

The Short Guide

Children Law

Guernsey and Alderney

Guide to:

The Children (Guernsey & Alderney) Law 2008 (“the children law”)

&

The Criminal Justice (Children & Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008 (“the criminal law”).

January 2009.

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Foreword

I am really pleased to be able to introduce this short guide to the new children's laws, which represents seven years of determined effort with the involvement of many parties.

These laws give Guernsey and Alderney a unique opportunity to lead the way in working with its children and young people in an innovative and forward thinking way.

I would particularly like to thank the many members of staff from Services for Children and Young People who have made an invaluable contribution throughout this process. I would also like to thank Ruth Bowen for her work in compiling this guide.

I hope you find this booklet informative and useful.

Jacqui Gallienne
Director
Services for Children and Young People

Introduction

This guide is intended to provide an easy introduction and reference to the main points of the two new laws affecting children and their families, introduced into the Bailiwick in January 2010

The guide is a brief summary only. It should not be taken as an authoritative statement of the law. For more detailed understanding, it may be necessary to take legal advice, and/or read the laws themselves, together with the accompanying court rules, regulations and ordinances.

Background to the new laws

It is 40 years since Guernsey's last major piece of legislation affecting children and in many respects it no longer fits with the reality of family life today. As island communities, relying on a globally flexible workforce, it has become increasingly important to comply with internationally agreed standards, such as those set out in the European Convention on Human Rights and UN Convention on the Rights of the Child.

Between 1989 – 2003, the rest of the British Isles updated their children laws. Guernsey took the opportunity to look very carefully at these laws, learning from the things that work well and those that are problematic. The new laws have attempted to create a legal system for children and families that is uniquely suited to Guernsey's island communities.

Although much of the Guernsey law will look familiar to those with knowledge of, for example, the Children Act 1989 or the Children (Scotland) Act 1995, there are fundamental differences, and in many instances it will be inappropriate to try and draw direct parallels.

Scope and timing of the new laws

The children law applies to Guernsey and Alderney, although not to Sark at this stage. The criminal law covers Sark as well.

Philosophy

The welfare of children is at the heart of the new children laws. The law also emphasises the responsibilities of parents and others caring for children. Of course welfare must be subject to considerations of public interest and safety and the laws recognise this. They also recognise that the States have responsibilities too, in supporting families that may be struggling and ensuring that when children cannot live at home, they have the next best thing to loving and competent parents.

Our children are our most important investment for the future, and we collectively owe it to them and to ourselves, to help them fulfil their potential, and grow up, as far as is possible, to be happy and healthy members of society, willing and able to make a positive contribution to the community in which they live.

Glossary

Below are some definitions of significant words and phrases used in the new children laws. Not included here are words/phrases that are defined in the relevant section of this guide.

In the laws themselves, these, and other, definitions are in sections 2 and 122 of the children law, and sections 1 and 24 of the criminal law.

Key definitions

Child is a person under 18. [Except for Part V of the criminal law, dealing with remand, where the age is under 17].

Father is the genetic father of a child (whether or not he has parental responsibility) OR an adoptive father [“father” will also include some men who are not the genetic father, but held in law to be father under proposals for an ordinance on assisted reproduction].

Mother is the woman who gave birth to a child OR an adoptive mother.

Parent is a mother or father who has parental responsibility. [For details of who has parental responsibility and how they get it, see Part II of the children law].

Some other definitions

This is not an exhaustive list; it includes some words and phrases mentioned, but not defined in this guide.

Assisted reproduction means the use of medical techniques or treatment to enhance fertility and includes, for example, artificial insemination with donated sperm

Child defendant is a child who has been charged with a criminal offence, but not yet convicted.

Child offender is a child who has been convicted of an offence.

Compulsory intervention means intervention in the family life of a child by way of court or tribunal order, whether or not the child or family have consented.

Development means physical, intellectual, emotional, social or behavioural development.

Disability means physical or mental impairment, which has a significant adverse effect on the ability to carry out normal day to day activities.

Family home is any house or other building used as a family residence and in which the child normally lives with a person who cares for the child, (but not as part of their employment).

Family proceedings include any court proceedings under the children law, Guernsey adoption laws, Guernsey divorce laws, the 1988 Domestic Proceedings and Magistrate's Court Law, Alderney's 1964 Separation, Maintenance and Affiliation Law. [Other, less well used laws are also included and court rules may further extend the list].

Guardian is a person appointed under Part III to fulfil the role of a parent who has died.

Medical treatment must have been recommended by a registered medical practitioner and includes any examination or investigation.

Ordinance is law passed by vote of deputies in the States of Guernsey (and/or Alderney). It may fill in some of the detail that is only outlined in the main laws. Unlike laws, an ordinance does not have to be approved by the Privy Council and is therefore, generally quicker to come into effect.

Person includes not only an individual, but also a body or agency such as departments of the States, committees of Alderney States, a court.

Regulations are like ordinances in that they fill in detail left out of the main law. Regulations are made by individual States' departments and some need to be laid before the States.

Rules of court are yet another way of filling in detail, which is only outlined in a law. They are made by the Royal Court or Court of Alderney with no involvement of the States. They generally deal with how the law will operate in practice in the courts.

The Children (Guernsey & Alderney) Law 2008

Part I – Preliminary (sections 1-4)

Section 1 sets out in general terms the main purposes of the law, which include protection of children from harm and promotion of their health and development.

Section 2 has key definitions, which are included in the glossary of this guide. Principle of these is that:

“child means a person under the age of 18..”

This follows the international definition in the UN Convention on the Rights of the Child.

Section 3 contains the child welfare principles, which must be considered by any public authority undertaking any function under the law. Most important of these (s.3(1)(b)) is that:

“...the child’s welfare is the paramount consideration.”

(An exception to this is if welfare conflicts with the safety of another person (s.3(3)).

