

# BILLET D'ÉTAT No. I, 2008

30<sup>th</sup> January, 2008

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# PROJET DE LOI

ENTITLED

## **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

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



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
- (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.

**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 108 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.

### **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 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.

**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.

## 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,

- (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 73, 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).

**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).

**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).

**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.

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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.



(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 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.

**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 -

- (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,
- (b) the Chief Officer of Police,
- (c) the Director of the Education Department,
- (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.

## PART VI

### THE CHILDREN'S CONVENOR, CHILDREN'S CONVENOR 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 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 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.

#### **Children's Convenor Board.**

31. (1) There is established a board to be known as the Children's Convenor 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 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.

**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.

## 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.

*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.

**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.

**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) ground for referral stated by the Children's Convenor,  
or
- (b) statement of fact made by the Children's Convenor in support of any such ground,

the Convenor shall, unless he withdraws any such ground 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 ground 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 ground,

it shall, unless the Convenor withdraws the ground or statement, or the Tribunal determines to discharge the ground or statement, direct the Children's Convenor to consider referring any such ground 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.

*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) is satisfied that the conditions in subsection (1) are satisfied in respect of the period of the interim care requirement.

(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.

**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, or
- (c) if discharged under section 54.

**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.

**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.

**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.

**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.

**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).

**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.

**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.

**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) or 64, 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) or 64.

**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 Home Department 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.

## 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 101 or 104, and
- (c) any application for –
  - (i) a secure accommodation order,



- (ii) a community parenting order,
- (iii) an emergency child protection order, or
- (iv) 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.

## 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.

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

69. (1) Subject to sections 70 and 72, 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.

**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.

**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.

**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 121(1), "**Guernsey and Alderney**" include the territorial waters adjacent to Guernsey and Alderney.

#### **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 121(1), "**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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<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.

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

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

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- (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.

## 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.

### 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

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- (a) requiring the Home Department 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 Home Department 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 Home Department responsible for passports and passport applications to disclose to the court any information held by the Home Department concerning the child whose passport or passport application is referred to in the order.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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 -

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



- (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 -

- (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 car 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.

**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 techniques 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.

**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, and

(b) the Tribunal.

(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.

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<sup>h</sup> Order in Council No. \*\* of 2008

(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 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.

**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 (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.

**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 amend any Part of this Law other than Parts I and II.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to make Ordinances and vice versa.

**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 -
  - (i) create new 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.

**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.

**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,

**"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,

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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.

"**business day**" has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>j</sup>,

"**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 Board**" : see section 31(1),

"**Child Protection Committee**" : see section 29(1),

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<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; GSI 1993/28.



**"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,

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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.

**"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 Health and Social Services Department,

**"department of the States"** means any department, council or 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,

**"Education Department"** means the States Education Department,

**"emergency child protection order"** : see section 55,

**"enactment"** includes a Law, an Ordinance and any subordinate

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<sup>m</sup> Ordres en Conseil Vol. XXIII, p. 573; amended by Orders in Council No. XIII of 1991 and No. X of 2004.

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>,

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<sup>n</sup> Ordres en Conseil Vol. XVIII, pg. 192.

<sup>o</sup> Ordres en Conseil Vol. XI, pg. 318.

- (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,

**"guardian"** means a guardian appointed under Part III and any other type of children's guardian,

**"Guernsey"** includes the Islands of Herm and Jethou,

**"health"** means physical, emotional or mental health,

**"Home Department"** means the States Home Department,

**"immigration officer"** means a person appointed as such under the

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<sup>p</sup> Ordres en Conseil Vol. XXXI, pg. 171.

<sup>q</sup> Ordres en Conseil Vol. VIII, pg. 132.

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 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

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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.

- (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

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<sup>t</sup> Order in Council No. III of 2004.

<sup>u</sup> Order in Council No. XIV of 2000.

by any medium, including by newspaper, by radio or television broadcast, 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>,

**"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

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<sup>v</sup> Ordres en Conseil Vol. XIII, p.288; Vol. XIV, p.407; Vol. XV, p.279; 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.

"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> -

(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.

**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 -

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<sup>y</sup> Ordres en Conseil Vol. XXXII, p. 106.

<sup>z</sup> Ordres en Conseil Vol. XIII, p.355.

- (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.

**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 -

- (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.

## 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 & 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>.

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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

7. Loi supplementaire 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>.

9. Loi relative à l'Entretien des Enfants Illegitimes, 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>.

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<sup>gg</sup> Ordres en Conseil Vol.VII, p.396  
<sup>hh</sup> Ordres en Conseil Vol.VIII, p.29  
<sup>ii</sup> Ordres en Conseil Vol.VIII, p.130  
<sup>jj</sup> Ordres en Conseil Vol.VIII, p.238  
<sup>kk</sup> Ordres en Conseil Vol.VIII, p.363  
<sup>ll</sup> Ordres en Conseil Vol.XI, p.116  
<sup>mm</sup> Ordres en Conseil Vol.XIV, p.332  
<sup>nn</sup> Ordres en Conseil Vol.XV, p.200

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) (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 & Guardianship of Minors) (Guernsey) Law, 1978<sup>ww</sup>.

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<sup>oo</sup> Ordres en Conseil Vol. XVIII. p. 192  
<sup>pp</sup> Ordres en Conseil Vol. XXI, p.34  
<sup>qq</sup> Ordres en Conseil Vol. XXII, p.318  
<sup>rr</sup> Ordres en Conseil Vol. XXII, p.521  
<sup>ss</sup> Ordres en Conseil Vol. XXIII, p.3  
<sup>tt</sup> Ordres en Conseil Vol. XXIII, p.26  
<sup>uu</sup> Ordres en Conseil Vol. XXIII, p.238  
<sup>vv</sup> Ordres en Conseil Vol. XXVI, p.150  
<sup>ww</sup> Ordres en Conseil Vol. XXVI, p.264

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>.
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>.

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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  
bbb Ordres en Conseil Vol.XXXI, p.326  
ccc Ordres en Conseil Vol.XXXII, p.77  
ddd Order in Council No.XIX of 1991



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 & 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>.

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>.

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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
jjj	Order in Council No.XIV of 2002
kkk	Order in Council No.XVII of 2003
lll	Order in Council No.XXIII of 2003

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 Elementaire 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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<sup>mmm</sup> Ordres en Conseil Vol.VII, p.256  
<sup>nnn</sup> Ordres en Conseil Vol.VIII, p.355  
<sup>ooo</sup> Ordres en Conseil Vol.VIII, p.382  
<sup>ppp</sup> Ordres en Conseil Vol.XV, p.413  
<sup>qqq</sup> Ordres en Conseil Vol.XIX, p.241  
<sup>rrr</sup> Ordres en Conseil Vol.XXXII, p.177

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008**

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# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) 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 the Bailiwick of Guernsey.

### PART I

#### PRELIMINARY

##### **Key definitions.**

**1.** (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) "**Child defendant**" means a child who has been charged with a criminal offence.

(4) "**Child offender**" means a child who has been convicted of a criminal offence.

(5) "**Defendant**" in Part V means a child defendant or child offender who is under the age of 17 years.

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

**Considerations in respect of offending by children.**

2. (1) When a public authority carries out a relevant function in respect of a child –

(a) the principal consideration shall be the prevention of offending by the child in the long and the short term, and

(b) the following considerations shall also be taken into account –

(i) the interests of any victim of criminal behaviour by the child,

(ii) the welfare of the child,

(iii) the alternative means of dealing with the child which could be pursued, except where the public interest requires that criminal proceedings should be instituted against him, and

(iv) the desirability of ensuring that the child remains in the community so far as that is practicable and consonant with the need to ensure the safety of the public.

