisfied that the Department, and any other person who, or which, the Tribunal believes may have an interest, have taken all reasonable steps to assess the needs of the child and provide services on a voluntary basis, and either –

- (a) voluntary provision has not been sufficient, or
- (b) there is no reasonable prospect that voluntary provision will be sufficient,

to provide adequate care, protection, guidance or control for the child.

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**NOTES**

*In section 44, paragraph (b) of subsection (2) was substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 52, with effect from 4th January, 2010.*

*The following case has referred to section 44:*

*In the matter of "C" (2013) (Unreported, Royal Court, 3rd January) (Guernsey Judgment No. 20/2013).*

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**Obligations of the Department under a care requirement.**

**45.** Where a child is subject to a care requirement it shall be the duty of the Department, and any other person referred to in the child's plan, to give effect

to the requirement by –

- (a) the provision of such supervision, support and services as the child requires for his adequate care, protection, guidance and control, and
- (b) the taking of such steps as are necessary to ensure that any conditions to which a care requirement is subject are observed.

**Duration of a care requirement.**

**46.** (1) No child shall be subject to a care requirement for longer than is necessary to provide him with adequate care, protection, guidance or control.

(2) Subject to any variation, continuation or revocation, no care requirement shall remain in force for a period in excess of one year from the date of the final determination.

(3) Where an application is made for a community parenting order or an interim community parenting order in respect of a child who is subject to a care requirement, the duration of the care requirement shall, unless the care requirement is discharged under section 54, be extended for a period equivalent to the period commencing on the date of the application for the order and expiring on the date upon which the application is finally determined or withdrawn.

(4) A care requirement shall cease to have effect –

- (a) upon the making of an adoption order (unless the relevant court orders otherwise),
- (b) when the child attains the age of 18, [...]
- (c) if discharged under section 54[,] [or
- (d) in the case of an interim care requirement, if the Tribunal or the Juvenile Court discharges the child's

case.]

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**NOTE**

*In section 46, first, the word omitted in square brackets in paragraph (b) of subsection (4) was repealed, second, the punctuation immediately after paragraph (c) thereof was substituted and, third, paragraph (d), and the word immediately after paragraph (c), thereof were inserted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, respectively section 53(a), section 53(b) and section 53(c), with effect from 4th January, 2010.*

---

**Review, continuation, variation and revocation of a care requirement.**

47. (1) A care requirement shall be reviewed by the Tribunal in accordance with the provisions of any Ordinance made under section 34, upon the application of –

- (a) the Department,
- (b) the child, or
- (c) such other person as may be specified by such an Ordinance.

(2) Upon a review the Tribunal may continue, vary or revoke a care requirement.

*Community parenting order*

**Meaning and purpose of a community parenting order.**

48. (1) A community parenting order is an order made by a relevant court granting the Department parental responsibility for a child.

- (2) The purpose of a community parenting order is –
- (a) to protect the child from harm and promote his proper and adequate health, welfare and development, and

- (b) to enable the Department to make plans for the care of the child until –
  - (i) he attains the age of 18,
  - (ii) where appropriate and in accordance with regulations made under section 26(1)(b), he has completed any course of study or training upon which he is engaged after he has attained the age of 18, or
  - (iii) in the case of an interim community parenting order, the order expires.

(3) An application for a community parenting order may only be made by the Department.

**Circumstances in which a community parenting order may be made.**

**49.** (1) A relevant court shall not make a community parenting order in respect of a child, unless –

- (a) it has first approved the contents of a child's plan for the child, and
  - (b) the circumstances described in subsection (2)(a) or (b) apply.
- (2) The circumstances for the purposes of subsection (1)(b) are –
- (a) where –
    - (i) at least one of the conditions set out in section 35(2) is satisfied, and
    - (ii) there is no reasonable prospect of –

- (A) the child's parents, or
  - (B) any other member of the child's family,  
being able, and willing, to provide adequate care, protection, guidance and control for the child, or
- (b) where, in respect of every person who has parental responsibility for the child –
- (i) that person consents to the making of the order, or
  - (ii) that person –
    - (A) is not known,
    - (B) cannot be found, or
    - (C) is incapable of giving consent.

---

**NOTE**

*The following case has referred to section 49:*

*In re the S children* (2010) (Unreported, Juvenile Court, 17th March) (Guernsey Judgment No 13/2010);

*In the matter of "K" (a minor)* (2014) (Unreported, Royal Court, 16th July) (Guernsey Judgment No. 34/2014).

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**Contact with a child subject to a community parenting order and special contact orders.**

**50.** (1) Subject to subsections (4) and (5), the Department shall arrange for a child who is subject to a community parenting order to have reasonable contact with any person who, immediately prior to the making of the order –

- (a) had parental responsibility for the child,
- (b) was a person in whose favour a contact order, in respect of the child, was in force,
- (c) was a person entitled to have the child residing with him under an order of a relevant court, or
- (d) as a condition of a care requirement, was a person with whom the child –
  - (i) had contact, or
  - (ii) lived.

(2) A relevant court may, upon the application of any person of a class or description specified by rules of court, make a special contact order in respect of a child who is subject to a community parenting order.

- (3) A special contact order is an order –
- (a) requiring the Department to allow a child to visit, or stay with, the person named in the order, or
  - (b) requiring the child named in the order and that person otherwise to have contact with one another.

(4) A relevant court may make an order authorising the Department to refuse to allow contact between the child and any person –

- (a) who is –
  - (i) mentioned in subsection (1)(a) to (c), or
  - (ii) named in a special contact order, and

(b) who is named in the order under this subsection.

(5) The Department may, for a period not exceeding 7 days, refuse to allow the contact that would otherwise be required under subsections (1) or (2) if –

(a) it is satisfied that it is urgently necessary to ensure that contact is denied in order to safeguard or promote the child's welfare, and

(b) it gives notice to the person who is denied contact as soon as reasonably practicable.

(6) An order made under this section –

(a) may be made subject to such conditions as the relevant court thinks fit, and

(b) may be varied or discharged upon the application of –

(i) the Department,

(ii) the child, or

(iii) the person named in the order.

---

**NOTE**

*The following Rules have been made by Order of the Royal Court under section 50:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

---

**Effect of community parenting order on parental responsibility.**

**51.** (1) Subject to subsection (2), where a child is subject to a community parenting order, the Department may determine to what extent, if any –



- (a) a parent, or
- (b) any other person,

having parental responsibility in respect of the child, shall perform the duties and may exercise the right under section 5 in respect of that child.

- (2) Unless it has obtained –
  - (a) the consent of all persons having parental responsibility in respect of the child, or
  - (b) leave from a relevant court,

a determination of the Department under subsection (1) shall have no effect in relation to the issues referred to in subsection (3).

- (3) The issues for the purposes of subsection (2) are –
  - (a) naming, or changing the name of, the child,
  - (b) subject to Part XI, removing the child out of the jurisdiction of Guernsey and Alderney,
  - (c) placing the child out of the jurisdiction of Guernsey and Alderney,
  - (d) placing the child for adoption,
  - (e) choosing the religion in which the child is to be brought up,
  - (f) giving consent to the marriage of the child, and
  - (g) such other issue as the States may by Ordinance, made

under this paragraph, prescribe.

- (4) A community parenting order does not give the Department the power –
- (a) to give valid consent or refuse to consent to adoption,
  - (b) to appoint a guardian for the child under Part III.

---

**NOTE**

*The following case has referred to section 51:*

*In re V (a minor) (2010) (Unreported, Royal Court, 15th June)*  
(Guernsey Judgment No 25/2010).

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**Duration and discharge variation of community parenting order.**

52. (1) Subject to any enactment, or order of a relevant court, to the contrary, a community parenting order shall have effect until –
- (a) the child who is subject to the order –
    - (i) attains the age of 18 years, or
    - (ii) marries prior to attaining that age, or
  - (b) in the case of an interim community parenting order, the order expires.
- (2) A community parenting order may be discharged upon the application of –
- (a) the Department,
  - (b) the child, and

- (c) such other class or description of persons as may be specified in rules of court.

---

**NOTE**

*The following Rules have been made by Order of the Royal Court under section 52:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Power to make an interim community parenting order.**

**53.** (1) Where the provisions of section 49 are satisfied, a relevant court may, upon application made by the Department, make an interim community parenting order.

(2) An interim community parenting order shall have the same effect as a community parenting order for such period (not exceeding 3 months) as the relevant court may order.

(3) When making an interim community parenting order, a relevant court may exercise all the powers that are exercisable upon the making of a community parenting order.

(4) An interim community parenting order may be made subject to such conditions as the relevant court thinks fit.

(5) Any conditions attached to an interim community parenting order may be varied or discharged upon the application of any person referred to in section 52(2).

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**NOTE**

*The following case has referred to section 53:*

*In re the S children* (2010) (Unreported, Juvenile Court, 17th March) (Guernsey Judgment No 13/2010).

---

**Power to discharge care requirement upon disposal of application for community parenting order.**

54. Upon disposal of an application for a community parenting order a relevant court may discharge a care requirement if it is satisfied that, in all the circumstances of the matter, the care requirement would no longer serve any useful purpose.

*Protection of children in an emergency*

**Making of an emergency child protection order.**

55. (1) Where a relevant court is satisfied, on the application of the Department, that a child is –

- (a) suffering, or
- (b) at imminent risk of suffering,

serious harm, it may make an emergency child protection order.

(2) For the avoidance of doubt, an application under subsection (1) may be made ex parte.

**Effect of emergency child protection order.**

56. (1) Except where its terms otherwise provide, an emergency child protection order shall operate as –

- (a) a direction –
  - (i) to any person, who is in a position to do so, to comply with a request to produce the child to the Department, and
  - (ii) to a police officer to take such steps as are necessary, including entry onto private premises, to assist in giving effect to the order, and

- (b) lawful authority –
  - (i) subject to subsection (2), for any person approved by the Department –
    - (A) to take the child to accommodation approved by the Department, and
    - (B) to keep him there, and
  - (ii) for a police officer to discharge any duty to which he is subject under paragraph (a)(ii).

(2) An emergency child protection order may prohibit the removal of the child from any place in which he was being accommodated immediately prior to the making of the order.

**Duration of emergency child protection order.**

**57.** (1) An emergency child protection order shall remain in force for a maximum period of 8 days unless it is terminated before the expiration of that period under subsection (2).