The following principles also apply (s.3(2));

(a) children are usually best brought up within their own family and community;

where this is not possible –

(b) children should normally maintain contact with their family and community;

(c) there should be no compulsory intervention in a child’s life, unless necessary to provide care, protection, guidance or control;

(d) any delay in making a decision about a child is likely to be detrimental to welfare;

(e) irrespective of age, development or ability a child should have the opportunity to express their wishes, feelings and views;

- (f) from the age of 12 a child is presumed capable of forming a considered view, unless the contrary is shown;
- (g) so far as practicable, children in the care of the States are entitled to the same level of parenting as that provided by reasonable and competent parents;
- (h) in any case involving criminal activity (or risk of), the main purpose of any intervention is to be prevention of crime;
- (i) parents and others responsible for a child's welfare should consult, co-operate and resolve matters by agreement, with formal proceedings as a last resort;
- (j) it is normally in a child's best interests to have ongoing contact with both parents and it is the responsibility of those parents and public authorities to promote contact;
- (k) in making decisions, there should be no discrimination on grounds of gender, marital status, ethnic or cultural origin, age, disability or sexual orientation.

When taking these principles into account, a public body must also consider the child welfare checklist in section 4. These matters include:

- child's wishes and feelings;
- child's specific characteristics, including age and gender, cultural, ethnic, linguistic and religious background;
- harm the child has suffered or is at risk of suffering;
- physical, emotional and educational needs;
- how capable any parent (or other person caring for or with responsibility for the child) is of meeting the child's needs;
- the importance, and likely effect, of contact with the child's parents, wider family and significant others;
- the effect, or likely effect of a change in circumstances, including removal from Guernsey or Alderney.

In exceptional circumstances any of the matters in the principles or checklist may be overridden if the child's welfare requires it, but they must all nevertheless be considered.

NB: The welfare principles have been consolidated from British and international legislation and case law.

Part II – Parental Responsibility (sections 5-11)

What is parental responsibility? (section 5)

At its core, parental responsibility (sometimes abbreviated to “p.r.”) is a set of duties towards children:

- safeguarding and promoting health, education, development and welfare;
- providing care, direction, guidance and control;
- providing a home, either directly or indirectly;
- maintaining regular contact if not living with the child;
- acting as legal representative;
- safeguarding and dealing with any property;
- determining all aspects of upbringing.

The duties are to be performed as far as is practicable, in the interests of the child and taking account of the child’s own evolving capacity.

Those with parental responsibility have a right to exercise it without interference from others (including the States), unless permitted by law.

Who has parental responsibility? (sections 6-8)

The woman who gives birth to a child and the father, if married to the mother at the time of the birth, will always have parental responsibility. They can only lose their parental responsibility if the child is adopted (or in some very exceptional cases of assisted reproduction).

Fathers who were married and then divorce, continue to have parental responsibility and this applies even if the divorce occurred prior to the law coming into force.

Adoptive parents have parental responsibility in place of birth parents.

Unmarried fathers may acquire parental responsibility as follows:

- by marrying the mother;
- being registered on the birth certificate (BUT ONLY if registered after the date the law comes into effect);
- entering into an agreement with the mother in the prescribed form;
- if the court makes a parental responsibility order or residence order in his favour.

Other individuals get parental responsibility:

- if they have a residence order or parental responsibility order under Part IV;
- a guardian appointed under Part III;
- by virtue of some orders made prior to the new law (see final paragraph of this section, below).

Health & Social Services Dept has parental responsibility if it has any of the following orders: (see Part VII for details of the orders)

- fit person or special care order under the previous law;
- community parenting order;
- secure accommodation order;
- emergency child protection order.

In the case of the last two orders, parental responsibility must be exercised in a manner proportionate to the length of the order.

See below for details of parental responsibility where a care requirement is in force.

How long does parental responsibility last? (section 11)

- Until 18, or the child's marriage before that.
- Any court order that ends parental responsibility.

- Where parental responsibility is an integral part of a court order (e.g. a community parenting, secure accommodation, or residence order), when that order comes to an end.

Sharing parental responsibility (section 9)

One of the law's basic principles is that those responsible for a child should consult and co-operate with one another (s.3(2)(i)). This may not always be necessary or possible, especially on a day-to-day basis. Section 9(1) therefore provides that it is essential for all those with parental responsibility to be in agreement on the following issues:

- naming the child, or changing the name;
- removing the child from the jurisdiction of Guernsey and Alderney (see Part X for some important exceptions to this);
- choosing the child's school or religion;
- consenting to marriage.

Where it is not possible to obtain consent, on these or any other issues, the court can be asked to make a decision.

Some other issues on parental responsibility (sections 8 & 10)

- Parental responsibility may be delegated, but it cannot be surrendered or transferred;
- any person aged 16 or over who does not have parental responsibility but has the child in their care, has the right and the duty, to take whatever action may be necessary to safeguard the child (e.g. this would apply to a babysitter who needed to get medical attention, but could not contact the parents or others with parental responsibility);
- having, or not having, parental responsibility, does not affect any other duty a person might have towards a child (e.g. to pay maintenance);
- where a child is subject to a care requirement (see Part VII), the Department and any person named in a care requirement condition, may exercise parental responsibility

to the extent necessary to fulfil the terms and conditions of the care requirement.

What happens with court orders made before the new laws come into force?

Full details of what will happen to orders made before the law comes into force is set out in an ordinance.

These transitional provisions will automatically give parental responsibility to those who have certain specific orders, such as custody orders.

Part III – Guardians appointed to fulfil the role of a parent in place of a parent who has died (sections 12-16)

‘Guardian’ is a term much used in Guernsey laws and has a variety of meanings. In this law, it specifically means a person who has been appointed to stand in the shoes of a parent who has died. Other types of guardians will be dealt with in the transitional provisions.

How are guardians appointed?

The appointment must be in writing by a parent or other guardian. Usually it will be made by will (s.12). Similar rules apply to cancelling the appointment of a guardian, although divorce or judicial separation may automatically cancel some guardian appointments.