(2) For the purposes of this section, "**relevant function**" means a function under –

(a) this Law, or

- (b) any provision, statutory or otherwise, relating to offending by children, other than any provision of the Children Law.

## PART II

### AGE OF CRIMINAL RESPONSIBILITY

#### **Age of criminal responsibility.**

3. It shall be conclusively presumed that no child under the age of twelve years can be guilty of an offence.

## PART III

### REPORTING OF OFFENCES

#### **Reporting of offences and further action.**

4. (1) Where there is sufficient evidence to provide a realistic prospect of conviction of a child defendant for an offence, the designated officer shall cause a report of the offence to be transmitted –

- (a) to the Children's Convenor, or
- (b) if he decides that it may be necessary in the public interest to prosecute the child, to Her Majesty's Procureur and the Children's Convenor.

(2) In making a decision under subsection (1), the designated officer shall have regard to -

- (a) the nature and gravity of the offence charged,
- (b) whether the child defendant is considered to be a persistent offender,



- (c) the age of the child defendant,
- (d) any previous sentence or order of a criminal court or the Tribunal, and the response of the child defendant to that sentence or order, and
- (e) all information available to him in respect of -
  - (i) the offence, and
  - (ii) the child defendant.

(3) Notwithstanding subsection (2), where a child defendant is charged with a traffic offence, the designated officer shall cause that report to be transmitted under subsection (1)(b).

(4) Where a report has been transmitted under subsection (1)(a) and the Children's Convenor decides that it may be necessary in the public interest to prosecute the child defendant, he shall transmit the report to Her Majesty's Procureur with an endorsement to that effect.

(5) In making a decision under subsection (4), the Children's Convenor shall have regard to -

- (a) the nature and gravity of the offence charged,
- (b) whether the child defendant is considered to be a persistent offender,
- (c) the age of the child defendant,

(d) any previous sentence or order of a criminal court or the Tribunal, and the response of the child defendant to that sentence or order, and

(e) all information available to him in respect of -

(i) the offence, and

(ii) the child defendant.

(6) Where a report has been transmitted under subsection (1)(b) or (4), Her Majesty's Procureur shall review the report and consider -

(a) all information available to him in respect of -

(i) the offence, and

(ii) the child defendant, and

(b) any representations made by the Children's Convenor.

(7) After a review under subsection (6), Her Majesty's Procureur shall decide whether to -

(a) prosecute the child defendant, or

(b) refer the child defendant to the Children's Convenor to consider exercising his functions under the Children Law.

(8) Her Majesty's Procureur may -

- (a) review the report after he has made a decision to prosecute the child defendant under subsection (7)(a), and
- (b) refer the child defendant to the Children's Convenor under subsection (7)(b),

at any point until the child defendant has been convicted by a court.

(9) For the purposes of this section -

- (a) a "**designated officer**" means -
  - (i) in respect of the police, a police officer who has received training in dealing with child defendants and has been so designated by a police officer who holds the rank of inspector or above, and
  - (ii) in respect of Customs and Excise, an officer of Customs and Excise who has received training in dealing with child defendants and has been so designated by an officer of Customs and Excise who holds the rank of Senior Officer or above,
- (b) a "**criminal court**" includes a court of criminal jurisdiction sitting outside the Bailiwick, and
- (c) a "**traffic offence**" means an offence related to the circulation of a motor vehicle on a public highway for

which a person can be disqualified under the Motor Taxation and Licensing Law (Guernsey) Law, 1987<sup>b</sup>.

PART IV  
JURISDICTION AND PROCEDURE IN CRIMINAL COURTS IN RELATION  
TO CHILD OFFENDERS AND CHILD DEFENDANTS

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

5. (1) When dealing with a child defendant or child offender in respect of a function specified in subsection (2), the Magistrate's Court shall be known as the Juvenile Court and shall be constituted by the Magistrate sitting alone.

(2) The functions of the Juvenile Court under this Law shall be to

–

(a) where a prima facie case is established –

(i) commit for trial to the Royal Court any child defendant charged with an offence which is triable on indictment only,

(ii) commit for trial to the Royal Court any child defendant charged with an offence which may be tried on indictment where –

(A) the Magistrate declines jurisdiction, or

(B) Her Majesty's Procureur, or the child defendant, elects trial on indictment,

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<sup>b</sup> Ordres en Conseil Vol. XXX, p. 341; as amended by Orders in Council No. XI of 1995 and No. IX of 2000.

- (b) try any other child defendant and sentence, or otherwise deal with, him if he is convicted,
- (c) hear any breach proceedings in respect of any child offender and deal with him if the breach is proved, and
- (d) sentence, or otherwise deal with, any child offender remitted to it for that purpose.

(3) The Royal Court may from time to time make rules governing the practice and procedure in the Juvenile Court.

(4) The provisions of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988<sup>c</sup> shall apply to and in respect of appeals from the Juvenile Court as those provisions apply to and in respect of appeals from the Magistrate's Court.

**Children prosecuted jointly with adults.**

6. Where in accordance with section 4, a decision has been made to prosecute a child defendant, and notwithstanding the provisions of section 5, the Magistrate's Court (not sitting as the Juvenile Court) or the Royal Court (sitting as a Full Court or as an Ordinary Court as the case may be) may -

- (a) hear any charge made jointly against a child defendant and an adult,
- (b) hear any charge made against a child defendant if an adult is charged at the same time with -

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<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 83.

- (i) aiding, abetting, counselling or procuring the offence alleged to have been committed by the child defendant, or
- (ii) an offence arising out of circumstances the same as, or connected with those giving rise to, the offence alleged to have been committed by the child defendant,
- (c) hear any committal proceedings involving both a child defendant and an adult, and
- (d) continue to hear and determine any proceedings in the course of which it appears for the first time that a person to whom they relate is a child defendant or child offender.

**Powers of a relevant court upon conviction.**

7. (1) Where a relevant court has convicted a child offender, the court may –

- (a) sentence him, or
  - (b) remit the matter to the Tribunal for consideration and determination, or
  - (c) remit him to the Juvenile Court for sentence.
- (2) For the purposes of this section, a "**relevant court**" means –
- (a) the Magistrate's Court (not sitting as the Juvenile Court),

- (b) the Royal Court (however constituted),
- (c) the Criminal Division of the Court of Appeal,
- (d) except for the purposes of subsection (1)(c) –
  - (i) the Juvenile Court, and
  - (ii) the Court of Alderney, and
- (e) except for the purposes of subsection (1)(b) and (c), the Court of the SÉNÉSCHAL of Sark.

**Persons permitted to be present in the Juvenile Court.**

8. (1) Subject to subsection (2), no person may be present during the hearing by the Juvenile Court of any proceedings against a child defendant or a child offender except -

- (a) members and officers of the court,
- (b) the prosecutor,
- (c) the child defendant or child offender, his Advocate, his parent and any other person who has parental responsibility for him,
- (d) any witnesses,
- (e) any representative of the Department,

(f) any person who the court is satisfied is a bona fide representative of a media organisation, and

(g) such other persons as the court may specifically authorise to be present.

(2) In any proceedings against a child defendant or a child offender, a court may exclude from a hearing a person listed in subsection (1) where his attendance would have a detrimental effect on –

(a) the conduct of the hearing, or

(b) the welfare of the child defendant or child offender.

(3) The provisions of this section also apply to the Court of Alderney and the Court of the SÉNÉSCHAL of Sark.

**Attendance at court of a child defendant or a child offender.**

9. A warrant issued by a court under section 11(2) of the Bail Law for the arrest of child defendant or child offender may include a direction that he be –

(a) released on bail, with or without conditions, or

(b) detained in custody until he can be brought before the court.