(2) An emergency child protection order shall cease to have effect upon the occurrence of any of the following events –

- (a) the expiration of a period of 24 hours from the making of the order, in circumstances where the Department has not, within that period, taken any steps to implement the order,
- (b) the Children's Convenor, with the consent of the Department, releases the child from the order,
- (c) a relevant court discharges the order, or

- (d) the Tribunal first sits to consider the case of the child.

**Application for discharge or variation of emergency child protection order.**

**58.** (1) Any of the following may apply to a relevant court for the discharge or variation of an emergency child protection order –

- (a) the child,
- (b) a parent of the child,
- (c) a person, other than a parent, who has parental responsibility for the child,
- (d) any person with whom the child was living immediately before the making of the order, or
- (e) the Children's Convenor.

(2) An application for the discharge, or variation, of an emergency child protection order shall be heard by the court within 48 hours of service of notice of the application upon all parties who must be served with such notice in accordance with rules of court.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 58:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Exclusion order.**

**59.** (1) Where a relevant court is satisfied, on the application of the Department, that –

- (a) a child is –
  - (i) suffering, or

- (ii) at imminent risk of suffering,  
  
serious harm, and
- (b) the child will be safeguarded from that harm, if –
  - (i) the person named as respondent in the application is excluded from the child's family home,
  - (ii) there is a person specified in the order who is –
    - (A) residing in the family home, and
    - (B) capable of taking responsibility for the care and protection of the child, and
  - (iii) an exclusion order would better safeguard the welfare of the child than removing the child from the family home,

it may make an exclusion order in relation to the person named in the order.

(2) No application for an exclusion order shall be finally determined unless the person named as respondent in the application has been afforded an opportunity of being heard by the court.

(3) For the avoidance of doubt, an application under subsection (1) for an exclusion order may be made ex parte.

(4) On any adjournment of the hearing of an application under subsection (1), the relevant court may make an interim exclusion order.

**Effect of exclusion order.**

**60.** An exclusion order, or an interim exclusion order –

- (a) suspends the right of the person against whom the order is made from occupying or visiting the family home to which it relates, or
- (b) where the order is made against a person who does not have a right to occupy or visit the family home, prohibits that person from occupying or visiting that home,

except in accordance with the terms and conditions of any written permission granted by –

- (i) the court which made the order, or
- (ii) the Department.

**Power to make orders ancillary to an exclusion order.**

**61.** (1) Upon the making of an exclusion order or an interim exclusion order, and at any time whilst the order remains in force, a relevant court may, upon application of the Department or of its own motion, make an ancillary order.

(2) For the purposes of subsection (2), an ancillary order is an order –

- (a) requiring the person against whom the order is made to leave the family home by a specific time and date,
- (b) prohibiting the person against whom the order is made from returning to the family home,
- (c) excluding the person against whom the order is made from a defined area within which the family home is situated,



- (d) prohibiting the person against whom the order is made from removing from the family home any item specified in the order,
- (e) prohibiting the person against whom the order is made from taking any specified step in relation to any child specified in the order,
- (f) regulating (including by way of prohibition) contact between the person against whom the order is made and any child specified in the order,
- (g) requiring the person against whom the order is made to make payments in respect of outgoings incurred in respect of the family home, or
- (h) preserving possessions of the person against whom the order is made which are located within, or upon, the family home.

**Power of arrest for breach of an exclusion order or ancillary order.**

62. (1) Where a relevant court makes an exclusion order or an interim exclusion order (with or without also making an ancillary order), it may attach a power of arrest to that order and any ancillary order which it has made.

(2) A police officer may arrest without warrant a person against whom an exclusion order, an interim exclusion order or an ancillary order has been made, if –

- (a) a power of arrest is attached to the order, and
- (b) the police officer has reasonable cause to suspect that that person –
  - (i) has had notice of the making of the order, and

(ii) is in breach of the order.

(3) A person arrested under subsection (2) –

(a) shall be brought before the relevant court within 24 hours of his arrest, and

(b) shall not be released within that period except by direction of the court;

but nothing in this subsection authorises his detention beyond that period.

(4) In reckoning a period of 24 hours for the purposes of subsection (3), no account shall be taken of –

(a) a Saturday, Sunday, Good Friday or Christmas Day, or

(b) a public holiday.

**Duration and other provisions in respect of exclusion and ancillary orders.**

**63.** (1) Subject to subsections (2) and (3), an exclusion order, an interim exclusion order and any order ancillary to it, shall have effect for such period as the relevant court thinks fit.

(2) An exclusion order, an interim exclusion order and any order ancillary to it which suspends the right of any person against whom the order is made from occupying or visiting the family home to which it relates, shall not have effect for a period in excess of 12 months.

(3) An exclusion order made upon an application made *ex parte* shall have effect for such period, not exceeding 5 days, as the relevant court thinks fit.

*Powers of police officers*

**Powers of police officers where child is suffering harm or at risk.**

**64.** (1) Where a police officer has reasonable cause to believe that a child is suffering, or is imminently likely to suffer, serious harm he may –

- (a) without warrant –
  - (i) enter any premises, upon which he reasonably suspects such a child to be, for the purposes of searching for that child,
  - (ii) remove the child to a place of safety, or
  - (iii) both, or
- (b) take such steps as are reasonable to prevent the child's removal from any hospital or other place in which he is for the time being accommodated, or
- (c) otherwise remove the child from the control or supervision of –
  - (i) a parent,
  - (ii) a person with parental responsibility, or
  - (iii) any other person with whom the child may be.

(2) For the purposes of this Law, a child with respect to whom a police officer has exercised his powers under this section shall be referred to as having been taken into police protection.

**[Powers of police officers to recover children for whom Department is responsible.**

**64A.** (1) Subsection (2) applies –

- (a) in relation to a child in respect of whom –

- (i) a care requirement,
- (ii) a community parenting order,
- (iii) an emergency child protection order, or
- (iv) a secure accommodation order.

has been made, and

- (b) where the child –
  - (i) has been unlawfully taken away or is being unlawfully kept away from the Department,
  - (ii) has run away or is staying away from the Department, or
  - (iii) is missing, and
- (c) where the Department has requested a police officer to assist in the recovery of the child.

- (2) A police officer may recover the child –
  - (a) by requiring any person who has information as to the child's whereabouts to disclose that information,
  - (b) by directing any person who is in a position to do so to produce the child,
  - (c) by entering without warrant any premises upon which he reasonably suspects the child to be for the purposes of searching for the child,

- (d) by removing the child to such place as the Department may request, or
- (e) by requiring any person to deliver the child to the Department.

(3) No person shall be excused from complying with any request made under subsection (2)(a) on the ground that complying with it might incriminate him or his spouse of an offence but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.]

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**NOTE**

*Section 64A was inserted by the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015, section 2, with effect from 27th July, 2015.*

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**Offence of impeding or obstructing police officer exercising powers under this Law.**

**65.** (1) A person who wilfully impedes or obstructs a police officer, whilst that officer is exercising any power or performing any duty under section 56(1)[, 64 or 64A], is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(3) For the purposes of this section, a "**person**" does not include the child in respect of whom the police officer is exercising any power or performing any duty under section 56(1)[, 64 or 64A].

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**NOTE**

*In section 65, the punctuation, figures, word and letter in square brackets in subsection (1) and subsection (3) were substituted by the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015, section 3, with effect from 27th July, 2015.*

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**Duration of police protection and power to make regulations concerning children taken into police protection.**

**66.** (1) A child who has been taken into police protection under section 64 may be kept in police protection for a continuous period not in excess of 24 hours.

(2) The [Committee for Home Affairs] may by regulations made under this section make such provision as it thinks fit concerning children who are taken into police protection.

(3) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning –

- (a) the measures and procedures which must be taken and observed in respect of a child in police protection, and
- (b) the persons who must take and observe such measures and procedures.

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**NOTE**

*In section 66, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

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**PART VIII  
THE JUVENILE COURT**

**Constitution and jurisdiction of the Juvenile Court.**

**67.** (1) When dealing with proceedings involving a child under subsection (2), the Magistrate's Court shall be known as the Juvenile Court and shall be constituted by the Magistrate sitting alone.

(2) Without prejudice to the provisions of any other enactment, the Juvenile Court shall deal with –

- (a) a finding on an issue or matter referred by the Children's Convenor under Part VII,
- (b) any appeal from the Child, Youth and Community Tribunal under section [99 or 102], and
- (c) any application for –
  - (i) a secure accommodation order,
  - (ii) a community parenting order,
  - (iii) an emergency child protection order, or
  - [(iv) an exclusion order,]
  - [(v)] a section 17 order.

(3) The Royal Court, sitting as a Full Court, may from time to time make rules governing the practice and procedure in the Juvenile Court whenever the Juvenile Court is dealing with any matter under this Law.

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**NOTES**

*In section 67, first, the word and figures in square brackets in paragraph (b) of subsection (2) were substituted, second, sub-paragraph (iv) of paragraph (c) thereof was inserted and, third, sub-paragraph (v) of paragraph (c) thereof was re-numbered by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, respectively section 54(a), section 54(b) and section 54(c), with effect from 4th January, 2010.*

*The following Rules have been made by Order of the Royal Court under section 67:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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PART IX  
SECURE ACCOMMODATION

**Meaning of "secure accommodation".**

**68.** For the purposes of this Part "**secure accommodation**" means accommodation, provided for the purpose of restricting the liberty of a child, which –

- (a) has been designated by the Department in accordance with, and
- (b) meets standards and conditions prescribed by,

regulations made under this section.

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**NOTE**

*The following Regulations have been made under section 68:*

*Children (Secure Accommodation) (Guernsey and Alderney) Regulations, 2009.*

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**Prohibition on use of secure accommodation otherwise than under court order.**

**69.** (1) Subject to [section 71], a child may not be placed, and, if placed, may not be kept, in secure accommodation otherwise than pursuant to an order authorising the use of secure accommodation (a "**secure accommodation order**") made by the Juvenile Court under this section, upon application made by the Department.

(2) The Juvenile Court shall make a secure accommodation order in respect of a child if it is satisfied that –



- (a) the child –
  - (i) has a history of absconding and is likely to abscond from accommodation which is not secure accommodation, and
  - (ii) if he absconds, is likely to suffer significant harm, or
- (b) if the child is kept in any accommodation which is not secure accommodation, he is likely to injure himself or other persons.

(3) When making a secure accommodation order the Juvenile Court shall specify the period for which the order is to have effect and that period shall not be longer than the period specified by an Ordinance of the States made under this section.