The appointment only takes effect when the appointer has died and then only if the guardian accepts the appointment AND one of the following happens:

- i. the surviving parent consents or dies;
- ii. the court confirms the appointment; or
- iii. the appointer had a residence order in their favour immediately before they died.

In England and Wales an appointment cannot usually take effect until both parents have died, whereas under Guernsey's previous law the appointment always took effect, even if the surviving parent did not get on with the guardian. The new Guernsey law is a compromise between these two rather inflexible positions.

The court also has wide powers to appoint or dismiss a guardian, including attaching conditions to any appointment. These powers are quite technical, will probably be used extremely rarely and so are not dealt with in detail here.

Guardians and parental responsibility

Guardians have parental responsibility, which they must exercise in accordance with the law set out in Part II (s.16).

Part IV – Orders with respect to children in family and other proceedings (sections 17 – 22)

These will replace custody and access with a broader range of orders, available to a wider range of people.

The section 17 orders are:

Residence order covers arrangements settling with whom a child lives and gives that individual (or individuals) parental responsibility.

Contact order requires the individual(s) the child lives with to allow the child to have contact with someone else. That contact may be direct or indirect (e.g. emails, phone calls).

Specific issue order deals with a particular question that has arisen. They are usually made when those with parental responsibility cannot agree on a particular matter, such as change of name.

Prohibited steps order prevents a specific action, such as removing a child from the jurisdiction.

Parental responsibility order gives an individual parental responsibility

NB: In England and Wales, the only individuals who can have freestanding parental responsibility are a child's mother, father or step-parent. Anyone else only has parental responsibility as a consequence of another order, usually a residence order.

Who gets section 17 orders, and how?

Anyone can be given a s.17 order if it is in the child's interests.

The following have an absolute right to apply:

- anyone with parental responsibility;
- the child's father (even if he doesn't have parental responsibility).

The following have a right to apply for a residence order, contact order, or parental responsibility order:

- a person the child has lived with, within the preceding three months, for a total of one year over the past two years;
- someone with written consent of all those with parental responsibility (including HSSD where the child is subject to certain public law orders).

People not mentioned above can still apply, but must first get the court's consent; e.g. grandparents.

Some other points about section 17 orders

- HSSD and other non-individuals can only apply for prohibited steps or specific issue orders (s.19).

- The right of HSSD foster carers to apply for orders is limited (s.20).
- Children can apply for orders about themselves (with court permission).
- More than one person can have a residence order, in which case they share residence.
- Conditions in a care requirement will take precedence over s.17 orders.

How long do orders last?

Unless orders are varied or discharged or they specifically state otherwise, orders come to an end when:

- i. the child is 18 or marries;
- ii. a community parenting or adoption order is made;
- iii. in the case of a residence order made to one parent, both parents live together for more than six months;
- iv. a similar provision to (iii) applies to contact orders if the parents resume living together more than six months.

Part V – Services and support for children and families (sections 23 – 29)

This part imposes some new duties on the States to children who are in need or at risk and brings existing duties up to date.

What do “in need” and “at risk” mean? (section 23)

A child is in need if s/he:

- needs additional services in order either to achieve or maintain a reasonable standard of health or development, or to prevent significant impairment to health or development;
- is disabled;
- is adversely affected, or likely to be, by the disability or illness of a family member.

“Additional services” are over and above those provided to all children by the States (such as ordinary schooling and routine immunisations and health checks).

A child is at risk when s/he is believed to satisfy the grounds for compulsory intervention set out in Part VII.

The law imposes a duty on the States to identify difficulties and provide services at an early stage, so that children in need and their families are provided with help, which prevents problems developing or escalating to the point that the child is at risk.

What other duties are there?

As well as the general duty to children in need, more specific duties are imposed by the law on the States and others as follows:

- Once every three years HSSD, together with other States’ departments and relevant voluntary agencies, must prepare a plan for providing services to promote and safeguard the welfare of children and their families. The plan must be submitted to the States and published. Other States departments are under an obligation to assist in the implementation of the plan as well as its preparation. (s.28).
- HSSD must provide accommodation to certain children (s. 25).
- Children in the care of HSSD and those who were previously in HSSD care, are entitled to certain services and forms of support (s.26).
- Employees of the States and others working with children may have a duty to share information where they believe a child is in need or at risk. Again, the details of this will be set out in regulations or guidance and in certain circumstances, normal data protection considerations may be overridden (s.27).
- A Child Protection Committee, comprising representatives from various States and other bodies (such as police, voluntary agencies and education), will have responsibility for co-ordinating the protection and promotion of children’s welfare throughout Guernsey and Alderney. This may

include, for example, producing guidance on how and in what circumstances, information should be shared under s. 27.

Part VI – The Children’s Convenor, Children’s Convenor Board and Child Youth and Community Tribunal (sections 30 – 34)

This part of the law establishes two major new bodies:

The Child Youth and Community Tribunal (the Tribunal) will replace court in most cases of child protection and child offending. These cases will now be heard by a lay panel of three people, drawn from the local community. Guided by the law’s basic principles, with the welfare of the child as the paramount consideration, the Tribunal will consider whether children at risk need compulsory intervention to ensure they receive sufficient care, protection, guidance or control.

The approach of the Tribunal will be much less formal than a court, geared towards discussion with both the child and family and aimed at getting to the bottom of the child’s problems and finding ways to tackle them, within the family wherever possible.

With a few exceptions, anyone aged 21 – 69 can apply to be a member of the Tribunal and the emphasis is on people with life experience and empathy, rather than formal qualifications. Those who cannot apply include sitting members of the States of Guernsey and Alderney and lawyers employed by the States. Although not specified in the law, employees of HSSD’s Services for Children and Young People will also not be able to sit on the Tribunal, to avoid any possible conflict of interest.

One of the Tribunal members will be President who, as well as sitting on tribunals, will be its public face and responsible for some administration, such as allocating members to specific hearings.