**Attendance of persons responsible for the welfare of a child defendant or a child offender.**

10. (1) Where a child defendant or a child offender is brought before a court charged with an offence –

(a) a parent of his, or any other person who has parental responsibility for him,



- (b) where the child defendant or child offender is the subject of a community parenting order, a representative of the Department,

shall be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that –

- (i) it would be unreasonable to require his attendance,
- (ii) his attendance is not essential to the just hearing of the case, or
- (iii) his attendance would have a detrimental effect on –
  - (A) the conduct of the proceedings, or
  - (B) the welfare of the child defendant or child offender.

(2) The following persons may be required to attend court instead of, or in addition to, those persons referred to in subsection (1) –

- (a) where the child defendant or child offender is subject to a care requirement, a representative of the Department,
- (b) any other person who has for the time being assumed responsibility for his welfare, and

- (c) such other person as the court considers appropriate.

(3) Where a person is required to attend at a court under subsection (1)(a) and refuses or fails to do so, a warrant may be issued authorising any police officer to arrest that person and bring him before the court.

**Reporting of cases involving a child defendant or child offender.**

11. (1) Subsection (2) applies in respect of any proceedings against a child defendant or child offender in -

- (a) the Magistrate's Court, (whether or not constituted as the Juvenile Court),
- (b) the Royal Court, (however constituted),
- (c) the Court of Alderney,
- (d) the Court of the S  n  schal of Sark, or
- (e) any court sitting as an appellate court from a decision made by a court listed in paragraphs (a) to (d).

(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 or complainant therein, and

- (b) in relation to the proceedings, no picture shall be published which is or includes a picture of any such child.

(3) However, any court mentioned in subsection (1) may by order, 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) 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.

(5) Where a body corporate is guilty of an offence under this section 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 body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

## PART V

### BAIL AND KEEPING DEFENDANTS IN CUSTODY

#### General provisions.

**12.** (1) Subject to the provisions of this Part and the modifications in Schedule 1, the Bail Law shall have effect in respect of a defendant.

(2) In this Part, "**defendant**" shall have the meaning given in section 1(5).

#### Detention by the police.

**13.** (1) Where a defendant is not released on bail by the police pursuant to the PPACE Law, he may only be detained in custody –

- (a) in the care of the Department,
- (b) in the care of the Department in secure accommodation,
- (c) in police detention, or
- (d) in the Prison.

(2) A defendant may be detained in custody in the care of the Department in secure accommodation where –

- (a) he –

- (i) is likely to abscond if not so detained, or
  - (ii) is likely to injure himself or others if not so detained, and
- (b) the Chief Officer of the Department has given his consent.
- (3) For the purposes of this section -
  - (a) "police" includes Customs and Excise, and
  - (b) "police detention" includes customs detention.

**Remand in custody by a court.**

**14.** (1) Where a defendant is not released on bail by a court pursuant to the Bail Law, without prejudice to the terms of the PPACE Law he may only be remanded in custody –

- (a) in the care of the Department,
- (b) in the care of the Department in secure accommodation, or
- (b) in the Prison.

(2) A court may only remand a defendant in custody in the Prison or in the care of the Department in secure accommodation if it appears -

- (a) that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because -

(i) the defendant is likely to abscond from such other accommodation, or

(ii) the defendant is likely to injure himself or other people if he is kept in any such accommodation, and

(b) either -

(i) the defendant is charged with or has been convicted of a violent or sexual offence, or of an offence punishable in the case of an adult with imprisonment for a term of 10 years or more, or

(ii) the defendant has a recent history of absconding while remanded in the care of the Department, and is charged with or has been convicted of an imprisonable offence alleged or found to have been committed while he was so remanded.

(3) Where a defendant is remanded in custody under the provisions of this section, he shall be deemed to be in lawful custody.

(4) Where a defendant has been -

(a) remanded in custody in the Prison, or

(b) remanded in custody in the care of the Department in secure accommodation,

the period of the remand shall not exceed 28 days on any one occasion without further authorisation by the court.

(5) Where a defendant is remanded into the care of the Department in accordance with this section, the Department shall take such steps as it considers necessary or expedient to keep him in its care and shall produce him before the court when ordered to do so.

## PART VI

### SENTENCING PROVISIONS

#### Supervision Orders

**15.** (1) Without prejudice to any other sentence which may be passed on a child offender by a court, the court may make a supervision order in respect of him.

(2) Under a supervision order -

- (a) the child offender will be supervised by a person appointed by the court ("**the supervisor**"), and
- (b) the supervisor shall advise and assist the child offender, with particular reference to the considerations set out in section 2.

(3) A supervision order may contain such provisions as the court, having regard to the particular circumstances of the case, considers necessary for the effective management and performance of the order.

(4) A supervision order may be made for a period not exceeding two years but in any event a supervision order shall cease to have effect when the

child offender attains the age of eighteen years.

(5) The States may by Ordinance make such provision as they think fit relating to the making and performance of supervision orders.

**Breach of supervision order.**

**16.** (1) If at any time while a supervision order is in force, it appears to the supervisor that the child offender has failed to comply with any of the provisions made under section 15(3) or has committed an offence during the currency of the order, he may inform the court which made the supervision order ("**the sentencing court**") that a breach of the order has occurred.

(2) On receipt of information under subsection (1) the sentencing court may either -

- (a) require the police to warn the child offender to appear before it on a date and at a time specified, or
- (b) issue a warrant for his arrest.

(3) Prior to the appearance of the child offender before the sentencing court, the supervisor shall, if possible, inform the child offender of the facts of the alleged breach of the order.

(4) If the child offender admits that he is in breach of the order, the facts concerning the breach may be presented to the sentencing court by the supervisor who may also make written or oral representations concerning the disposal of the matter.

(5) If the child offender does not admit that he is in breach of the order, the sentencing court shall hear evidence to determine whether any breach has occurred.



(6) If -

- (a) the child offender admits that he has breached the order, or
- (b) it is proved to the satisfaction of the sentencing court that the child offender has breached the order,

the sentencing court shall proceed in one of the ways described in subsection (7).

(7) The sentencing court may -

- (a) order that the order continue (with or without variation) without any fine,
- (b) order that -
  - (i) the order continue (with or without variation), and
  - (ii) the child offender pay a fine not exceeding level 2 on the uniform scale,
- (c) revoke the order and deal with the offence in respect of which the order was made in any manner in which the child offender could have been dealt with for that offence, or
- (d) revoke the order.

(8) Where a court convicts a child offender of an offence committed during the currency of a supervision order, it shall deal with him for that offence and shall notify his supervisor of the fact of that offence.

**Variation or revocation of supervision order due to change in circumstances.**

17. (1) Where a supervision order is in force in respect of any child offender and, on the application of the child offender or the supervisor, it appears to the sentencing court that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the court may -

- (a) vary the order,
- (b) revoke the order, or
- (c) revoke the order and deal with the child offender for the offence in respect of which the order was made in any manner in which the child offender could have been dealt with for that offence.

(2) The court may vary the supervision order -

- (a) by substituting a new supervisor for the supervisor at the time of the application, or
- (b) by -
  - (i) inserting (either in addition to or in substitution for any provision), or
  - (ii) removing,

any provision made under section 17(3) as the court, having regard to the particular

circumstances of the case, considers necessary for the effective management and performance of the order.

(3) Where the sentencing court proposes to consider exercising its powers under subsection (1) otherwise than on the application of the child offender, the court may either direct the child offender to appear before it on a date and at a time specified or issue a warrant for his arrest.

## PART VII

### MISCELLANEOUS PROVISIONS

#### **Effect of remittal to the Tribunal.**

18. (1) Where a child offender has pleaded guilty to or been found guilty of an offence by a court and the matter is remitted to the Tribunal in accordance with section 7(1)(b), that matter shall not constitute a conviction.