(4) On any adjournment of the hearing of an application under this section, the Juvenile Court may make an interim secure accommodation order permitting a child to be kept in secure accommodation during the period of the adjournment but the period for which such an interim order is to have effect shall not exceed the shorter of –

- (a) such period as the Juvenile Court shall determine, or
- (b) such period specified by an Ordinance of the States made under this section.

(5) The States shall by Ordinance made under this section –

- (a) specify periods for the purposes of subsections (3) and (4), and
- (b) provide for circumstances in which any periods specified under paragraph (a) may be extended by

order of the Juvenile Court.

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**NOTES**

*In section 69, the word and figures in square brackets in subsection (1) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 55, with effect from 4th January, 2010.*

*The following Ordinance has been made under section 69:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**Legal representation.**

**70.** The Juvenile Court shall not exercise its powers under section 69 in respect of a child who is not represented by an Advocate, unless the child has –

- (a) been informed of his right to representation,
- (b) been given the opportunity to request such representation, and
- (c) refused to be represented or failed to make any request to be represented.

**Power of Department to detain a child in secure accommodation.**

**71.** (1) Subject to subsection (2), the Department may detain a child in secure accommodation for a period not exceeding 72 hours.

(2) The power to detain under subsection (1) shall be exercised only in accordance with an Ordinance made under this section which shall prescribe –

- (a) the circumstances and manner in which the power may be exercised, and
- (b) the limitations upon the exercise of that power.

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**NOTE**

*The following Ordinance has been made under section 71:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**Effect of secure accommodation order.**

72. (1) A secure accommodation order, whilst it has effect –
- (a) authorises (but, for the avoidance of doubt, shall not require) the Department to place and keep a child to whom the order relates in secure accommodation, and
  - (b) gives the Department parental responsibility in respect of the child to which the order relates in accordance with section 8(a).

(2) For the purposes of subsection (1), a secure accommodation order includes an interim secure accommodation order, made under section 69(4).

**Reviews.**

73. (1) The Department shall review the need to keep a child in secure accommodation in accordance with requirements specified by Ordinance of the States made under this section.

(2) An Ordinance under this section may make all such provision concerning the review requirement under subsection (1) as the States think reasonably necessary, including (without limitation) the action to be taken by the Department to implement the results of any such review.

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**NOTE**

*The following Ordinance has been made under section 73:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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PART X  
REMOVAL OF CHILDREN OUT OF JURISDICTION

**Offence of abduction of a child out of the jurisdiction.**

74. (1) Subject to –
- (a) subsection (3),
  - (b) section 75, and
  - (c) any other enactment,

any person who takes or sends a child under the age of 16 out of the jurisdiction of Guernsey and Alderney, without the appropriate consent, commits an offence.

(2) In subsection (1) "**the appropriate consent**" in relation to a child means –

- (a) the consent of –
  - (i) every person with parental responsibility in respect of the child, and
  - (ii) where the child is subject to a care requirement, the Department, or
- (b) the leave of a relevant court granted under this paragraph.

(3) A person does not commit an offence under this section if he can show on the balance of probabilities that –

- (a) he reasonably believed that any other person required to consent had so consented,
- (b) he reasonably believed that any other person required

to consent would have so consented if he had been aware of all the relevant circumstances, or

- (c) he had taken all reasonable steps to communicate with any other person required to consent but was unable to communicate with them.

(4) A person guilty of an offence under subsection (1) shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years, or to a fine, or to both.

(5) A police officer or a customs officer may arrest without warrant any person, who he has reasonable cause to suspect is committing or is about to commit an offence under subsection (1).

**Circumstances in which consent not necessary.**

**75.** (1) For the purposes of this section, "**consent**" means the consent in –

- (a) section 9(1)(b) (section 9 relates to shared parental responsibility),
- (b) section 51(2)(a) but only in respect of the issue in section 51(3)(b) (section 51 relates to the effect of a community parenting order on parental responsibility), and
- (c) section 74(1) (section 74 relates to the offence of abduction of a child out of the jurisdiction)

(2) Subject to subsection (3), consent need not be obtained where it is proposed that the child would be out of the jurisdiction –

- (a) for a period not exceeding 28 days, and
- (b) one of the conditions referred to in subsection (3) applies.

(3) The conditions for the purpose of subsection (2) are –

- (a) the person sending or taking the child out of the jurisdiction of Guernsey and Alderney has a residence order relating to the child in his favour,
- (b) a community parenting order has been made in respect of the child and the Department has arranged, or consents, to the sending or taking,
- (c) the child is subject to a care requirement and the Department has arranged, or consents, to the sending or taking, or
- (d) the child is being removed from, or kept out of, the jurisdiction for the purposes of receiving medical treatment.

**Construction of references to taking, sending and jurisdiction of Guernsey and Alderney for purposes of sections 74 and 75.**

**76.** For the purposes of sections 74 and 75 –

- (a) a person shall be regarded as taking a child if he causes or induces the child to accompany him or any other person or causes the child to be taken,
- (b) a person shall be regarded as sending a child if he

causes the child to be sent, and

- (c) in accordance with section [122], "**Guernsey and Alderney**" include the territorial waters adjacent to Guernsey and Alderney.

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**NOTE**

*In section 76, the figures in square brackets in paragraph (c) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 56, with effect from 4th January, 2010.*

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**Application of Part X.**

**77.** This Part shall not apply in respect of the placement of a child out of the jurisdiction under Part XI.

PART XI

PLACEMENT OF CHILDREN OUT OF THE JURISDICTION

**Definitions and interpretation for the purposes of Part XI.**

**78.** (1) For the purposes of this Law, unless the context requires otherwise –

a child is "**placed out of the jurisdiction**" where (otherwise than for short-term medical treatment or solely recreational purposes) a placement agency makes arrangements (whether alone or in conjunction with any other person) for the child to live (whether for a fixed or indeterminate period of time) otherwise than within Guernsey and Alderney,

**"a placement agency"** means –

- (a) the States,
- (b) a department of the States, or
- (c) any other prescribed person, and

In accordance with section [122], "Guernsey and Alderney" includes the territorial waters adjacent to Guernsey and Alderney.

- (2) A child –
- (a) who has been placed out of the jurisdiction under this Part, and
  - (b) who, immediately prior to being so placed –
    - (i) was ordinarily resident in Guernsey shall, for the purposes of the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>e</sup>, be treated as being ordinarily resident in Guernsey, or
    - (ii) was ordinarily resident in Alderney shall, for the purposes of the Building and Development Control (Alderney) Law, 2002<sup>f</sup>, be treated as being ordinarily resident in Alderney,

for the period of any placement.

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**NOTE**

*In section 78, the figures in square brackets in subsection (1) were substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 56, with effect from 4th January, 2010.*

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**Placement out of the jurisdiction of a child who is not subject to a care requirement or order of relevant court.**

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<sup>e</sup> Order in Council No. IV of 1994; amended by No. VI of 1998; No. III of 2002; and the Housing (Control of Occupation) (Guernsey) (Amendment) Law, 2006; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); Orders in Council IV of 1994, VI of 1998, and III of 2002.

<sup>f</sup> Orders in Council XII of 2003 and XV of 2004.



**79.** (1) A child, other than a child to whom section 81 relates, shall not be placed out of the jurisdiction unless –

- (a) a relevant court, or the Tribunal, has granted permission, or
- (b) the following conditions are satisfied –
  - (i) the child's parents consent to the placement,
  - (ii) where a person other than, or in addition to, the child's parents has parental responsibility in respect of the child, that person consents to the placement, and
  - (iii) the child has been given an opportunity to express his wishes, feelings and views about the placement.

(2) Where it appears to the Children's Convenor –

- (a) that one or more of the conditions referred to in subsections (1)(b)(i), (ii) and (iii) may not be met, or
- (b) that the proposed placement may not in the best interests of the child,

he shall refer the case of the child to the Tribunal for consideration and determination under section 80.

**Referrals to the Tribunal under section 79(2).**

**80.** (1) The Tribunal shall consider the case of a child which has been referred to it under section 79(2) and determine whether or not the proposal to place the child out of the jurisdiction is in the best interests of the child concerned.

(2) Where the Tribunal is satisfied that the proposal is in the best

interests of the child, it may grant permission for the placement to take place, subject to such terms and conditions (including terms and conditions concerning contact with the child) as it thinks fit.

(3) A permission under subsection (2) –

- (a) shall have effect for such period (not exceeding 12 months) as the Tribunal shall determine,
- (b) may be renewed by the Tribunal for such period, or periods (in each and every case not exceeding 12 months), as the Tribunal shall determine, and
- (c) shall constitute lawful authority for the placement agency to take all such steps as are reasonably necessary (subject to any terms and conditions upon which the permission is granted) to give effect to the proposed placement.

(4) Where the Tribunal is not satisfied that the proposal is in the best interests of the child it shall not grant permission for the placement to take place, and it may –

- (a) request the placement agency to revise any proposals for the placement and reconsider the matter in the light of the revised proposals,
- (b) refuse to consider the matter further,
- (c) adjourn the matter,
- (d) grant interim permission for the placement to take place subject to such terms and conditions as the Tribunal thinks fit, or
- (e) take such other steps as it thinks fit.

**Placement out of the jurisdiction of a child who is subject to a care requirement or order of relevant court.**

**81.** (1) A child who is subject to a care requirement shall not be placed out of the jurisdiction contrary to any condition made under section 44(3)(e).

(2) A child who is subject to –

- (a) a community parenting order,
- (b) a secure accommodation order, or
- (c) other prescribed order,

shall not be placed out of the jurisdiction except in accordance with leave granted by the relevant court.

(3) Leave granted under subsection (2), may be granted subject to such terms and conditions (including terms and conditions concerning contact with the child) as the relevant court thinks fit.

**Power to make regulations for the purpose of Part XI.**

**82.** (1) The Department may by regulations make such provision as it thinks fit for the purpose of giving effect to this Part and such other Parts of this Law as relate to or concern this Part.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning –

- (a) the establishment of a panel or other body to approve, monitor and regulate the placement of children out of the jurisdiction,
- (b) assessment (including full multi-agency assessment) of the needs of any child who is being considered for

- placement out of the jurisdiction,
- (c) review (including the frequency of any review) by the Children's Convenor, or any other prescribed person, of a decision, or proposal, to place a child out of the jurisdiction,
  - (d) preparation of a child's plan prior to placement of any child out of the jurisdiction,
  - (e) the obligation to agree the contents of a child's plan with the person responsible for the care of the child in the jurisdiction in which he is to be placed,
  - (f) notification of the placement to the prescribed persons in the area where the child is to live, and
  - (g) the referral to the Tribunal under section 79(2) of a proposal to place a child out of the jurisdiction.