Members and the President, are formally appointed by the Royal Court after undergoing thorough training. They will receive an allowance.

The Children's Convenor is the gatekeeper to the Tribunal. Referrals of children thought to be in need of compulsory intervention under section 35 of the law (see Part VII) must be made to the Convenor, who will investigate the case and decided whether to refer on to the tribunal.

The Convenor should be a qualified lawyer with extensive experience of child law cases. There will be a deputy Convenor, with similar experience, responsibilities and powers.

The law also establishes a Children's Convenor and Tribunal Board, which will be responsible for appointing, assisting and supporting the Convenor. The Board will also offer support to the President.

The detail of how the Convenor and Tribunal will function is set out in Part VII of the law and in ordinance.

NB: Although the Tribunal and Children's Convenor are based on the Scottish Children's Hearing system, there are substantial differences in the Guernsey scheme, so beware of making assumptions on the basis of what happens in Scotland.

Part VII – Children requiring care, protection, guidance or control (sections 35 – 66)

This is the longest part of the new law, and it makes radical changes to the previous methods of dealing with children who offend and those in need of care and protection. It is broken down into seven sub-parts:

1. Compulsory intervention
2. Notification, referral to and investigation by Children's Convenor
3. Referral to Tribunal
4. Care requirement
5. Community parenting order
6. Protection of children in an emergency
7. Powers of police officers.

1) Compulsory intervention (section 35)

Section 35 sets out the conditions that must usually be satisfied to justify a court or the Tribunal making an order about a child.

There is one main condition (1) which must be combined with one of the conditions in (2), as follows:

(1) There is, or appears to be, no one able and willing to exercise parental responsibility so as to provide adequate care protection guidance or control to the child AND

(2) on the balance of probabilities, the child:

- (a) has suffered, or is likely to suffer, significant impairment to health or development;
- (b) has suffered, or likely to suffer, sexual or physical abuse;
- (c) has misused drugs or alcohol or inhaled a volatile substance;
- (d) exposed or likely to be exposed to moral danger;
- (e) has displayed violent or destructive behaviour and is likely to be a danger to himself or others OR is otherwise beyond control;

- (f) is 12 or over and has committed a criminal offence;
- (g) is failing to attend school without good reason.

NB: The 'balance of probabilities' means that the condition in (2) must be proved more likely than not to be satisfied. It does not have to be shown 'beyond reasonable doubt' as in a criminal case, even for condition (f), because this will not be regarded as a criminal conviction.

2) Notification, referral to and investigation by the Children's Convenor (sections 36 – 41)

Referral and investigation

Any person may refer a child to the Convenor if they believe the conditions in section 35 may apply (s.36(1)).

NB: Referral to the Convenor does NOT take the place of child protection investigations by HSSD, which have a duty under ordinance to investigate child protection concerns. Anyone worried about a child should continue to contact children's services in the first instance, where specialist social workers will make enquiries and decide what further action, if any, needs to be taken. This decision will include whether a referral needs to be made to the Convenor. Therefore, although under section 36 anyone may refer to the Convenor, in practice, it is likely that most referrals will be by police or HSSD.

When a referral is made, the Convenor is under a duty to investigate the referral (s.37). This may include obtaining reports from HSSD, education and other agencies involved with the child.

The Convenor has power to require information to assist the investigation. Where a person refuses to disclose the information, the Convenor can apply to court (s.39).

It is an offence to fail to provide information to the Convenor or to give false information knowingly or recklessly (s.41).

Notification

As well as referrals, a number of issues must as a matter of course be notified to the Convenor. These issues include:

- any detention of a child, whether by police, customs or HSSD; in secure accommodation or the prison;
- making of emergency child protection order;
- applications for various court orders, including adoption and community parenting order;
- placements of children out of the jurisdiction.

3) Referral to Tribunal (section 42)

If, following investigation, the Convenor believes that compulsory intervention may be necessary, the case must be referred to the Tribunal (s.42).

Where a case is referred to the Tribunal, but before the Tribunal meets, the parents, older children and others entitled must be given, by the Convenor, full details of the reasons for the referral and asked whether they agree with them.

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Before the Tribunal meets, there will be a Convenor's meeting, with the parents, child and others as required. The main point of this is to establish whether the conditions for referral are accepted. If they are not, then the matter must be sent to the Juvenile Court for a decision whether the section 35 conditions are satisfied. If the court decides that they are, the case will go back to the Tribunal for a decision on whether compulsory intervention is necessary and if so, what it should be.

The Convenor's meeting may also consider issues such as who should be involved in the case and whether the child should attend the Tribunal hearing.

Where the Convenor decides not to refer to the Tribunal, details of that decision must be given to those specified in regulations. The case may still be referred to HSSD, or any other relevant service if the child is a child in need under Part V.

4) Care requirement (sections 43 – 47)

If the Tribunal, having heard the case, decides that voluntary provision cannot give adequate care, protection, guidance or control, it can make a care requirement, requiring the States take action to:

- Protect the child and promote their welfare etc.
- Assist the parent, or other carer, in looking after the child (s. 43).

A final care requirement can only be made if the Tribunal is satisfied:

- voluntary measures have not been sufficient or are unlikely to be sufficient; and
- a child's plan has been approved (s.44).

Conditions

The Tribunal has wide discretion to attach conditions to a care requirement. These can include, for example, where a child should live and with whom they have contact and/or whether they need to attend a project to address offending behaviour.

Duration

- A care requirement lasts for a maximum of one year, although it can be renewed (s.46).
- It will be reviewed within the year and may be discharged or varied (s.47).
- Interim care requirements may be made for up to 28 days if the Tribunal is not in a position to make a final order (s. 44(2)).

Parental Responsibility

Although a care requirement does not automatically grant full parental responsibility, HSSD and anyone else named in a care requirement condition, will be entitled to exercise parental responsibility to the extent necessary to make the condition effective.