(2) Notwithstanding subsection (1), such guilty plea or finding of guilt may be taken into account when a designated officer makes a decision under section 4.

#### **Presumption and determination of age.**

19. (1) Where –

- (a) a person charged with an offence or alleged to be in breach of a sentence is brought before a court in proceedings for that offence or breach, and
- (b) it appears to the court that he has not attained the age of 18,

the court shall make due inquiry as to his age.

(2) A court making due inquiry under subsection (1) may receive such evidence as it sees fit.

(3) After making due inquiry, the court shall make a finding as to the age of that person and, for the purposes of this Law and the 1917 Law, that age shall be deemed to be the true age of that person.

(4) Where it appears to the court that the person so brought before it has not attained the age of 18, that person shall be deemed to be a child for the purposes of this Law and the 1917 Law.

(5) An order or judgment of a court made or given in those proceedings before any finding was made under subsection (3) shall not be invalidated by any finding that the age of that person was not correctly stated to the court.

(6) Notwithstanding subsection (5), where any order made was a sentence which could not have lawfully been passed if the true age of the person had been known, the court shall set aside that order and proceed to sentence or otherwise deal with him in accordance with his true age.

(7) Where –

(a) a person charged with an offence or alleged to be in breach of a sentence is brought before a court in proceedings for that offence or breach, and

(b) it appears to the court that he had not attained the age of 12 at the time of –

(i) the alleged offence, or

- (ii) the original offence for which he was convicted,

(as the case may be), the court shall make due inquiry as to his age.

(8) A court making due inquiry under subsection (7) may receive such evidence as it sees fit.

(9) After making due inquiry, the court shall make a finding as to the age of that person at the time of the alleged offence and that age shall be deemed to be the true age of that person.

(10) Where it appears to the court that the person so brought before it had not attained the age of 12 at the time of the alleged offence, any order or judgment of the court in those proceedings shall be null and void.

**Attainment of a relevant age before the conclusion of proceedings.**

**20.** (1) For the purposes of this Law (except Part V), where a child attains the age of 18 before the conclusion of proceedings, he shall no longer be deemed to be a child if he attained that age before the hearing at which –

- (a) the mode of trial was determined, or
- (b) he first entered a plea to the charge.

(2) Where a child attains the age of 18 before the conclusion of proceedings and he does not fall within subsection (1), he shall be deemed to be a child for the purposes of those proceedings and may be dealt with by a court in any way in which he could have been dealt with had he not attained that age.

(3) For the purposes of Part V, where a child attains the age of 17 before the conclusion of proceedings, he shall not be deemed to be a "defendant"

under that Part at the next or any subsequent hearing of those proceedings after he attained that age.

(4) Notwithstanding subsection (3), where a defendant has been released on bail subject to a condition, any such condition will remain in force until it is revoked by the court.

**General provisions as to ordinances and subordinate legislation.**

**21.** (1) Any ordinance or subordinate legislation under this Law -

- (a) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
- (b) may be amended or repealed by a subsequent ordinance or subordinate legislation made hereunder, and
- (c) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make any ordinance or subordinate legislation 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.

**Rules of Court.**

**22.** (1) The appropriate court may make rules of Court dealing with all procedural matters arising under this Law and which -

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient,
- (b) may be amended or repealed by subsequent rules of Court, and
- (c) may make different provision in relation to proceedings before different courts of the Bailiwick.

(2) For the purposes of subsection (1), the appropriate court is -

- (a) in relation to Guernsey, the Royal Court,

(b) in relation to Alderney, the Royal Court or the Court of Alderney, and

(c) in relation to Sark, the Court of the SÉNÉSCHAL of Sark.

**Amendments, repeals and transitional provisions.**

**23.** (1) The amendments in Part I of Schedule 2 shall have effect.

(2) The repeals in Part II of Schedule 2 shall have effect.

(3) The transitional provisions in Part III of Schedule 2 shall have effect.

**Interpretation.**

**24.** (1) In this Law, unless the context requires otherwise -

"**the 1917 Law**" means the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes<sup>d</sup>,

"**adult**" means a person who is aged 18 years or over,

"**the Bail Law**" means the Bail (Bailiwick of Guernsey) Law, 2003<sup>e</sup>,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

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<sup>d</sup> Ordres en Conseil Vol. V, pg. 342.

<sup>e</sup> Order in Council No. XVII of 2003.



**"breach proceedings"** means any proceedings taken against a child offender where he is alleged or has been found to have breached any provision of an order made by a court when sentencing him,

**"care requirement"** has the meaning given in section 43 of the Children Law,

**"Chief Officer of the Department"** includes any person acting by or under his authority,

**"child"** has the meaning given in section 1(2),

**"child defendant"** has the meaning given in section 1(3),

**"child offender"** has the meaning given in section 1(4),

**"the Children Law"** means the Children (Guernsey and Alderney) Law, 2008<sup>f</sup>,

**"Children's Convenor"** means the holder of the office established by section 30 of the Children Law,

**"community parenting order"** means an order made under section 48 of the Children Law,

**"conviction"** includes –

- (a) an entering of a guilty plea,

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<sup>f</sup> Order in Council No. \*\* of 2008

- (b) a finding of guilt (unless made upon a reference under section 42 of the Children Law),
- (c) a finding that a person is not guilty by reason of insanity,
- (d) any finding that the person in question did the act or made the omission charged, and
- (e) a finding under section 1 of the Loi relative à la probation de Délinquants of 1929<sup>g</sup>, in respect of which an order is made placing the person convicted on probation, dismissing the charge or discharging him conditionally,

and "**convicted**" shall be construed accordingly,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961<sup>h</sup>,

"**criminal court**" has the meaning given in section 4(9)(b),

"**Customs and Excise**" means the service which is comprised of the Chief Officer of Customs and Excise and any officer of Customs and Excise acting by or under his authority,

"**customs detention**" has the same meaning as in the PPACE Law,

"**defendant**" has the meaning given in section 1(5),

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<sup>g</sup> Ordres en Conseil Vol. VIII, p. 365.

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

**"the Department"** means the States Health and Social Services Department,

**"designated officer"** has the meaning given in section 4(9)(a),

**"enactment"** includes a Law, an Ordinance and any subordinate legislation,

**"Guernsey"** includes the Islands of Herm and Jethou,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"Island legislature"** means -

- (a) in Guernsey, the States of Deliberation,
- (b) in Alderney, the States of Alderney,
- (c) in Sark, the Chief Pleas of Sark,

**"Juvenile Court"** means the court constituted in accordance with section 5,

**"Magistrate"** includes an Assistant Magistrate and an Acting Magistrate,

**"Magistrate's Court"** means the court established by the Magistrate's Court (Guernsey) Law, 1954<sup>i</sup>,

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<sup>i</sup> Ordres en Conseil Vol. XVI, p. 103.

**"media organisation"** means an organisation whose principal activity is the publication of information,

**"parent"**, in relation to a child offender or child defendant, means a father or mother who has parental responsibility in respect of him,

**"parental responsibility"** has the meaning given in section 5 of the Children Law,

**"picture"** includes a photograph and a representation,

**"police detention"** has the same meaning as in the PPACE Law,

**"police officer"** means -

(a) in relation to Guernsey -

- (i) a member of the salaried police force of the Island of Guernsey, 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 salaried police force of the Island of Guernsey,
- (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>j</sup>,

(c) in relation to Sark -

- (i) the Constable, the Vingtenier and a member of the salaried police force of the Island of Guernsey, and
- (ii) within the limits of his jurisdiction, a special constable,

and related expressions shall be construed accordingly,

**"the PPACE Law"** means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>k</sup>,

**"prosecutor"** means any person who is authorised by Her Majesty's Procureur to prosecute in a court of criminal jurisdiction in the Bailiwick,

**"public authority"** includes -

- (a) a court or tribunal, and
- (b) any person certain of whose functions are of a public nature,

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<sup>j</sup> Order in Council No. III of 2004.