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**NOTE**

*The following Regulations have been made under section 82:*

*Children (Placement out of the Jurisdiction) (Guernsey and Alderney) Regulations, 2013.*

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**PART XII**  
**SAFEGUARDER SERVICE**

**Establishment of the Safeguarder Service.**

**83.** There is established a service to be known as the Safeguarder Service (referred to in this Law as the "**Safeguarder Service**").

**Functions of the Safeguarder Service.**

**84.** (1) In respect of any family proceedings in which the welfare of a child is, or may be, in question, or any investigation under this Law concerning the

circumstances of any child, it is the function of the Safeguarder Service to safeguard and promote the welfare of the child by –

- (a) giving advice to –
  - (i) the relevant court, or
  - (ii) the Tribunal,about any application made in such proceedings before the court or the Tribunal,
- (b) giving advice to the Convenor in connection with any investigation, and
- (c) carrying out such other functions as rules of court may specify.

(2) The functions of the Safeguarder Service under this section may be carried out by any individual Safeguarder, unless any enactment provides otherwise.

**Power to make Ordinances for the purpose of Part XII.**

**85.** (1) The States may by Ordinance make such provision as they think fit for the purpose of giving effect to this Part and such other Parts of this Law as relate to, or concern, this Part.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or concerning –

- (a) the administration of, responsibility for and management of the Safeguarder Service including (without limitation) the monitoring of the effectiveness of the Service,

- (b) the appointment, and removal from appointment, of any Safeguarder in connection with any family proceedings,
- (c) the powers, duties and functions which may, or shall, be exercised, performed or carried out by a Safeguarder and the delegation of those powers, duties and functions,
- (d) the obligations, rights and privileges to which a Safeguarder shall be subject or may exercise or enjoy, and
- (e) the levying of fees and charges for services supplied by the Safeguarder Service.

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**NOTE**

*The following Ordinance has been made under section 85:*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**PART XIII  
ENFORCEMENT**

**Powers of enforcement to be in addition to any other powers.**

**86.** For the avoidance of doubt, the powers of enforcement created under this Part are in addition to, and not in substitution for, any other powers available to a court enabling that court –

- (a) to enforce compliance with any order or judgment, or
- (b) to punish any person for contempt of court.

**Penal notice.**

**87.** (1) A relevant court may, where it thinks fit, attach a penal notice

to any order which it has power to make under this Law.

(2) A person who, without reasonable excuse, fails to comply with the requirements of a penal notice is guilty of contempt of court.

(3) In this section, a "**penal notice**" means a notice addressed to a person –

(a) requiring that person to comply with the provisions of the order insofar as they relate to him, and

(b) warning that person as to the consequences of any failure to comply.

**Direction to disclose whereabouts.**

**88.** (1) In any family proceedings, a relevant court may direct any person –

(a) to disclose to the court –

(i) the whereabouts, and

(ii) any information that could lead to the discovery of the whereabouts,

of any child to whom the proceedings relate, and

(b) to attend before the court if so required.

(2) Where a relevant court is satisfied that a person, who has been given notice of a direction under subsection (1), has failed to disclose the whereabouts of the child, to attend before the court, or both, it may order a police officer –

(a) to arrest the person, and

(b) subject to subsection (3), to detain him in custody until he can be produced to the court.

(3) The court may, at any time –

(a) revoke an order made under subsection (2), and

(b) order the discharge from custody of any person who has been detained.

(4) A person who, without reasonable excuse, fails to comply with a direction given to him under subsection (1) is guilty of contempt of court.

(5) No person shall be excused from complying with a direction given to him under subsection (1) on the ground that complying might incriminate him or his spouse of an offence but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

**Penalty for contempt of court and power of court to make compensation orders.**

**89.** (1) A person guilty of contempt of court under section 87(2) or 88(4) is liable –

(a) to be committed to custody for such period, not exceeding 6 months, as the court thinks fit, or

(b) to have imposed upon him a penalty (which for the purposes of enforcement shall be treated as if it were a fine imposed upon a conviction) not exceeding level 5 on the uniform scale,

or both.

(2) Where a person is guilty of contempt of court under section 87(2) or 88(4), a relevant court may in addition, or as an alternative, to imposing a



penalty upon him under subsection (1), make a compensation order, in such amount as the court thinks fit, in favour of any person who has suffered financial loss as a consequence of the contempt.

(3) A person in whose favour a compensation order is made under subsection (2), may recover the amount of compensation payable as a civil debt, due to him, from the person against whom the order is made.

**Sureties and bonds.**

**90.** (1) A relevant court may, when making any order in family proceedings, make it a condition of the order that –

- (a) a surety, who is acceptable to the court, is provided,  
or
- (b) a party to the proceedings enters into a bond, in a form that is acceptable to the court,

for the purpose of ensuring that a person performs any obligation to which he is subject under the order.

(2) The court may –

- (a) fix –
  - (i) the amount in which a surety is to be bound,  
and
  - (ii) the amount of any bond,at such sum as it thinks fit, and
- (b) determine all such matters as may be necessary for the purpose of giving effect to the obligations of any surety, or party to a bond, under this section.

(3) Where any sum is paid in satisfaction of any obligation of a surety, or party to a bond, under this section the court may order that the whole of that sum, or such part as it may determine, shall be paid to any person who has suffered financial loss as a result of the failure of any person to perform any obligation to which he is subject under an order to which subsection (1) relates.

**Orders relating to passports and passport applications.**

**91.** (1) In any family proceedings a relevant court may make an order requiring any person to lodge one or both of the following –

- (a) his passport, and
- (b) the passport of any child to whom the proceedings relate,

with the court, or such other person as the court may direct, upon such terms, and subject to such conditions, as the court thinks fit.

(2) In any family proceedings a relevant court may make an order –

- (a) requiring the [Committee for Home Affairs] to disclose to the court such information concerning –
  - (i) the passport of any child, or
  - (ii) any application for a passport for any child,as may be specified in the order, or
- (b) prohibiting the [Committee for Home Affairs] from issuing a passport for any child –
  - (i) without the court's written consent, or
  - (ii) except in accordance with such conditions as

the court thinks fit.

(3) An order under subsection (2)(a) shall require, and act as lawful authority for, any officer of the [Committee for Home Affairs] responsible for passports and passport applications to disclose to the court any information held by the [Committee for Home Affairs] concerning the child whose passport or passport application is referred to in the order.

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**NOTE**

*In section 91, the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

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**Recovery of children by the Department.**

**92.** (1) Where it appears to a relevant court that there is reason to believe that a child to whom this section applies in accordance with subsection (2) –

- (a) has been unlawfully taken away or is being unlawfully kept away from the Department,
- (b) has run away or is staying away from the Department,  
or
- (c) is missing,

the court may make an order under this section ("**a recovery order**").

- (2) This section applies in relation to a child in respect of whom –
- (a) a care requirement,
  - (b) a community parenting order,
  - (c) an emergency child protection order, or

- (d) a secure accommodation order,

has been made.

- (3) A recovery order –
  - (a) operates as a direction to any person who is in a position to do so to produce the child on request to any relevant person,
  - (b) authorises the removal of the child by any relevant person,
  - (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a relevant person,
  - (d) authorises –
    - (i) a relevant person to enter any premises specified in the order for the purposes of searching for the child, and
    - (ii) a police officer to use reasonable force to enter any premises specified in the order for the purposes of searching for the child, and
  - (e) requires a relevant person to deliver the child to the Department.

(4) Unless the context requires otherwise, for the purposes of this section and section 94(3) a "**relevant person**" means –

- (a) any person specified by the court,
- (b) any police officer, and

- (c) any person who is authorised, after the recovery order is made, by the Department.

(5) No person shall be excused from complying with any request made under subsection (3)(c) on the ground that complying with it might incriminate him or his spouse of an offence but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.

**Power to order recovery of child.**

**93.** (1) Where, in any family proceedings –

- (a) a person is required by the order of a relevant court to give up a child to another person ("**the person concerned**"), and
- (b) the court which made the order imposing the requirement is satisfied that the child has not been given up in accordance with the order,

the court may make an order authorising any person specified by the court, or a police officer, to take charge of the child and deliver him to the person concerned.

(2) The authority conferred by subsection (1) includes authority –

- (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found, and
- (b) to use such force as may be reasonably necessary to give effect to the purpose of the order.

(3) The power created under this section is without prejudice to any other power conferred on a court by or under any other enactment or rule of law.

**Offences.**

**94.** (1) A person who, in purported compliance with a direction given to him under subsection 88(1)(b) intentionally, or recklessly, misleads the court as to the whereabouts of a child, commits an offence and is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.

(2) A person who, knowingly and without lawful authority or reasonable excuse –

- (a) takes a child to whom section 92 applies away from the Department,
- (b) keeps such a child away from the Department, or
- (c) induces, assists or incites such a child to run away or stay away from the Department,

commits an offence and is liable –

- (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

(3) A person who intentionally obstructs –

- (a) a relevant person (as that expression is defined in section 92(4)) exercising any power under section 92(3) to remove a child, or
- (b) any person exercising any authority or power under section 93(2),

commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 3 on the uniform scale, or to both.

PART XIV  
JURISDICTION OF ROYAL COURT, POWER TO VARY TRUSTS AND  
APPEALS

**Jurisdiction of Royal Court exercisable by Matrimonial Causes Division and, in relation to Part III, Ordinary Court.**

**95.** (1) The jurisdiction and functions of the Royal Court under this Law, with the exception of the jurisdiction and functions created under Part III, shall be vested in and exercisable exclusively by the Matrimonial Causes Division of the Royal Court of Guernsey.

(2) The jurisdiction and functions of the Royal Court under Part III shall be vested in and exercisable by the Royal Court of Guernsey sitting as an Ordinary Court.

**Powers of Royal Court to exercise powers of Magistrate's Court or Juvenile Court.**

**96.** The Royal Court may exercise in respect of any child in any family proceedings before the Royal Court, all the powers which are exercisable in respect of a child by –

- (a) the Magistrate's Court,
- (b) the Court of Alderney, or

- (c) the Juvenile Court,

under this Law.