5) Community parenting order (sections 48 – 54)

Unlike a care requirement, this order is intended to give HSSD power to plan for a child, where it is clear that the child's family will be unable or unwilling to look after the child in the long-term.

It is an order made by the Juvenile Court (and not the Tribunal) and an application can only be made by HSSD (and not the Convenor).

A community parenting order can only be made if, either 1 or 2 below are satisfied (s.49):

1. One of the conditions in section 35(2) (see page 26) are met and there is no reasonable prospect of the child's parents or any other member of the family being able and willing to provide adequate care, protection, guidance or control.

2. Every person with parental responsibility either consents to the order being made, or that person is not known, or cannot be found or is incapable of consenting.

NB: This enables parents to consent to an order without having to admit, or the court to rule, that they are in any way at fault.

An order cannot be made without a child's plan being approved.

Duration

As they are intended to provide for the long term care of a child, orders will last until the child is 18 (s.52), unless they are discharged earlier by the court.

Effect on parental responsibility

An order gives full parental responsibility to HSSD, which has the power to decide to what extent it may be exercised with anyone else with parental responsibility. There are a few issues where HSSD cannot act without the consent of those with parental responsibility or the court:

- change of name or religion;
- removal from the jurisdiction except for limited purposes (see Part XI for more detail);
- placement for adoption;
- consent to marriage.

HSSD cannot consent to adoption or appoint a Part III guardian for a child.

Special Contact Orders

Section 50 regulates contact with children subject to community parenting orders.

In the absence of an order, there is a duty on HSSD to arrange for such children to have contact with all those who, immediately before a community parenting order was made:

- (a) had parental responsibility for the child;
- (b) had a contact order in their favour;
- (c) were entitled to have the child living with them under a court order; or
- (d) either had the child living with them, or had contact with the child under a care requirement condition.

Special contact orders apply specifically to children subject to community parenting orders and are made by the Juvenile Court. Details of who may apply for a special contact order and in what circumstances will be in court rules.

In an emergency, to protect the child, HSSD can refuse contact for up to 7 days. If HSSD wants to prevent contact in the longer term, or reduce it without the agreement of those entitled to contact, an application must be made to the court.

Care Requirement and Community Parenting Orders

The main provisions and the main differences:

	Care requirement	Community parenting order
Forum	Tribunal	Juvenile Court
Referrer/ Applicant	Convenor	HSSD
Purpose	Assist family to care for child	Care long term away from family
Duration	1 yr	To age 18
Parental Responsibility (p.r.)	Remains with parent and others with p.r. HSSD and anyone named in care requirement condition may exercise to necessary extent.	HSSD shares with parents / others with p.r. Power to HSSD to decide how this shared p.r. is exercised
Conditions	Extensive power to impose.	Cannot be imposed on full order.
Contact	Regulated by Tribunal.	Presumption of contact. Regulated by court.

NB: There are also major differences between the new Guernsey orders and UK orders and attempting to draw parallels is likely to be misleading.

6) Protection of children in an emergency (sections 55 – 63)

Emergency child protection order (section 55)

In an emergency, where a child is suffering, or at immediate risk of suffering, serious harm, HSSD may make an application to court for an emergency child protection order (s.55). In exceptional circumstances, the application can be made without giving notice to the parents/carers, but usually they will be told in advance.

The order enables HSSD, with police assistance if necessary, to remove a child from the dangerous situation, or prevent their removal from a safe place.

The order can last for 8 days maximum (s.57). Within that period it will end if:

- HSSD has not taken steps to act upon the order within 24 hours;
- the Convenor, with HSSD consent, releases the child;
- the Tribunal sits to consider the case.

The following can apply to discharge an order; the application must be heard within 48 hours (s.58):

- those with parental responsibility;
- the Convenor;
- any person the child was living with when the order is made;
- the child.

NB: Human rights case law has made clear that such orders, because they are a profound interference with the right to enjoy family life, should have a very high threshold.

Exclusion order (section 59)

As an alternative to removing a child from a dangerous situation, the court can make an exclusion order, which removes the person presenting the danger from the child's home.

There must be a person remaining in the home capable of taking responsibility for the child's protection and a power of arrest may be attached to the order (s.62).

An exclusion order cannot last for more than 1 year, or 5 days, if it is made without giving notice to the excluded person.

Various ancillary orders may be made, including regulating contact, payment of rent or mortgage, safeguarding the possessions of the excluded person (s.61).

7) Powers of police officers (section 64)

A police officer who believes a child is suffering, or about to suffer, serious harm can:

- a) enter premises (without a warrant) and/or remove the child;
- b) take necessary steps to prevent a child's removal from hospital or other place where the child is; or
- c) in other necessary circumstances remove a child from a parent or carer or other person.

A child taken into police protection may be kept for a maximum of 24 hours. Regulations will detail how the police power is to be exercised and provide for the child to be transferred to the care of HSSD as quickly as possible (s.66).

Part VIII – The Juvenile Court (s.67)

This very short part provides for the Magistrate to sit in the Juvenile Court alone (i.e. without the Juvenile Panel, which will no longer exist).

It also provides for the court to deal with the following issues:

- disputes about whether the conditions for referral to the Tribunal are met;
- appeals from the Tribunal;
- secure accommodation orders;
- community parenting orders;
- emergency child protection orders;
- orders under section 17 (residence, contact etc.).

Part IX – Secure Accommodation (sections 68-73)

How and why are children detained in the secure accommodation unit?

There are four ways a child may be taken into secure accommodation.

On criminal grounds:

- 1) On the authority of the Chief Officer or a Director of HSSD following a request by the police when they have detained a child under the Powers of Police and Criminal Evidence (Bailiwick of Guernsey) Law 2003.
- 2) On remand by the Juvenile Court when the child is alleged to have committed a criminal offence.

The main children law does not deal with remands on criminal grounds, referred to at 1 and 2 above: these are explained in the criminal law section of this guide.