<sup>k</sup> Order in Council No. XXIII of 2003.

but does not include an Island legislature or a person exercising functions in connection with proceedings in an Island legislature,

**"publish"** means to distribute, publicise or disseminate by any medium, including by newspaper, by radio or television broadcast, or by the internet, and related expressions are to be construed accordingly,

**"relevant court"** has the meaning given in section 7(2),

**"relevant function"** has the meaning given in section 2(2),

**"Royal Court"** means the Royal Court, sitting as a Full Court,

**"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 section 68 of the Children Law.

**"sentencing court"** has the meaning given in section 16,

**"States"** means the States of Guernsey,

**"subordinate legislation"** means any statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**supervisor**" has the meaning given in section 15(2)(a),

"**traffic offence**" has the meaning given in section 4(9)(c), and

"**Tribunal**" means the Child, Youth and Community Tribunal established by section 33 of the Children Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>1</sup> applies to the interpretation of this Law throughout the Bailiwick.

(3) Unless the context requires otherwise, references in this Law to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

**Extent.**

**25.** This Law shall have effect throughout the Bailiwick, with the exception that -

- (a) sections 5 and 6, and Part V shall not have effect in Alderney, and
- (b) sections 4, 5 and 6, and Parts V and VI shall not have effect in Sark.

**Citation and Commencement.**

**26.** (1) This Law may be cited as the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

(2) This Law shall come into force on such day as the States may by Ordinance appoint and such an Ordinance may appoint different days for

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<sup>1</sup> Ordres en Conseil Vol. XIII, p.355.

different provisions and different purposes.



## SCHEDULE 1

### MODIFICATION OF THE BAIL LAW FOR THE PURPOSES OF DEFENDANTS UNDER THIS LAW

1. For section 2(4)(c), substitute "section 17 of the Juvenile Court Reform Law,".
2. In section 3(7), substitute "parent of, or other person who has parental responsibility for," for "parent or guardian of".
3. In section 3(7), substitute “that other person” for “guardian”.
4. In section 3(7)(a), substitute "parent of, or other person who has parental responsibility for," for "parent or the guardian of".
5. In sections 3(7), 11(6) and 15(9), substitute "defendant" for "child or young person".
6. In section 3(7)(a), substitute "defendant" for "young person".
7. In section 4(3), omit "or, if he is a child or young person, for his own welfare."
8. In section 5(3), omit "or, if he is a child or young person, for his own welfare."
9. For section 10(9)(c), substitute –

"(c) “the appropriate officer” of the court is -

- (i) in the case of the Juvenile Court, Her Majesty's Greffier or any of his deputies; or
  - (ii) in the case of the Court of Appeal, the Registrar thereof or such other officer as may be authorised by him to act for that purpose."
- 10. In sections 11(6) and 15(9), substitute "Part V of the Juvenile Court Reform Law" for "section 9 of the Juvenile Court (Guernsey) Law, 1989".
- 11. In section 12(3), immediately after "the amount in which the surety is to be bound", insert "(but which may not exceed £500)".
- 12. For section 12(4), substitute –
 

"(4) Where this subsection applies the recognisance of the surety may be entered into before such person as the court may by order specify or, if it makes no such order, before the Magistrate, Assistant Magistrate or a Jurat, or a police officer of at least the rank of inspector or a person of such other description as may be specified in Rules of Court."
- 13. In section 15(1)(a), immediately following "or more", insert "in the case of an adult".
- 14. In section 16(3), substitute "Part V of the Juvenile Court Reform Law" for "sections 6,7 and 8 of the Children and Young Persons (Secure Accommodation) Ordinance, 1997".
- 15. For section 19(5), substitute –
 

"(5) References in this Law to a defendant's being kept in custody or being in custody include references to his being detained in the custody of

the Department in pursuance of an order made under Part V of the Juvenile Court Reform Law."

16. Immediately after section 19(5), insert –

"(5A) References to a person (other than in section 13) shall be taken to be references to a "defendant" as defined in Part V of the Juvenile Court Reform Law."

17. In section 19(6), omit the definitions of "child" and "young person".
18. In section 19(6), in the definition of "defendant" substitute "has the meaning given in section 1(5) of the Juvenile Court Reform Law,".
19. In section 19(6), immediately after the definition of "Her Majesty's Procureur", insert the definition "**Juvenile Court**" means the court constituted in accordance with section 5 of the Juvenile Court Reform Law,".
20. In section 19(6), immediately after the definition of "Juvenile Court", insert the definition "**the Juvenile Court Reform Law**" means the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008;".
21. In section 19(6), for the definition of "Magistrates Court", substitute "includes the Juvenile Court;".

## SCHEDULE 2

### Section 25

## PART I

### AMENDMENTS

1. For section 6 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990<sup>m</sup>, substitute -

**"Child offenders."**

6. (1) Subject to subsection (2), where a court makes a compensation order against a child offender, it -

(a) shall, if he has not attained the age of 14 years,  
and

(b) may, in any other case,

order that the amount due shall be paid by his parent or any other person with parental responsibility for him ("**other person**").

(2) The court shall not make an order under subsection (1) if either -

(a) his parent or other person cannot be found, or

(b) his parent or other person satisfies the court that he has not contributed to the commission of the offence in respect of which the

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<sup>m</sup> Order in Council No. VI of 1990.

compensation order is made by neglecting to exercise appropriate care, protection, guidance and control in respect of the offender.

(3) A parent or other person against whom an order is made under this section may appeal against the order in accordance with the provisions of any enactment relating to appeals in criminal matters as if he had been convicted of the offence in respect of which the order was made and the order was a sentence passed upon his conviction.

(4) Any amount which is ordered to be paid by a parent or other person under this section -

- (a) shall be recoverable as a civil debt from the parent or other person, and
- (b) shall not be recoverable as a civil debt from the child offender,

and for the purposes of execution shall have effect as a judgment of a civil court for such amount.

(5) In this section -

- (a) "child offender" means a person under the age of 18 years who has been convicted of an offence, and
- (b) "parental responsibility" has the meaning given in section 5 of the Children (Guernsey and Alderney) Law, 2008."

2. For paragraph 3(1) of the Schedule to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002<sup>n</sup>, substitute -

"3. (1) This paragraph applies to the following sentences -

- (a) Probation Order,
- (b) Conditional Discharge,
- (c) Bind Over,
- (d) Attendance Centre Order, and
- (e) Supervision Order."

3. For section 2(4)(b) of the Bail (Bailiwick of Guernsey) Law, 2003<sup>o</sup>, substitute "section 6" for "section 5".

## PART II

### REPEALS

1. Article 1(3) of the Loi relative à la probation de Délinquants of 1929<sup>p</sup>.
2. The Juvenile Court (Guernsey) Law, 1989.
3. The Children and Young Persons (Secure Accommodation) Ordinance, 1997.

## PART III

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<sup>n</sup> Order in Council No. XIV of 2002.

<sup>o</sup> Order in Council No. XVII of 2003.

<sup>p</sup> Ordres en Conseil Vol. VIII, p. 365.

## TRANSITIONAL PROVISIONS

The coming into force of this Law is of no effect in relation to proceedings for an offence which is alleged to have been committed or was committed before the date on which the Law comes into force.

## **States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolution of the 29<sup>th</sup> November, 2007<sup>a</sup>, and in exercise of the powers conferred on them by sections 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of statutory references to States Treasurer.**

1. For any reference in a relevant enactment to the States Treasurer, however expressed, there is substituted a reference to the Chief Accountant.