**Power to vary trusts.**

**97.** (1) Where –

- (a) a relevant court makes any order under this Law relating to a child, and
- (b) any person is entitled under any trust to receive any sum of money in respect of the maintenance of the child,

the court may, if it thinks fit, make a variation order.

(2) For the purposes of subsection (1) a "**variation order**" is an order providing that the whole, or any part, of the sum of money payable in respect of the maintenance of the child –

- (a) is to be paid to the person named in the order, and
- (b) is to be applied by that person for the benefit of the child in such manner as, having regard to the terms of the trust, the court may decide.

**Appeals from decisions under Part IV ("Orders with respect to children in family and other proceedings").**

**98.** (1) An appeal from any decision of –

- (a) the Magistrate's Court,
- (b) the Juvenile Court, or
- (c) the Court of Alderney,



under Part IV shall lie to the Royal Court.

- (2) An appeal under this section shall be instituted –
  - (a) within a period of 21 days immediately following the date of the decision of the Magistrate's Court, the Juvenile Court or the Court of Alderney, as the case may be, and
  - (b) in such manner, and upon such grounds, as rules of court may provide.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 98:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Appeals from decisions under Part VII ('Children requiring care, protection, guidance or control').**

**99.** (1) An appeal from any decision of the Tribunal under Part VII relating to a care requirement including, without limitation, a decision –

- (a) to make, or to refuse to make, a care requirement, or
- (b) to make a care requirement subject to conditions,

shall lie to the Juvenile Court.

- (2) An appeal –
  - (a) from any decision of the Juvenile Court under Part VII, other than a decision relating to an emergency child protection order, or

- (b) on a question of law, from any decision of the Juvenile Court in connection with an appeal under subsection (1),

shall lie to the Royal Court.

- (3) An appeal under this section shall be instituted –
  - (a) within a period of 21 days immediately following the date of the decision of the Tribunal or the Juvenile Court, as the case may be,
  - (b) by such persons and in such manner as rules of court may provide, and
  - (c) where the appeal is made from a decision of the Juvenile Court under subsection (2)(a), upon such grounds as rules of court may provide.

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**NOTES**

*The following Rules have been made by Order of the Royal Court under section 99:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

*The following case has referred to section 99:*

*The States of Guernsey and T (2012) (Unreported, Royal Court, 14th November) (Guernsey Judgment No 40/2012).*

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**Appeals from decisions under Part IX ("Secure accommodation").**

**100.** (1) An appeal from any decision of the Juvenile Court under Part IX shall lie to the Royal Court.

- (2) An appeal under this section shall be instituted –
  - (a) within a period of 2 business days immediately following the date of the decision, where it concerns

an order having a duration of 8 days or less, or

- (b) within a period 7 days immediately following the date of the decision, where it concerns an order having a duration of more than 8 days,

in such manner, and upon such grounds, as rules of court may provide.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 100:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Appeals from decisions under section 74(2)(b).**

**101.** (1) An appeal from any decision of the Magistrate's Court, the Court of Alderney or the Juvenile Court under section 74(2)(b) shall lie to the Royal Court.

(2) An appeal under this section shall be instituted –

- (a) within a period of 14 days immediately following the date of the decision of the Magistrate's Court, the Court of Alderney or the Juvenile Court, as the case may be, and
- (b) in such manner, and upon such grounds, as rules of court may provide.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 101:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Appeals from decisions under Part XI ('Placement of children out of the**

**jurisdiction').**

**102.** (1) An appeal from any decision of the Tribunal made under Part XI shall lie to the Juvenile Court in accordance with rules of court.

(2) An appeal on a question of law, from any decision of the Juvenile Court in connection with an appeal under subsection (1), shall lie to the Royal Court.

(3) An appeal from any decision of a relevant court made under Part XI shall lie to the Royal Court.

(4) An appeal under this section shall be instituted –

(a) within a period of 21 days immediately following the date of the decision of the Tribunal, the Juvenile Court or relevant court, as the case may be,

(b) in such manner as rules of court may provide, and

(c) where the appeal is made from a decision of the Tribunal under subsection (1), upon such grounds as rules of court may provide.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 102:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Appeals from decisions under Part XIII ('Enforcement').**

**103.** (1) An appeal from any decision of the Magistrate's Court, the Court of Alderney or the Juvenile Court, under Part XIII shall lie to the Royal Court.

(2) An appeal under this section shall be instituted –

- (a) within a period of 14 days immediately following the date of the decision of the Magistrate's Court, the Court of Alderney or the Juvenile Court, as the case may be, and
- (b) in such manner, and upon such grounds, as rules of court may provide.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 103:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Powers of Juvenile Court and Royal Court when sitting in appellate capacity.**

**104.** (1) Where the Juvenile Court is seised of any matter sitting in an appellate capacity under section 99(1) or 102(1), it may by order confirm, reverse, vary or substitute the decision of the Tribunal against which an appeal has been made, and –

- (a) remit the matter back to the Tribunal, or
- (b) exercise any power which could have been exercised by the Tribunal.

(2) Where the Royal Court is seised of any matter sitting in an appellate capacity under section 98(1), 99(2), 100(1), 101(1), 102(2) or 103, it may by order confirm, reverse, vary or substitute the decision of the Magistrate's Court, the Court of Alderney or the Juvenile Court, as the case may be, against which an appeal has been made, and –

- (a) remit the matter back to the Magistrate's Court, Court of Alderney or Juvenile Court, as the case may be, or
- (b) make such other order in the matter as it thinks fit.

(3) For the avoidance of doubt and subject to any rules of court made under section 121, or any other provision of this Law, upon determination of an appeal the costs of and incidental to any appeal proceedings under sections 98 to 103 shall be in the discretion of the Juvenile Court or the Royal Court, as the case may be.

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**NOTE**

*The following cases have referred to section 104:*

*In the matter of "C"* (2013) (Unreported, Royal Court, 3rd January) (Guernsey Judgment No. 20/2013);

*In the matter of "K" (a minor)* (2014) (Unreported, Royal Court, 16th July) (Guernsey Judgment No. 34/2014).

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**Appeals from decisions of the Royal Court on point of law.**

**105.** (1) An appeal on a question of law from any decision of the Royal Court (whether made by the Matrimonial Causes Division or sitting as the Ordinary Court) under this Law (including, for the avoidance of doubt, a decision made in the exercise of any appellate jurisdiction but excluding any decision made in exercise of any criminal jurisdiction) shall, with leave of the Royal Court or Court of Appeal, lie to the Court of Appeal.

- (2) An appeal under this section shall be instituted –
- (a) within a period of 14 days immediately following the date of the decision of the Royal Court, and
  - (b) in such manner as rules of court may provide.

(3) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>g</sup> ("Powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

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<sup>g</sup> Ordres en Conseil Vol. XVIII, p. 315.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 105:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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**Power to extend time within which appeal lies.**

**106.** (1) Any court to which an appeal lies under this Part may, where it is satisfied that –

- (a) it was not reasonably practicable for the appeal to be instituted within the relevant time period, and
- (b) it is fair in all the circumstances,

extend the period within which the appeal may be instituted.

(2) For the purposes of subsection (1), the "**relevant time period**" means any time period stipulated under this Part within which an appeal shall be instituted.

PART XV

MISCELLANEOUS POWERS TO MAKE ORDINANCES CONCERNING  
CHILDREN AND RELATED MATTERS

**Power to make Ordinances relating to private arrangements for fostering children.**

**107.** (1) The States may by Ordinance make such provision as they think fit for the purpose of regulating private arrangements for fostering children.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or concerning –

- (a) the welfare of children who have been fostered under private arrangements for fostering children including,

without limitation, powers for the Department –

- (i) to enter and inspect premises which are used, or intended to be used, in connection with such arrangements,
  - (ii) to have contact with such children,
  - (iii) to require the provision of information concerning such children,
  - (iv) to remove such children from unsuitable accommodation and, following removal, to look after them, and
  - (v) to issue written guidance in connection with such arrangements,
- (b) the disqualification, or prohibition, of persons from –
- (i) being foster carers, or
  - (ii) entering into, or being involved in, private arrangements for fostering children,
- (c) the duties and obligations of persons who have entered into private arrangements for fostering children, and
- (d) the creation of criminal offences for breaches of duties or obligations towards, or in connection with, such children.

**Power to make Ordinances relating to child minders and day care providers.**

**108.** (1) The States may by Ordinance make such provision as they think fit for the purpose of regulating –



*Consolidated text*

- (a) child minders, and
- (b) day care providers.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or concerning –

- (a) the prohibition of the provision of child minding, or day care services, except by persons who are registered child minders, or registered day care providers,
- (b) the registration of persons as child minders, or day care providers, including, without limitation, registration subject to conditions,
- (c) the establishment and maintenance of a register of persons who are registered under such an Ordinance,
- (d) the suspension, variation and revocation of any registration or condition,
- (e) appeals from decisions relating to –
  - (i) the registration of persons as child minders, or day care providers,
  - (ii) the suspension, variation or revocation of any registration or condition,
- (f) powers for the Department –
  - (i) to enter and inspect premises which are used for the purpose of the provision of child minding or day care services,

- (ii) to require the provision of information concerning children who are minded or cared for,
- (iii) to issue written guidance in connection with –
  - (A) child minders,
  - (B) day care providers, and
  - (C) the provision of child minding or day care services,
- (g) the duties and obligations of child minders and day care providers, and
- (h) the creation of criminal offences for breaches of –
  - (i) any duties or obligations towards, or in connection with, children who are minded or cared for,
  - (ii) any prohibition of the provision of child minding, or day care services, or
  - (iii) any obligations concerning the registration of persons as child minders, or day care providers.

(3) In this section –

a "**child minder**" means a person who looks after one or more children under the age of 8, for longer than 2 hours a day, on domestic premises for reward,

"**child minding services**" means services which consist of any form

of care (whether or not provided to any extent in the form of an educational activity) provided for a child by a person who is acting as a child minder in respect of that child,

**"day care provider"** means a person who provides day care services at any time of the day for one or more children under the age of 8, for longer than 2 hours a day, on premises other than domestic premises,

**"day care services"** means services which consist of any form of care (whether or not provided to any extent in the form of an educational activity) provided for a child by a person who is acting as a day care provider for that child, and

**"domestic premises"** means any premises which are wholly or mainly used as a private dwelling.

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**NOTE**

*The following Ordinance has been made under section 108:*

*Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015.*

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**Power to make Ordinances relating to assisted reproduction and surrogacy.**

**109.** (1) The States may by Ordinance make such provision as they think fit relating to the parentage of a child born –

- (a) as a consequence of assisted reproduction, or
- (b) pursuant to a surrogacy arrangement.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or concerning, the registration of any person, under any enactment relating to the registration of births occurring within Guernsey or Alderney, as the parent of any child born as a consequence of assisted reproduction or pursuant to a surrogacy arrangement.