On welfare grounds:

- 3) On the authority of the Chief Officer or a Director of HSSD.
- 4) By an order of the Juvenile Court on the basis of the child's welfare needs.

For a child to be detained in the secure unit on welfare grounds, whether by court or HSSD, the following criteria must apply (s.69):

EITHER –

a) The child has a history of absconding and is likely to abscond if not in secure accommodation and they will suffer significant harm if not in secure accommodation.

OR

(b) The child is likely to injure themselves or others if not detained in secure accommodation.

How long?

The maximum periods of detention on welfare grounds are:

- without a court order, 72 hours (s.71);
- under a court order, where the child is in the Guernsey unit, up to 28 days at any one time, with a maximum of three months (not renewable);
- under court order, where the child is in unit away from the Bailiwick, up to six months at any one time, which may be renewed.

The periods given above for court ordered remands will be set by ordinance, and have still to be approved by the States.

Other points about secure accommodation

- No court order should be made unless the child has had the chance to be represented by an advocate.
- A secure accommodation order gives HSSD parental responsibility for the child, while the order lasts.
- A court order simply gives HSSD permission to keep a child in the secure unit, it does not mean the child must be detained.

The ordinance provides for a number of issues including:

- Who must give permission where HSSD detains a child without an order.
- Requiring regular reviews of children in secure accommodation, including by an independent person.

Part X – Removal of children out of the jurisdiction (sections 74-77)

The general rule is that a child cannot be removed from the jurisdiction of Guernsey and Alderney without the consent of every person with parental responsibility (s.9(1)(b)). This part of the law expands upon, and modifies this in certain circumstances.

Criminal offence

Unless one of the exceptions listed below applies, it is a criminal offence to take a child under 16 from the jurisdiction without the consent of everyone with parental responsibility (including the consent of HSSD where the child is subject to a care requirement), or a court order (s.74). Removing a child under 16 may result in a fine or imprisonment.

An offence is not committed if the person removing the child:

- reasonably believes that other people required to consent either have consented, or would do so if they knew all the relevant circumstances; or
- has taken all reasonable steps to communicate with the other necessary people but has been unable to do so.

NB: Making abduction a criminal offence under section 74 is in addition to the fact that removing a child under 18 without the necessary consents, may be in breach of the children law. Even if there is no criminal prosecution, removing a child could lead to court proceedings under section 17 and/or the enforcement provisions in Part XIII.

Consent not necessary

In the following cases it is not necessary to get the consent of everyone with parental responsibility to remove a child aged under 18 from the jurisdiction for a period of up to 28 days:

- the person taking or sending the child has a residence order in their favour;
- the child is subject to a community parenting order or care requirement and HSSD has either arranged for, or consents to, the child's removal;
- the child is out of the jurisdiction for the purpose of medical treatment.

Part XI - Placement of Children Out of the Jurisdiction (sections 78-82)

Inevitably, a jurisdiction the size of Guernsey and Alderney cannot provide facilities that will only be needed by a tiny minority of children, for example, those who have serious disabilities or need specialist fostering. At any one time there are about 30 of these children, usually placed in England and Wales, whose placements are arranged and funded by the States. The new law provides safeguards for these children and their families, by providing for full scrutiny of these placements, and independent oversight by the Convenor, the Tribunal and/or a court.

What is a placement out of the jurisdiction?

It is important to distinguish a removal from the jurisdiction under Part X, with a placement out of the jurisdiction which is where:

a 'placement agency' makes arrangements for a child to live away from Guernsey and Alderney, for either a fixed or open-ended period of time (s.78).

(This excludes short-term medical treatment and solely recreational purposes).

A placement agency is the States, or a department of the States and it could include a body authorised by the States to make such placements.

NB: In practice a placement agency will normally be HSSD and the Education Department, acting together under the umbrella of the Complex Needs Panel, which has been specifically set up to consider such placements.

Restrictions on placements out of the jurisdiction.

A child may only be placed out of the jurisdiction:

- (a) as a condition of a care requirement made by the Tribunal (s. 44 & 81); or
- (b) if the child is subject to a court order such as community parenting or secure accommodation order and the court gives permission (s.81); or
- (c) the child's parents and anyone else with parental responsibility consent AND the child has been given an opportunity to express their views about the placement (s.79).

Power of the Convenor and Tribunal

Where it appears to the Convenor that the conditions in (c) above have not been met, the case must be referred to the Tribunal, which can consider the case and give permission for the placement for up to a year at a time (s.80).

NB: Regulations under section 82 will provide for all out of jurisdiction placements recommended by the complex needs panel to be submitted to the Convenor, whose enquiries should be speedy in what are clearly straightforward cases. A child does not have to be subject to a care requirement for the Tribunal to give permission under s.80.

Part XII - Safeguarder Service (sections 83-85)

The Safeguarder Service has been operating in Guernsey since 2006, and for sometime before then as the Court Welfare Service. This part of the law establishes it on a formal basis, outlining its function, duties and powers.

The primary function of the service is to safeguard and promote the welfare of a child in any family proceedings by giving advice to a relevant court, the Tribunal or the Convenor (s.84).

The details of how the service will operate day-to-day will be in an ordinance, which will deal with such matters as:

- how and when safeguarders are appointed (and removed);
- the powers and duties of safeguarders;

- any fees to be charged for the safeguarder service.

NB: The Safeguarder Service is independent, within the administration of the Royal Court. It is staffed by experienced social workers and is entirely independent of HSSD.

Part XIII - Enforcement (sections 86-94)

The Guernsey courts already have a number of powers to enforce their orders and the provisions in this part are in addition to, or otherwise to bolster those existing powers. The function of these enforcement powers is to:

- ensure that orders are complied with;
- punish those who break court orders.

NB: In family proceedings in particular the emphasis is mainly on getting people to obey court orders. Punishment of parents can often rebound on children and is only likely to be used in more extreme cases.

These provisions do not apply to the Tribunal.