### **Savings and transitional provisions.**

2. Anything done before the date of commencement of this Ordinance or in the process of being done on that date by or in relation to the States Treasurer under or by virtue of a relevant enactment shall have effect as if done or (as the case may be) may be continued by or in relation to the Chief Accountant.

### **Subordinate legislation.**

3. The provisions of sections 1 and 2 also apply in relation to any subordinate legislation made or having effect as if made under a relevant enactment as they apply to a relevant enactment; and the provisions of the relevant enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

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<sup>a</sup> Article I(12) of Billet d'État No. XXIII of 2007.

<sup>b</sup> Order in Council No. XXI of 1991.



**Interpretation.**

4. In this Ordinance -

"**Chief Accountant**" means the Chief Accountant of the States of Guernsey,

"**relevant enactment**" means -

- (a) any Law,
- (b) any Act of Parliament extended to the Bailiwick, and
- (c) any Ordinance of the States,

as amended, repealed and re-enacted (with or without modification), extended or applied,

"**subordinate legislation**" means any statutory instrument, regulation, rule, order, byelaw, scheme, code and other subordinate instrument of a legislative nature.

**Citation.**

5. This Ordinance may be cited as the States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008.

**Commencement.**

6. This Ordinance shall come into force on the 1<sup>st</sup> February, 2008.

## **The Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007**

**THE LEGISLATION SELECT COMMITTEE**, in pursuance of the Resolution of the States of the 25<sup>th</sup> July, 2007<sup>a</sup>, and in exercise of the powers conferred on the States by section 39A of the Income Tax (Guernsey) Law, 1975<sup>b</sup> and all other powers enabling them in that behalf and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948, as amended<sup>c</sup>, hereby orders:-

### **Tax relief on interest payments for principal private residence.**

**1.** (1) For the purposes of sections 14 and 38 of the Income Tax (Guernsey) Law, 1975, as amended ("**the Law of 1975**"), and subject to subsection (2), deductions in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits which, but for those sections, would be assessable to tax where -

- (a) the borrower is an individual who is solely or principally resident in Guernsey,
- (b) the borrowed money has been or will be used in the year of charge in which it was borrowed or the next year of charge (or in any other year of charge where the Administrator is satisfied that, for reasons beyond

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<sup>a</sup> Article VIII of Billet d'État No. XIX of 2007.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; section 39A was inserted by No. XVII of 2001.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

the borrower's control, it has not been possible for the borrower to use the money in those years) solely for the acquisition of land or the acquisition, construction, reconstruction or repair of a building,

- (c) the land or building is owned by the borrower,
- (d) in the case of land, there is being or is to be constructed on it a building which will, on completion of the works, be the borrower's principal private residence,
- (e) in the case of a building, it is or will, on completion of the works, be the borrower's principal private residence, and
- (f) the land or building (as the case may be) is situated in Guernsey.

(2) No deduction in respect of the amount of interest paid on borrowed money shall be allowed -

- (a) in respect of money borrowed on or after the 1<sup>st</sup> January, 2008 unless the money was borrowed from -
  - (i) a person resident in Guernsey, or
  - (ii) a company subject to tax in respect of income of Class 2(2)(a) (income from banking business) at the company intermediate rate,

- (b) to the extent that the amount of money borrowed in respect of the land or building exceeds £400,000.

(3) For the purposes of calculating the amount of relief due and determining the individual to whom relief is due -

- (a) all loans used by any person for the acquisition of the land or the acquisition, construction, reconstruction or repair of the building in question shall be aggregated, and
- (b) loans shall be aggregated by reference to -
  - (i) in the case of a loan secured by an entry in the Livre des Hypothèques, Obligations et Actes de Cour, the order in which they were registered, or
  - (ii) in any other case, the order in which the monies were advanced.

However, where the loans are registered on the same day, or are contemporaneous, the relief may be apportioned between the borrowers in accordance with their respective interests in the land or building in question or in such other manner as the Administrator may direct.

(4) Notwithstanding subsection (1)(c), where the borrowed money is used for -

- (a) the acquisition of land on which there is being or is to be constructed a building which will, on completion of the works, be the principal private residence of a person mentioned in subsection (5)(a) or (b) below, or
- (b) the acquisition, construction, reconstruction or repair of a building which is or will, on completion of the works, be the principal private residence of that person,

the borrower may claim relief under this section as if the land or principal private residence (as the case may be) of that person were owned by him and were part of his own land or principal private residence.

(5) The persons are either of the following -

- (a) the borrower's spouse (where a decree of judicial separation or Magistrate's separation order is in force), or
- (b) the borrower's former spouse (where a final order on a decree of divorce has been made).

A "decree of judicial separation or Magistrate's separation order" and a "final order on a decree of divorce" include a corresponding decree or order made in a jurisdiction outside Guernsey.

(6) Notwithstanding subsection (1)(c), where the borrowed money has been used for the acquisition of shares of a company which is -

- (a) the owner of land on which there is being or is to be constructed a building which will, on completion of the works, be the borrower's principal private residence, or
- (b) the owner of a building which is or will, on completion of any works, be the borrower's principal private residence,

the borrower may, provided that he is a beneficial member of the company within the meaning of section 62D of the Law of 1975<sup>d</sup>, claim relief under and in accordance with this section as if the building were owned by him.

- (7) Where the borrowed money has been or will be used -
  - (a) for the acquisition of land which is owned by a company but on which there is being or is to be constructed a building which will, on completion of the works, be the borrower's principal private residence, or
  - (b) for the acquisition, construction, reconstruction or repair of a building which is owned by a company but which is or will, on completion of the works, be the borrower's principal private residence,

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<sup>d</sup> Ordres en Conseil Vol. XXV, p. 124; section 62D was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

the borrower may, notwithstanding subsection (1)(c), and provided that he is a beneficial member of the company within the meaning of section 62D of the Law of 1975, claim relief under and in accordance with this section as if the land or building were owned by him.

(8) Where a company is the borrower, and the borrowed money has been or will be used -

- (a) for the acquisition of land which is owned by the company but on which there is being or is to be constructed a building which will, on completion of the works, be the principal private residence of a beneficial member of the company within the meaning of section 62D of the Law of 1975, or
- (b) for the acquisition, construction, reconstruction or repair of a building which is owned by the company but which is or will, on completion of the works, be the principal private residence of such a beneficial member,

then the company may claim relief under and in accordance with this section in respect of any interest paid by it to the same extent that the beneficial member would have been entitled to claim relief under subsection (1) had he been the owner of the land or building.

However, if the company's income is insufficient to enable it to claim relief in respect of all the interest paid by it, then the beneficial member may, notwithstanding subsection (1)(c), claim the excess relief under and in accordance with this section in respect of interest paid by him as if the land or building were

owned by him.

**Tax relief on interest payments for let property.**

2. (1) For the purposes of sections 14 and 38 of the Law of 1975, and subject to subsection (2), deductions in respect of the amount of interest paid in the year of charge 2008 and any subsequent year of charge on money borrowed solely for the acquisition of land, or the acquisition, construction, reconstruction or repair of a building, situate in Guernsey or elsewhere and owned by the borrower may be made from income which, but for those sections, would be assessable to tax in respect of any such land or building in accordance with the provisions of Part I of the Law of 1975.

(2) No deduction in respect of the amount of interest paid on borrowed money shall be allowed -

- (a) subject to subsection (3), against income which arises in a different year of charge from that in which the interest is payable (and accordingly where the interest payable in any year of charge exceeds the income arising in that year the excess may not be carried forward),
- (b) to the extent that the interest paid exceeds the income from the land or building, save that the excess may (subject to the other provisions of this section) be deducted from any other income of the same Class in respect of any other land or building situate in Guernsey or elsewhere, or
- (c) in respect of any amount of interest payable on the



borrowed money at a time when the land or building is not let and is not being actively marketed as available to let.