(3) For the purposes of this section –

["**assisted reproduction**" means the use of medical, scientific, or technical procedures or treatment to enhance fertility (including, without limitation, drug therapy, artificial insemination and in vitro fertilisation),] and

"**surrogacy arrangement**" means the practice whereby a woman agrees with 2 other persons to carry a child with the intention that –

- (a) any child born in pursuance of the agreement is handed over to, and
- (b) parental responsibility in respect of the child is exercised by, or vested in,

those other persons after the birth of that child.

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#### NOTES

*In section 109(3), the definition of "assisted reproduction" in subsection (3) was substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 56A, with effect from 4th January, 2010.*

*The following Ordinance has been made under section 109:*

*Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009.*

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#### **Power to make Ordinances relating to enforcement of overseas orders.**

**110.** (1) The States may by Ordinance make such provision as they think fit relating to the registration, effect and enforcement of judgments and orders relating to children made by courts in jurisdictions other than Guernsey and Alderney (referred to in subsection (2) as "**overseas judgments and orders**").

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or

concerning –

- (a) the overseas judgments and orders which may be registered and enforced in Guernsey and Alderney,
- (b) the jurisdiction of the courts of Guernsey and Alderney to hear and determine applications for registration and enforcement of overseas judgments and orders,
- (c) the practice and procedure to be followed in connection with applications for registration and enforcement,
- (d) the powers of the courts of Guernsey and Alderney to enforce overseas judgements and orders that have been registered, and
- (e) appeals against decisions of the courts of Guernsey and Alderney relating to the registration and enforcement of overseas judgments and orders.

**Power to make Ordinances relating to the abduction of children.**

**111.** The States may by Ordinance make such provision as they think fit for the purpose of giving effect to the provisions of any international convention relating to the abduction of children which extend to Guernsey or Alderney.

PART XVI

GENERAL AND MISCELLANEOUS PROVISIONS

**Power for Department to prescribe charges.**

**112.** (1) The Department may by regulations made under this section prescribe fees and charges which shall be payable to the Department in such amounts, at such rates, by such persons and for such services provided by the Department in the discharge of its duties under this Law, as may be prescribed.

(2) Fees and charges prescribed under this section may be recovered from any person who is liable to pay them in the same manner as recovery of a civil debt due to the States.

**Publication of written guidance.**

**113.** The Department shall publish any written guidance issued under this Law in such manner as appears to the Department to be appropriate for the purpose of bringing the contents of the guidance to the attention of those persons who need to be made aware of those contents.

**Sittings outside Guernsey.**

**114.** For the avoidance of doubt, a court or the Tribunal may be properly constituted for the purposes of this Law when sitting outside Guernsey or Alderney.

**Reporting of proceedings under this Law.**

**115.** (1) Subsection (2) applies in respect of any proceedings under this Law in –

- (a) any relevant court, [...]
- (b) the Tribunal[,]
- [(c) any meeting convened under section 42(2).]

(2) Where this subsection applies –

- (a) no report shall be published which –
  - (i) reveals the name, address or school, or
  - (ii) includes any particulars which are reasonably likely to lead to the identification,

of any child concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein,

and

- (b) no picture shall be published which is or includes a picture of any such child.

(3) However, a relevant court or the Tribunal may, if satisfied that it is in the interests of justice so to do, dispense with the requirements of subsection (2) to such extent, and subject to such terms and conditions, as may be specified in the order.

(4) Without prejudice to the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008<sup>h</sup>, subsection (2) also applies in respect of any proceedings in any court, other than proceedings mentioned in subsection (1), to such extent (if it all) and subject to such terms or conditions, as the court may direct.

(5) Any person who publishes any matter in contravention of this section is guilty of an offence and liable on –

- (a) summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or both, or
- (b) conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or both.

(6) Where a body corporate is guilty of an offence under this Law and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its

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<sup>h</sup> Order in Council No. VI of 2009.

members, subsection (6) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

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**NOTE**

*In section 115, first, the word omitted in square brackets in paragraph (a) of subsection (1) was repealed, second, the punctuation immediately after paragraph (b) thereof was substituted and, third, paragraph (c) was inserted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, respectively section 57(a), section 57(b) and section 57(c), with effect from 4th January, 2010.*

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**Persons permitted to be present in court when dealing with a child.**

**116.** (1) No person may be present during the hearing by a court of any proceedings in respect of a child except for –

- (a) members and officers of the court,
- (b) the parties, their Advocates, any persons having responsibility for their welfare, and any witnesses and other persons directly concerned in the matter, and
- (c) such other persons as the court may specifically authorise to be present.

(2) For the purposes of subsection (1), "**proceedings**" includes an appeal from any decision made in respect of the original proceedings in respect of or by a child.

**Additional power of court upon disposal of an application for an order.**

**117.** On disposing of any application for an order under this Law, the court may –

- (a) whether or not it makes any other order in response to the application, order that no application for an order under this Law of any specified kind may be made with respect to the child concerned by the person



named in the order without leave of the court,

- (b) in the case of a recovery order under section 92, and for the avoidance of doubt, direct that the order remains in force for such period as the court may order, provided that the period shall not extend beyond the day on which the relevant requirement or order, as the case may be, referred to in subsection (2) of that section comes to an end.]

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**NOTE**

*Section 117 was substituted by the Children (Guernsey and Alderney) (Amendment) Ordinance, 2015, section 4, with effect from 27th July, 2015.*

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**Restriction on exercise of court's customary law jurisdiction.**

**118.** (1) Where, in relation to any matter or issue –

- (a) a power created under this Law, and
- (b) a power under the customary law,

are exercisable in respect of the matter or issue by a relevant court, the court shall exercise the power created under this Law, unless the effect would be unfair or unjust.

(2) No application for any exercise of a court's customary law jurisdiction with respect to children may be made by the Department unless the Department has obtained the leave of the court.

(3) A court may only grant leave for the purpose of subsection (2) if it is satisfied that –

- (a) the result which the Department wishes to achieve could not be achieved through the making of any order of a kind to which subsection (4) applies, and

- (b) there is no reasonable cause to believe that if the court's customary law jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.
- (4) This subsection applies to any order –
- (a) made otherwise than in the exercise of the court's customary law jurisdiction, and
  - (b) which the Department is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

**Power to amend Law by Ordinance.**

**119.** [ (1) The States may by Ordinance –

- (a) amend Part VI, Part VII, Part XI, Part XII or Part XVI, where it appears to the States to be necessary or expedient to do so for the purpose of –
  - (i) protecting children from harm,
  - (ii) promoting their proper and adequate health, welfare and development,
  - (iii) ensuring the most beneficial and effective use, or application, of the child welfare principles,
  - (iv) facilitating the fair and efficient carrying out of the functions of –
    - (A) the Children's Convenor,
    - (B) the Board,

- (C) the Office of the President,
  - (D) the office of the deputy President of the Tribunal
  - (E) the Tribunal, or
  - (F) the Safeguarder Service, or
- (v) discharging any international obligation to which Guernsey or Alderney is subject, and
- (b) make such additional provision as they think fit for the purposes of carrying this Law into effect.]

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to make Ordinances and vice versa.

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**NOTES**

*In section 119, subsection (1) was substituted by the Children (Guernsey and Alderney) Law, 2008 (Amendment) Ordinance, 2009, section 1, with effect from 4th January, 2010.*

*The following Ordinances have been made under section 119:*

*Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009;*

*Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.*

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**General provisions as to subordinate legislation.**

**120.** (1) Any Ordinance, order, regulation, rule or guidance made, or issued, under this Law –

- (a) may, in the case of an Ordinance, and for the avoidance of doubt –

*Consolidated text*

- [(i) subject to subsection (4), create new liabilities, obligations, penalties and offences, and]
- (ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary law,
- (b) may be amended or repealed by a subsequent Ordinance, order, regulation, rule or guidance, as the case may be, hereunder, and
- (c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation –
  - (i) in the case of an Ordinance, and
  - (ii) in the case of a regulation, order, rule or guidance under this Law,provisions repealing, amending or modifying any enactment.

(2) Any power conferred by this Law to make, or issue, any Ordinance, order, regulation, rule or guidance 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.

(3) Regulations or any order (other than an order of a court) under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations or order be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations or a new order.

[ (4) The power conferred by virtue of subsection (1)(a)(i) shall not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the limits of jurisdiction imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.]

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**NOTE**

*In section 120, paragraph (a)(i) of subsection (1) was substituted and subsection (4) was inserted by the Children (Guernsey and Alderney) Law, 2008 (Amendment) Ordinance, 2009, respectively section 2(a) and section*

2(b), with effect from 4th January, 2010.

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**Power of Royal Court to make rules of court.**

**121.** (1) The Royal Court sitting as the Full Court has power to make rules of court under this Law.

(2) Rules of court made under this Law shall have effect in relation to the Royal Court, the Court of Alderney, the Magistrate's Court and the Juvenile Court, as the case may be.

(3) In addition to rules of court made under powers created under any other provision of this Law, rules of court under this section may provide for all procedural, practical and incidental matters which may be necessary for bringing this Law into effect including, without limitation –

(a) the courts which may exercise jurisdiction under this Law, and

(b) ensuring the anonymity of children, and where appropriate the families of children, who may be involved in any family proceedings.

(4) Rules of court under any provision of this Law –

(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.

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**NOTE**

*The following Rules have been made by Order of the Royal Court under section 121:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

**Interpretation.**

**122.** (1) In this Law, unless the context requires otherwise, the following words and expressions shall be construed in accordance with this subsection or the other provisions of this Law referred to in relation to them in this subsection –

**"adoption order"** includes –

- (a) an adoption order made by the Royal Court under section 2 of the Adoption (Guernsey) Law, 1960<sup>i</sup>, and
- (b) an adoption order made by a court of competent jurisdiction under the law of a prescribed country or territory,

**"Advocate"** means an Advocate of the Royal Court of Guernsey,

**["Alderney"** means the Island of Alderney,]

**"appointer"** means a person who appoints another person as a guardian under Part III,

**"the Board"**: see section 31(1),

**"British Isles"** means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland,

**"business day"** has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>j</sup>,

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<sup>i</sup> Ordres en Conseil Vol. XVIII, p. 192; Vol. XXI, p. 34, Vol. XXIII, p. 238; Orders in Council No. VIII of 1997 and No. XII of 2000.