Penal notice

The court has power to attach a penal notice to an order, which warns a person that if they do not comply with the order there will be specific consequences (s.87), which are usually those in the next paragraph.

If a person fails to comply with the order, they are known as being “in contempt of court” and may be sent to prison for up to six months and/or fined and/or have to pay compensation (s.89).

Sureties and bonds

As a way of encouraging compliance with an order, a court may require a person to provide:

- i. a surety (i.e. a third person who agrees to be responsible for a debt or obligation); or
- ii. a bond (a sum of money).

If the order is broken, any money deposited or promised by the surety may be used to compensate anyone who has suffered financial loss as a result of the breach of the order (s.90). An example would be requiring a parent to deposit a bond as a condition of permission to remove the child from the jurisdiction. If that parent failed to return the child, the other parent could use the bond money to cover legal and travel expenses incurred in recovering the child.

Passports

A practical way to ensure that children are not removed from the jurisdiction without consent is to require passports to be lodged with a third party, or to restrict the issue of a passport without certain safeguards. S.91 makes provision for both these possibilities.

Discovery and recovery of children

The court has various powers to assist in finding children. These include:

- ordering any person to disclose to the court information that could lead to finding where a child is (s.88);
- an order to recover a child who has gone missing, or run away or been unlawfully taken away from HSSD care, while subject to certain Part VII orders (s.92);
- an order enabling one person to recover a child from another person, who has disobeyed a court order to give up the child (s.93).

In all these cases the police may be used to help in enforcing the order, including entering premises and using force if reasonably necessary.

As well as any punishment for contempt of court, a person who deliberately helps to hide or obstructs recovery of a child in breach of these provisions may be punished by a fine or imprisonment of up to five years. Details of enforcement provisions will be in court rules.

Part XIV - Jurisdiction of Royal Court, Power to Vary Trusts and Appeals (sections 95-106)

Many of the provisions of this part are quite technical and it is not necessary to go into them in detail here.

Powers of Royal Court

Under s.96 the Royal Court can make any order in family proceedings that can be made by the Magistrate's Court, Juvenile Court or Court of Alderney under this law.

If a court has made an order about a child under the law, s.97 gives the court the power to vary an existing trust for the maintenance of a child.

NB: This power is likely to be used very rarely. It is also one of the rare cases when the welfare of the child is not the court's paramount consideration (s.3(3)(b)).

Appeals

Appeals against orders made under the following parts of the law are all dealt with separately under the listed sections:

- Part VI (Section 17 orders) – section 98;
- Part VII (compulsory intervention) – section 99;
- Part IX (secure accommodation) – section 100;
- Part X (removal from the jurisdiction) – section 101;
- Part XI (placement out of jurisdiction) – section 102;

- Part XIII (enforcement) – section 103.

Where an appeal is being considered it is vital to act **quickly**, if possible, immediately. This is because the time limit for appeals is short, usually 14 - 21 days from the date of the initial decision, (2 – 7 days in the case of secure accommodation). It is possible to get court permission to appeal out of time, but even if this is given, it may be too late to prevent the order that was made coming into effect.

As indicated, appeals are quite technical and it is generally important to get legal advice. On some issues, for example, there is a right of appeal on any matter (e.g. from a decision of the Tribunal), but on others it is only possible to appeal on a point of law.

In general, appeals are dealt with as follows:

- Tribunal → Juvenile Court
- Juvenile/Magistrate's Court → Royal Court
- Alderney Court → Royal Court
- Royal Court → Court of Appeal

Court rules will deal with the procedure for appeals.

Part XV - Miscellaneous Powers to Make Ordinances Concerning Children and Related Matters (sections 107-111)

As well as the various ordinances already mentioned in the course of this guide, this part specifically gives power to the States to make ordinances on the following matters:

- updating private fostering provision;
- updating day care provision;
- assisted reproduction and surrogacy;
- enforcement of overseas orders;
- abduction of children.

Although all these matters are important, they are not all crucial for the law to come into effect. The only exception to this is assisted reproduction, because it impacts on the definition of 'parent' and an ordinance covering this topic is in the course of drafting. All the other topics will be made in due course.

Part XVI - General and Miscellaneous Provisions (sections 112-126)

This covers various matters, which do not fit into any other part of the law. Some of them are technical so will not be mentioned here. Others include:

Power for HSSD to charge for services (s.112)

Regulations will have to be made if HSSD wishes to charge for any services it provides under this law.

Sittings outside Guernsey (s.114)

It will be possible for a court or the Tribunal to be legally constituted, even if not present on Guernsey or Alderney. This will also depend upon suitable agreement being reached with the relevant courts.

Reporting of proceedings (s.115)

This provides for any reporting of proceedings under the law, to ensure that the child's details are kept confidential.

Persons entitled to be present in court (s.116)

The people permitted to be in court for child-related hearings are limited to those directly concerned with the case and others with court permission.

NB: Those entitled to be present at Tribunal proceedings will be covered in the relevant ordinance.

Power of court to limit applications (s.117)

When the court disposes of an application (whether or not it makes an order), it can make an order preventing a named person from making further applications without court permission.

NB: This is to prevent people making numerous court applications, which have little chance of success and are damaging to the child.

Restrictions on use of the customary law (s.118)

The customary law of Guernsey is nowadays rarely used in children cases. This section provides that where there is a choice between an order under this law and the customary law, the court must use the children law, unless the result would be unjust. It also provides that HSSD cannot make an application under the customary law without court permission, which can only be given if there is no other appropriate order available and the child would otherwise suffer significant harm.

Interpretation (s.122)

This defines many of the terms used in the law, often simply by reference back to the relevant section. A glossary to the law deals with the most important of these in this guide.

Repeals, amendments and transitional provisions (s.123)

These are dealt with by ordinance. Most relevant, for the purpose of this guide, are the transitional provisions, which cover, for example, what happens to existing orders under the old law when the new law comes into force.

The Criminal Justice (Children & Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008.