(3) Where the borrowed money will be used for the acquisition of land or the acquisition, construction, reconstruction or repair of a building which, in the year of charge in which any interest on that money is payable, is incapable of occupation, the amount of interest paid may be carried forward from that year of charge to, and allowed as a deduction in, the year of charge in which income in respect of the letting of that land or building first arises.

**Tax relief on interest payments for miscellaneous purposes.**

3. For the purposes of sections 14 and 38 of the Law of 1975, deductions in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits which, but for those sections, would be assessable to tax where -

- (a) the borrower is an employee who is resident in Guernsey and who has borrowed the money and used it to purchase an asset used wholly, exclusively and necessarily in the performance of the duties of his employment,
- (b) the money was borrowed for the purposes of the acquisition of a business or part of a business (including, without limitation, the acquisition of goodwill in the assets of a business and the acquisition of shares in a company carrying on the business) in which the borrower is actively engaged,

- (c) the money was borrowed for the purpose of being lent to a company in which the borrower holds not less than 10% of the issued share capital and in the business of which the borrower is actively engaged, provided that the company uses the monies borrowed wholly and exclusively for the purposes of its business.

For the avoidance of doubt paragraph (c) does not apply to investment companies within the meaning of section 169 of the Law of 1975.

**No tax relief in other cases.**

4. Notwithstanding sections 14 and 38 of the Law of 1975, no deduction in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits pursuant to those sections except under and in accordance with section 1, 2 or 3.

**Interpretation.**

5. (1) In this Ordinance -

"**construction, reconstruction or repair**" includes extension and renovation, and

"**works**" means works of construction, reconstruction or repair.

(2) For the purposes of this Ordinance a building does not cease to be a borrower's principal private residence by reason only of absence from the building if the Administrator is satisfied that the absence is temporary and arises, for example -

- (a) for the purposes of a holiday or during periods of illness,
- (b) for the purposes of a business or secondment,
- (c) during periods of renovation or repair, or
- (d) in some other temporary circumstance, for example, due to military service.

The circumstances set out in paragraphs (a) to (d) are for the purposes of illustration and not of limitation.

**Citation.**

6. This Ordinance may be cited as the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.

**Commencement.**

7. This Ordinance shall come into force on the 1<sup>st</sup> January, 2008.

## **The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007**

### ARRANGEMENT OF SECTIONS

#### PART I PROPERTY TAX

##### *The tax*

1. Property tax to be levied in respect of real property.
2. Property tax to be calculated on basis of assessable units.
3. Property references and rates of property tax.
4. Exemptions.
5. Meaning of plan area.
6. Measurement of plan area.
7. Administration of Ordinance.

##### *Payment and liability*

8. Payment of the tax.
9. Penalties or interest for late payment.
10. Owner liable to property tax.
11. Plan area and property reference to be taken as at 31<sup>st</sup> December.

##### *The Register and the Map*

12. Department to keep Register.
13. Department to prepare Map.

##### *Notification, information and miscellaneous powers*

14. Notification by Department of property reference, etc of property and changes to Register.
15. Duty to notify change of plan area or change of property reference.
16. Duty to notify ownership of real property.
17. Provision of information as to real property, etc.
18. Power to enter real property.
19. Power of Bailiff to grant warrant.
20. Powers conferred by Bailiff's warrant.
21. Power to estimate liability to property tax in cases of failure to co-operate.

## PART II THE TAX ON REAL PROPERTY APPEALS PANEL & TRIBUNAL

- 22. Establishment of the Panel.
- 23. Appointment and constitution of the Tribunal.
- 24. Confidentiality of information.
- 25. Power of Chairman and Tribunal to seek directions.
- 26. Procedure and powers of Tribunal.
- 27. Appointment of Clerk.

## PART III RELEVANT DECISIONS AND REVIEW THEREOF

- 28. Meaning of "relevant decision".
- 29. Notice to be given by Department of relevant decisions.
- 30. Review by Department of relevant decisions.

## PART IV APPEALS

- 31. Right of appeal.
- 32. Time for appealing.
- 33. Form of notice of appeal and application.
- 34. Refusal by Tribunal to hear appeals or applications.
- 35. Powers of Tribunal on appeal.
- 36. Appeals from Tribunal to Royal Court.
- 37. Reference of points of law to Royal Court.
- 38. Appeal from Royal Court to Court of Appeal.
- 39. Interpretation of Tribunal's decisions.

## PART V GENERAL PROVISIONS AND INTERPRETATION

- 40. Amnesty for tax on rateable value, etc.
- 41. Effect of legislation on planning laws.
- 42. Prohibition against disclosure of information.
- 43. Exchange of information with Environment Department.
- 44. Further provisions as to disclosure.
- 45. Guidance.
- 46. Performance of functions by officers, etc.
- 47. Repeal and amendment of enactments.
- 48. Service of documents.
- 49. General provisions as to subordinate legislation.

- 50. Penalties for false information.
- 51. Criminal liability of directors, etc.
- 52. Proceedings against unincorporated bodies.
- 53. Defence of due diligence.
- 54. Interpretation.
- 55. Extent.
- 56. Citation.
- 57. Commencement.

- SCHEDULE 1: Property references and rates of tax.
- SCHEDULE 2: Repeals.
- SCHEDULE 3: Amendments.
- SCHEDULE 4: The Tribunal: procedure and powers.
- SCHEDULE 5: Form of notice of appeal to Tribunal and application to Tribunal for further time.

## The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> July, 2005<sup>a</sup> and the 28<sup>th</sup> June, 2007<sup>b</sup>, and in exercise of the powers conferred on them by sections 1, 2 and 4 of the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005<sup>c</sup> and all other powers enabling them in that behalf, hereby order:-

### PART I PROPERTY TAX

#### *The tax*

#### **Property tax to be levied in respect of real property.**

1. (1) A tax to be called property tax is payable in accordance with the provisions of this Ordinance in respect of real property in the Islands of Guernsey, Alderney and Herm ("**the Islands**").

(2) Property tax is an annual tax which is chargeable in respect of each calendar year.

#### **Property tax to be calculated on basis of assessable units.**

2. (1) Property tax is payable in respect of each assessable unit of the real property in question.

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<sup>a</sup> Article VII of Billet d'État No. XI of 2005.

<sup>b</sup> Article VIII of Billet d'État No. XVI of 2007.

<sup>c</sup> Order in Council No. X of 2006.

(2) In the case of a building, each square metre of the plan area of the building is an assessable unit.

(3) In the case of real property other than a building ("**land**"), each 50 square metres of the plan area of the land is an assessable unit.

**Property references and rates of property tax.**

3. (1) Property tax in respect of real property falling into a property reference specified in column 1 of Part I of Schedule 1 is chargeable at the rate per assessable unit attributable to the tariff reference specified in relation to that property reference in column 3 of Part I of Schedule 1.

(2) The rate of property tax attributable to each tariff reference shall be determined by Ordinance of the States.

(3) The Treasury and Resources Department ("**the Department**") may by regulation insert, amend or delete any entry in any column of Part I of Schedule 1.

**Exemptions.**

4. Property tax is not payable in respect of any real property specified in Part II of Schedule 1.

**Meaning of plan area.**

5. (1) Subject to the provisions of regulations under subsection (2), the "**plan area**" of any real property in the Islands has the following meanings -

- (a) in the case of a building which, wholly or partially, can in the opinion of the Department be accurately



externally measured for the purposes of this Ordinance by reference to the Map, the plan area is (subject to the application of any multiplier, etc, under section 6(2)) the total horizontal plan view area of the building measured to the edge of the roofline,

- (b) in the case of a building which cannot in the opinion of the Department be accurately externally measured for the purposes of this Ordinance by reference to the Map, the plan area is the total internal horizontal surface area measured to the floor line edge of the interior walls, and
- (c) in the case of land, the plan area is the total horizontal plan view area of the land.