<sup>j</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Orders in Council No. XI of 1993; Nos. I and XIV of 1994 and No. IX of 2001; G.S.I. 1993/28.

**"care requirement"**: see section 43(1),

**"Chief Officer of Police"** means the chief officer of the Island Police Force,

**"Chief Probation Officer"** means the chief officer of the Probation Service,

**"child"** means a person under the age of 18 years,

**"Child Protection Committee"**: see section 29(1),

**"child welfare checklist"**: see section 4(1),

**"child welfare principles"**: see section 3(2),

**"child's plan"**: see section 44(1)(b),

**"the children of Guernsey and Alderney"** means children who are resident in Guernsey or Alderney in accordance with regulations,

**"Children's Convenor"**: see section 30(1)(a),

**"[Children's Convenor and Tribunal Board]"**: see section 31(1),

**"Child Protection Committee"**: see section 29(1),

**"child welfare checklist"**: see section 4(1),

**"child welfare principles"**: see section 3(2),

**"community parenting order"**: see section 48,

**"compulsory intervention"** means intervention in the family life of a child by a public authority irrespective of the consent of –



- (a) the child,
- (b) the child's parents, or
- (c) any person having an interest in the child that amounts to family life,

but for the avoidance of doubt, does not include a criminal prosecution,

**"compulsory school age"** has the meaning given by section 16 of the Education (Guernsey) Law, 1970<sup>k</sup>,

**"contact order"**: see section 17(1)(b),

**"Court of Alderney"** means the Court of Alderney constituted in accordance with the Government of Alderney Law, 2004<sup>l</sup>,

**"Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961,

**"customary law"** includes the common law,

**"customs officer"** means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>m</sup> and includes an immigration officer,

**"Department"** means the States [Committee for Health & Social Care],

**"department of the States"** means any department, council or

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<sup>k</sup> Ordres en Conseil Vol. XXII, p. 318; Vol. XXVII, p. 347; Vol. XXVIII, p. 181; Vol. XXX, p. 179; Vol. XXXI, p. 168 and Vol. XXXII, p. 144.

<sup>l</sup> Order in Council No. III of 2005.

<sup>m</sup> Ordres en Conseil Vol. XXIII, p. 573; amended by Orders in Council No. XIII of 1991 and No. X of 2004.

committee (however called or titled) of the States of Guernsey,

**"Departmental foster parent"** means a foster parent approved for the purpose by the Department,

**"development"** means physical, intellectual, emotional, social or behavioural development,

**"disability"** means a physical or mental impairment which has a significant adverse effect on a person's ability to carry out normal day-to-day activities, and "disabled" is to be construed accordingly,

**"disclosure order"**: see section 39,

**"[Committee for Education, Sport & Culture]"** means the States [Committee for Education, Sport & Culture],

**"emergency child protection order"**: see section 55,

**"enactment"** includes a Law, an Ordinance and any subordinate legislation,

**"exclusion order"**: see section 59,

**"family home"** means any house, or any other place, or building, which is used as a family residence and in which a child ordinarily resides with a person –

- (a) who has parental responsibility in relation to that child, or
- (b) who ordinarily (and other than by reason only of his employment) has charge of, or control over, that child,

and includes the curtilage of any such house, place or building,

**"family proceedings"** means any proceedings –

- (a) under the inherent jurisdiction of any court in relation to children, and
- (b) under –
  - (i) this Law,
  - (ii) the Adoption (Guernsey) Law, 1960<sup>n</sup>,
  - (iii) the Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales, 1939<sup>o</sup>,
  - (iv) the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988<sup>p</sup>,
  - (v) the Loi relative à l'entretien des Enfants Illégitimes, 1927<sup>q</sup>,
  - (vi) the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964, and
  - (vii) any other enactment specified for the purpose in rules of court,

**"father"**: see section 2(3),

**"function"** includes a power and a duty,

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<sup>n</sup> Ordres en Conseil Vol. XVIII, p. 192.  
<sup>o</sup> Ordres en Conseil Vol. XI, p. 318.  
<sup>p</sup> Ordres en Conseil Vol. XXXI, p. 171.  
<sup>q</sup> Ordres en Conseil Vol. VIII, p. 132.

["**guardian**": see section 2(6),]

"**Guernsey**" includes the Islands of Herm and Jethou,

"**health**" means physical, emotional or mental health,

"[**Committee for Home Affairs**]" means the States [Committee for Home Affairs],

"**immigration officer**" means a person appointed as such under the Immigration Act 1971<sup>r</sup>,

"**interim community parenting order**": see section 53,

"**international agreement**" has the meaning given by section 2(1) of the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004<sup>s</sup>,

"**Island Police Force**" means the salaried police force of the Island of Guernsey;

"**Juvenile Court**" means the Magistrate's Court constituted in accordance with section 67 of this Law,

"**Law Officer**" means Her Majesty's Procureur and Her Majesty's Comptroller,

"**Magistrate**" has the same meaning as in the Magistrate's Court (Guernsey) Law, 1954 and includes an Acting Magistrate and a Judge of the Magistrate's Court,

"**Magistrate's Court**" in relation to Guernsey, means the court

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<sup>r</sup> An Act of Parliament (1971 c. 77); extended to the Bailiwick by the Immigration (Guernsey) Order 1993 (No. 1796).

<sup>s</sup> Order in Council No. XII of 2005.

established by the Magistrate's Court (Guernsey) Law, 1954,

**"medical treatment"** –

- (a) includes any examination or investigation to ascertain if treatment or further treatment is required, and
- (b) must have been recommended by a registered medical practitioner,

**"mother"**: see section 2(3),

**"Office of the Children's Convenor"**: see section 30(1),

**"Office of the President"**: see section 32(1),

**"penal notice"**: see section 87,

**"parent"**: see section 2(4),

**"parental responsibility"**: see section 5,

**"parental responsibility order"**: see section 17(1)(e),

**"person"** includes an individual, any department of the States, any committee of the States of Alderney, a court, the Tribunal, any other public authority, and any other body or agency, whether or not incorporated,

**"police officer"** means –

- (a) in relation to Guernsey, –
  - (i) a member of the Island Police Force, and
  - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of

Guernsey, and

- (b) in relation to Alderney –
  - (i) a member of the Island Police Force,
  - (ii) a member of any police force which may be established by the States of Alderney, and
  - (iii) within the limits of his jurisdiction, a member of the Alderney Special Constabulary appointed pursuant to section 47 of the Government of Alderney Law, 2004<sup>t</sup>,

**"prescribed"** means prescribed by regulations,

**"the President"**: see section 32(1)(a),

**"Probation Service"** means the Guernsey probation service,

**"prohibited steps order"**: see section 17(1)(d),

**"public authority"** has the meaning given under section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2001<sup>u</sup>, and, for the avoidance of doubt, shall include any person authorised to act on behalf of a public authority,

**"public holiday"** has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958,

**"publish"** means to distribute, publicise or disseminate information by any medium, including by newspaper, by radio or television broadcast,

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<sup>t</sup> Order in Council No. III of 2004.

<sup>u</sup> Order in Council No. XIV of 2000.

or by the internet, and related expressions are to be construed accordingly,

**"regulations"** means regulations made by the Department,

**"relevant court"** means any court, exercising jurisdiction in respect of Guernsey or Alderney, which is prescribed by rules of court for the purpose of exercising jurisdiction under this Law,

**"residence order"**: see section 17(1)(a),

**"the Royal Court"**: see section 95,

**"rules of court"** means rules made by order of the Royal Court,

**"Safeguarder Service"**: see section 83,

**"Safeguarder"** includes a person authorised by the Safeguarder Service to act on its behalf,

**"section 17 order"**: see section 17(2),

**"secure accommodation"**: see section 68,

**"secure accommodation order"**: see section 69(1),

**"special contact order"**: see section 50(3),

**"specific issue order"**: see section 17(1)(c),

**"States"** means the States of Guernsey,

**"States of Deliberation"** means the States of Deliberation of Guernsey within the meaning of within the meaning of the Reform (Guernsey) Law 1948<sup>v</sup>,

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v Ordres en Conseil Vol. XIII, p. 288; Vol. XIV, p. 407; Vol. XV, p. 279;

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

**"territorial waters"** means the territorial sea adjacent to the Islands of Guernsey or Alderney, as the case may be, the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964<sup>w</sup>,

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

**"uniform scale"** means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>x</sup>,

**"United Kingdom"** means the United Kingdom of Great Britain and Northern Ireland,

**"unmarried father"**: see section 6(2), and

**"youth detention"** means detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>y</sup>.

(2) The Interpretation (Guernsey) Law, 1948<sup>z</sup> –

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Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, p. 164; Vol. XXXII, p. 41; Order in Council No. V of 1993; No. II of 1996; No. III of 1998; No. X of 1998; No. XIII of 2003; No. III of 2004 and No. II of 2007; also amended by Ordinances XXXIII of 2003, III of 2004 and LI of 2006.

<sup>w</sup> Order in Council of the 25<sup>th</sup> September 1964.

<sup>x</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>y</sup> Ordres en Conseil Vol. XXXII, p. 106.