Part I – Preliminary (sections 1 & 2)

S.1 deals with key definitions, which are included in the general glossary. (Detailed definitions are in section 24.)

NB: 17 year olds will fall within the definition of child and be dealt with by the Juvenile Court, although they are treated as adults for the purposes of the Powers of Police and Criminal Evidence (Bailiwick of Guernsey) Law 2003 (PPACE) and remand.

The main consideration for a court and public authority dealing with the child is:

“..the prevention of offending.. in the long and ..short term.” (s.2)

Four other, equal ranking considerations, are also to be taken into account. These are:

- the interests of any victim;
- the welfare of the child;
- the need to use alternatives to prosecution if possible;
- children should not normally be imprisoned.

NB (i): Public interest and public safety will override all the above in appropriate cases.

(ii): The welfare of the child is an important consideration, but not paramount, as it is in the main children law.

Part II – Age of criminal responsibility (section 3)

The age at which a child can be convicted under the criminal law is raised from 10 to 12 years.

NB: This does not mean children under 12 (or even much younger) will 'get off'. Children of any age can be referred to the Tribunal if they are in need of control and, if they present a danger to the public, they may be detained in secure accommodation under the main children law.

Part III – Reporting of offences (section 4)

This sets out what will happen where the police have sufficient evidence against a child to believe they could successfully convict in a court. The detail of this process is in guidance from HMP. In essence what will happen is:

- Police (or customs) will send details to the Convenor, and in a serious case to HMP as well.
- Where a report has also gone to HMP he will make the final decision, after consulting with the Convenor.
- If the case goes to the Convenor alone, s/he will deal with it in accordance with Part VII of the main children law unless he decides that the case is serious enough to warrant criminal action, in which case it may be referred to HMP for a decision.

Part III also sets out the criteria to be applied when making decisions about prosecution and these include the seriousness of the offence, the age of the child and any previous offending.

NB: Traffic offences, including minor ones, will all be dealt with by a court as the Tribunal does not have power to disqualify or fine a driver.

Part IV – Procedure when children are prosecuted (sections 5-11)

Many of the provisions are technical and/or consolidate what was in previous laws that have been repealed. The main points of interest and difference are:

- The magistrate will sit alone and not with a lay panel (s.5).
- There is discretion for a child jointly prosecuted with an adult to be dealt with separately in the Juvenile Court.
- Where a court convicts a child offender, it may remit the case directly to the Tribunal instead of sentencing (s.7). Where it does this, the child will not have a criminal record (s.18).
- Some people are required to attend court. This includes the child, their parents, anyone with parental responsibility and HSSD where the child is subject to certain orders (ss.9 & 10).
- Only a limited number of people have the right to attend the Juvenile Court (s.8). This includes representatives of the media who must not publish names or identifying details of any child (s.11).

NB (i): A child charged jointly with an adult may also be diverted away from the court process under HMP guidelines and referred instead to the Convenor.

(ii): Where a court remits under s.7 it cannot also sentence. The case will go straight to the Tribunal for disposal, bypassing the Convenor's decision.

If a court sentences, it may also refer a case to the Convenor who will investigate and decide whether to refer to the Tribunal in the usual way.

Part V – Bail & remands in custody (sections 12-14)

In this part, a 'child' is under 17 (not under 18) (ss.12, 1(5)).

S.13 deals with detentions by the police (and customs) under PPACE. Under the PPACE codes, a detained child should be passed into the care of HSSD unless, in the view of the police, it is impracticable or unsafe to do so. The law clarifies that HSSD then has discretion where to place the child, who may only be kept in secure accommodation if likely to abscond or injure themselves or others. The decision about whether a child should be kept in secure accommodation is one for HSSD alone and may only be made where the Chief Officer or deputy designated in ordinance is satisfied that the child is likely to:

- i. abscond if not detained; or
- ii. injure himself or others.

Under s.14, a child not released on bail by a court may be remanded:

- into the care of HSSD, which then has responsibility for the child and discretion on the placement;
- in the care of HSSD in secure accommodation; or
- in the prison.

For a child to be remanded to secure accommodation or the prison, **one from each of A and B** below must be satisfied.

A) The child is likely to:

- i) abscond from other accommodation; or
- ii) injure himself or others if kept elsewhere.

AND

B) The child:

- i) is charged with or has been convicted of an offence which is violent, sexual offence or carries a sentence of at least 10 years; or
- ii) recently absconded while remanded in HSSD care and is charged with or been convicted of an imprisonable offence while so remanded.

The maximum period of a remand in the prison or secure accommodation is 28 days.

NB: This part does not affect the power of the court to bail the child, (which could be to the care of HSSD), or to fix conditions of bail (Bail (Bailiwick of Guernsey) Law 2003).

Part VI – Sentencing provisions (sections 15-17)

The law does not alter any existing court powers to sentence children, except that some changes are made to supervision orders. These changes include limiting the order to two years (it was previously three) and giving the court the power to pass an alternative sentence if a supervision order is breached (s.16).

Part VII – Miscellaneous provisions (sections 18-25)

These are mostly technical and beyond the scope of this guide. Ss.19 & 20 deal with age, including the effect of a child becoming an adult in the course of proceedings and what should happen, where there has been a mistake about age or the age is not clear.

Further Information

Accessing the laws

The laws can be obtained by using the following link on the internet:

http://www.gov.gg:80/ccm/cms-service/download/asset/?asset_id=6656007

This will download Volume IV of Billet D'État No. 1, 2008. The two new children laws are the first two items in this document. It is a large (2.2mb) document so may be difficult to download without broadband.

Further information on the Child Youth and Community Tribunal can be obtained at its website www.cyct.org.gg. It can also be e-mailed at info@cyct.org.gg or reached by phone on 235386.

A website for Services for Children and Young People can be found through links from the main government website at www.gov.gg.

Should you have any worries, concerns or queries you can speak to a member of the Services for Children and Young People staff at Perruque House on Tel. 256923.

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