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



*Consolidated text*

- (a) applies to the interpretation of this Law throughout Guernsey and Alderney, and
  - (b) in the absence of any provision to the contrary contained therein, applies to the interpretation of, any Ordinance or subordinate legislation made under this Law –
    - (i) throughout Guernsey and Alderney, and
    - (ii) for the avoidance of doubt in the case of any subordinate legislation, as it applies to the interpretation of a Guernsey enactment.
- (3) Unless the context requires otherwise, references in this Law to any enactment, subordinate legislation or international agreement are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

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**NOTES**

*In section 122,*

*the definition of the expression "Alderney" in subsection (1) was inserted, and the definition therein of the expression "guardian" was substituted, by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, respectively section 58(a) and section 58(b), with effect from 4th January, 2010;*

*the definition of the expression "Children's Convenor and Tribunal Board" in subsection (1) was substituted by the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, section 50(1), with effect from 4th January, 2010;*

*the words in square brackets in the definition of the expression "Department" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;*

*the words in square brackets in the definition of the expression "Committee for Education, Sport & Culture" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 3, with effect from 1st May, 2016;*

*the words in square brackets in the definition of the expression "Committee for Home Affairs" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The functions, rights and liabilities of the Education Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Education, Sport & Culture and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 3, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The following Regulations have been made under section 122:*

*Children (Residence) Regulations, 2009.*

*The following Rules have been made by Order of the Royal Court under section 122:*

*Family Proceedings (Guernsey and Alderney) Rules, 2009.*

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### **Repeals, amendments, transitional provisions and general savings.**

**123.** (1) Without prejudice to the generality of the powers conferred by any other provision of this Law, the States may by Ordinance made under this section repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to –

- (a) any of the enactments set out in the Schedule to this Law, and
- (b) any other enactment relating to children, or issues relating to children, including, without limitation –

- (i) the parentage of children,
- (ii) the care and welfare of children,
- (iii) the health of children, and
- (iii) the education of children.

(2) For the avoidance of doubt, an Ordinance under this section may amend any subordinate legislation made under any enactment to which subsection (1) applies.

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**NOTE**

*The following Ordinances have been made under section 123:*

*Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009;*  
*Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009;*  
*Child Protection (Amendment) (Guernsey) Ordinance, 2010;*  
*Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015.*

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**Extent.**

**124.** This Law applies to the islands of Guernsey and Alderney and the territorial waters.

**Citation.**

**125.** This Law may be cited as the Children (Guernsey and Alderney) Law, 2008.

**Commencement.**

**126.** (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) An Ordinance under subsection (1) may –

*Consolidated text*

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain such saving and transitional provisions as the States think appropriate.

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**NOTE**

*The Law was brought into force on 4th January, 2010 by the Children (Guernsey and Alderney) Law, 2008 (Commencement) Ordinance, 2009, section 1.*

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SCHEDULE Section 123  
SPECIFIC ENACTMENTS WHICH MAY BE REPEALED OR AMENDED BY  
ORDINANCE

1. Ordonnance relative à la vaccination des enfants, 1869<sup>aa</sup>.
2. Ordonnance autorisant la nomination par le Magistrat d'un Tuteur Spécial à soutenir ou défendre Procès relatif a l'entretien d'un Enfant Illégitime, 1930<sup>bb</sup>.
3. The Children and Young Persons (Regulation of Boarding-Out) Ordinance, 1968<sup>cc</sup>.
4. The Children and Young Persons (Secure Accommodation) Ordinance, 1997<sup>dd</sup>.
5. Loi relative à la protection des Femmes et Filles mineures, 1914<sup>ee</sup>.
6. Loi ayant rapport à la protection des enfants et des jeunes personnes, 1917<sup>ff</sup>.
7. Loi supplémentaire à la loi ayant rapport à la protection des enfants et des jeunes personnes, 1925<sup>gg</sup>.
8. Loi ayant rapport à l'emploi de femmes, de jeunes personnes et d'enfants, 1926<sup>hh</sup>.

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- aa** Recueil d'Ordonnances Tome IV, p. 97.  
**bb** Recueil d'Ordonnances Tome VIII, p. 62.  
**cc** Recueil d'Ordonnances Tome XV, p. 328.  
**dd** Ordinance No. XXIII of 1997.  
**ee** Ordres en Conseil Vol. V, p. 74.  
**ff** Ordres en Conseil Vol. V, p. 342.  
**gg** Ordres en Conseil Vol. VII, p. 396.  
**hh** Ordres en Conseil Vol. VIII, p. 29.

9. Loi relative à l'Entretien des Enfants Illégitimes, 1927<sup>ii</sup>.
10. Loi ayant rapport à l'asile des enfants, 1928<sup>jj</sup>.
11. Loi relative à la probation de délinquants, 1929<sup>kk</sup>.
12. Loi supplémentaire à la Loi ayant rapport à la protection des Enfants et des Jeunes Personnes, 1937<sup>ll</sup>.
13. The Matrimonial Causes Law, 1939.
14. The Family Allowances (Guernsey) Law, 1950<sup>mm</sup>.
15. The Marriage (Amendment) Law, 1951<sup>nn</sup>.
16. The Adoption (Guernsey) Law, 1960<sup>oo</sup>.
- [16.] The Children and Young Persons (Guernsey) Law, 1967<sup>pp</sup>.
17. The Education Law, 1970<sup>qq</sup>.
18. The States Children Board and Public Assistance (Amendment)

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ii	Ordres en Conseil Vol. VIII, p. 130.
jj	Ordres en Conseil Vol. VIII, p. 238.
kk	Ordres en Conseil Vol. VIII, p. 363.
ll	Ordres en Conseil Vol. XI, p. 116.
mm	Ordres en Conseil Vol. XIV, p. 332.
nn	Ordres en Conseil Vol. XV, p. 200.
oo	Ordres en Conseil Vol. XVIII. p. 192.
pp	Ordres en Conseil Vol. XXI, p. 34.
qq	Ordres en Conseil Vol. XXII, p. 318.

(Guernsey) Law, 1970<sup>rr</sup>.

19. The Children and Young Persons (Amendment) (Guernsey) Law, 1971<sup>ss</sup>.

20. The Supplementary Benefit (Guernsey) Law, 1971<sup>tt</sup>.

21. The Child Protection (Guernsey) Law, 1972<sup>uu</sup>.

22. The Family Allowances (Guernsey) (Amendment) Law, 1976<sup>vv</sup>.

23. The Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978<sup>ww</sup>.

24. The Social Insurance (Guernsey) Law, 1978<sup>xx</sup>.

25. The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979<sup>yy</sup>.

26. The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>zz</sup>.

27. The [Education Amendment Law, 1987]<sup>aaa</sup>.

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rr Ordres en Conseil Vol. XXII, p. 521.

ss Ordres en Conseil Vol. XXIII, p. 3.

tt Ordres en Conseil Vol. XXIII, p. 26.

uu Ordres en Conseil Vol. XXIII, p. 238.

vv Ordres en Conseil Vol. XXVI, p. 150.

ww Ordres en Conseil Vol. XXVI, p. 264.

xx Ordres en Conseil Vol. XXVI, p. 292.

yy Ordres en Conseil Vol. XXVII, p. 99.

zz Ordres en Conseil Vol. XXX, p. 145.

aaa Ordres en Conseil Vol. XXX, p. 179.

28. The Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.
29. The Juvenile Court (Guernsey) Law, 1989<sup>bbb</sup>.
30. The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990<sup>ccc</sup>.
31. The Children and Young Persons (Miscellaneous Provisions) (Guernsey) Law, 1991<sup>ddd</sup>.
32. The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992<sup>eee</sup>.
33. The Children and Young Persons (Amendment) (Guernsey) Law, 1997<sup>fff</sup>.
34. The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997<sup>ggg</sup>.
35. The Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000<sup>hhh</sup>.
36. The Children and Young Persons (Amendment) (Guernsey) Law, 2000<sup>iii</sup>.

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- bbb** Ordres en Conseil Vol. XXXI, p. 326.  
**ccc** Ordres en Conseil Vol. XXXII, p. 77.  
**ddd** Order in Council No. XIX of 1991.  
**eee** Order in Council No. II of 1992.  
**fff** Order in Council No. V of 1997.  
**ggg** Order in Council No. IX of 1997.  
**hhh** Order in Council No. V of 2000.  
**iii** Order in Council No. III of 2001.



37. The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002<sup>jjj</sup>.
38. The Bail (Bailiwick of Guernsey) Law, 2003<sup>kkk</sup>.
39. The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>lll</sup>.
40. Loi sur l'éducation élémentaire et l'instruction obligatoire (Auregny), 1924<sup>mmm</sup>.
41. Loi relative à la Vaccination des Enfants (Auregny), 1929<sup>nnn</sup>.
42. Loi portant amendement à la Loi sur l'Education Élémentaire et l'Instruction Obligatoire (Auregny), 1930<sup>ooo</sup>.
43. The Child Protection (Alderney) Law, 1953<sup>ppp</sup>.
44. The Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964<sup>qqq</sup>.
45. The Guardianship of Minors (Alderney) Law, 1990<sup>rrr</sup>.

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**NOTES**

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<b>jjj</b>	Order in Council No. XIV of 2002.
<b>kkk</b>	Order in Council No. XVII of 2003.
<b>lll</b>	Order in Council No. XXIII of 2003.
<b>mmm</b>	Ordres en Conseil Vol. VII, p. 256.
<b>nnn</b>	Ordres en Conseil Vol. VIII, p. 355.
<b>ooo</b>	Ordres en Conseil Vol. VIII, p. 382.
<b>ppp</b>	Ordres en Conseil Vol. XV, p. 413.
<b>qqq</b>	Ordres en Conseil Vol. XIX, p. 241.
<b>rrr</b>	Ordres en Conseil Vol. XXXII, p. 177.

*The Children and Young Persons (Secure Accommodation) Ordinance, 1997 and the Juvenile Court (Guernsey) Law, 1989 have since been repealed by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008, section 23(2), Schedule 2, Part II, respectively paragraph 3 and paragraph 2, with effect from 4th January, 2010, subject to the transitional provisions in section 23(3) of, and Part III of Schedule 2 to, the 2008 Law.*

*The Ordonnance relative à la vaccination des enfants, 1869, the Ordonnance autorisant la nomination par le Magistrat d'un Tuteur Spécial à soutenir ou défendre Procès relatif a l'entretien d'un Enfant Illégitime, 1930, the Children and Young Persons (Amendment) (Guernsey) Law, 1971, the Children and Young Persons (Amendment) (Guernsey) Law, 1997 and the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 have since been repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, respectively, Part II, paragraph 1, Part II, paragraph 2, Part I, paragraph 18, Part I, paragraph 29 and Part I, paragraph 30, with effect from 4th January, 2010, subject to the savings and transitional provisions in section 4 of, and Schedule 2 to, the 2009 Ordinance.*

*The second paragraph 16 shown, incorrectly, in the printed version of this Schedule as "16" should read "17" and, consequently, all paragraph numbers subsequent thereto should be changed correspondingly.*

*The words in square brackets shown, incorrectly, in the printed version of this Schedule as "Education Amendment Law, 1987" should read "Education (Amendment) (Guernsey) Law, 1987".*

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