(2) The Department may by regulation make such provision as it thinks fit in relation to the meaning of the expression "plan area" in relation to any real property or any class or description of real property.

(3) Regulations under subsection (2) -

- (a) may modify subsection (1) in its application to any real property or any class or description of real property, and
- (b) may make provision which is incidental, supplementary or ancillary to subsection (1).

**Measurement of plan area.**

**6.** (1) Subject to the provisions of regulations under subsection (3), the plan area of any real property in the Islands shall be measured as follows -

(a) in the case of a building described in section 5(1)(a) -

(i) to the extent that the plan area can be accurately externally measured by reference to the Map, it shall be so measured, and

(ii) to the extent that the plan area cannot be accurately externally measured by reference to the Map, it shall be measured externally by such other means and in accordance with such other arrangements as the Department may direct,

(b) in the case of a building described in section 5(1)(b), the plan area shall be measured internally by such means and in accordance with such arrangements as the Department may direct,

(c) in the case of land, the plan area shall be measured by reference to the Cadastre or by such other means and in accordance with such other arrangements as the Department may direct.

(2) For the purpose of calculating the plan area of a building or of land -

(a) in the case of a building -

- (i) the Department may apply such multiplier or such other formula, rule or means of calculation as it considers necessary to take account of the number of storeys and the internal configuration of the building, and
    - (ii) any remaining fraction of a square metre of one half or more shall be rounded up to one square metre (and a lesser fraction shall be disregarded), and
  - (b) in the case of land, any remaining number of square metres of 25 or more but less than 50 shall be rounded up to 50 square metres (and a lesser number shall be disregarded).
- (3) The Department may by regulation make such provision as it thinks fit in relation to the measurement of the plan area of any real property or any class or description of real property.
- (4) Regulations under subsection (3) -
- (a) may modify subsections (1) and (2) in their application to any real property or any class or description of real property, and
  - (b) may make provision which is incidental, supplementary or ancillary to subsections (1) and (2).

**Administration of Ordinance.**

7. The Department is responsible for the administration of this Ordinance and for the assessment and collection of property tax, and in particular, but without limitation, for -

- (a) determining the amount of property tax due in respect of any real property (but not the rate of property tax),
- (b) determining the property reference into which any real property falls,
- (c) determining the plan area of any real property and the number of assessable units thereof,
- (d) determining the ownership of any real property.
- (e) the establishment and maintenance of the Register under section 12.

*Payment and liability*

**Payment of the tax.**

8. (1) Subject to the provisions of this Ordinance, liability to property tax in respect of any real property arises upon service by the Department of an account specifying the amount of the tax due.

(2) Accounts shall be served -

- (a) on or at any time after the 1<sup>st</sup> January in the year in respect of which the tax is due, and

(b) on the owner of the property.

(3) Property tax is payable in such manner and at such times and intervals as the Department may require; and the requirements of the Department may make different provision in respect of -

(a) different owners or classes or description of owner,

(b) different property references, and

(c) different methods of payment.

(4) Without prejudice to the generality of subsection (3), requirements under that subsection may make provision for property tax -

(a) to be discounted by such amount, and

(b) to be paid by such instalments,

as the Department thinks fit.

(5) In any proceedings for the recovery of property tax a copy of an account produced by the Department (whether from data stored electronically or by other means) is evidence of the contents of the account.

**Penalties or interest for late payment.**

9. Where property tax in respect of any real property is not paid in accordance with the provisions of this Ordinance, the Department may, in its absolute discretion, levy whichever of the following is the greater -

- (a) a flat rate penalty of £25 for each month or part of a month in which the tax is unpaid, or
- (b) interest on the sum due at the rate of 10% per annum calculated from the date on which payment becomes due until the date on which payment is made,

and the penalty or interest is recoverable in the manner in which, and from the person from whom, the property tax is recoverable.

**Owner liable to property tax.**

**10.** (1) Property tax in respect of any real property, together with any interest or penalty recoverable in respect thereof -

- (a) is payable by the owner for the time being of the real property, whether or not he was the owner of the property when the property tax, interest or penalty became due, and
- (b) is recoverable from him as a civil debt due to the States.

(2) If two or more persons are the owners of the real property, their liability for property tax and any interest or penalty in respect thereof is joint and several.

**Plan area and property reference to be taken as at 31<sup>st</sup> December.**

**11.** For the purposes of calculating the amount of property tax due in any year in respect of any real property -

- (a) the plan area of the real property shall be taken to be its plan area as at the 31<sup>st</sup> December in the preceding year, and
- (b) the property reference of the real property shall be taken to be its property reference as at the 31<sup>st</sup> December in the preceding year.

*The Register and the Map*

**Department to keep Register.**

**12.** (1) The Department shall establish and maintain a Property Tax Register ("**the Register**") of all real property in the Islands.

References in this Ordinance to registration are, unless the context requires otherwise, to registration in the Register.

(2) The Register shall be kept in such form as the Department thinks fit and may (without limitation) be kept in electronic form.

(3) There shall be entered in the Register -

- (a) particulars of all real property in the Islands,
- (b) the property reference into which the real property falls and the tariff reference applicable to it,
- (c) the name and address of the owner of the real property,

- (d) any reference allocated to any particular real property and the owner thereof,
  - (e) the plan area of the real property, and
  - (f) such other matters as the Department thinks fit.
- (4) The Department shall make arrangements for -
  - (a) public access to the Register, and
  - (b) subject to payment of the appropriate fee, the supply of certified or uncertified copies or extracts of entries in the Register.
- (5) A copy, certified by or on behalf of the Department as being a correct copy of an entry in the Register, specifying -
  - (a) particulars of any real property in the Islands,
  - (b) the property reference into which any real property falls and the tariff reference applicable to it,
  - (c) the plan area of any real property, or
  - (d) the name and address of the owner of any real property,

is, in any legal proceedings for the recovery of property tax, evidence of each of



those matters unless notice of appeal under section 31(3) or an application for further time under section 32(1)(b) has been served in respect of the matter and the appeal or application has not been finally disposed of.

(6) The cost of -

- (a) the establishment of the Register shall be met from general revenues, and
- (b) the maintenance, updating and rectification of the Register shall be met as to 75% (or such greater percentage as the Department may from time to time determine) from general revenues and as to the remainder from parochial funds to be provided by the parishes in proportion to the total number of assessable units of all the real property respectively within each parish.

(7) Subsection (6) is without prejudice to any other agreement or arrangement between the States and the parishes as to the payment of the costs incurred by the States in the administration of this Ordinance or any other legislation relating to parochial taxation.

(8) The Department may at any time amend the Register by modifying, updating or rectifying any entry therein in such manner as it thinks fit.

(9) The Department shall, as soon as is reasonably practicable after effecting any such amendment, give notice in writing of the amendment to the owner of any real property affected by it.

(10) Subsection (8) is without prejudice to any other provision of this Ordinance relating to the keeping of the Register.

**Department to prepare Map.**

13. (1) The Department shall for the purposes of this Ordinance prepare and maintain a map of the Bailiwick to be called the States of Guernsey Digital Map ("**the Map**") from which measurements of the plan area of real property in the Islands may be made.

(2) The Map shall be kept in such form (including, without limitation, in electronic form) as the Department thinks fit and shall show and contain such information and data as to land parcels, building polygons and other relevant matters as the Department thinks fit.

(3) The Department shall make arrangements for -

- (a) public access to the Map at the Cadastre office, and
- (b) subject to payment of the appropriate fee, the supply of certified or uncertified copies, extracts or representations of entries in the Map.

(4) A copy, extract or representation of an entry in the Map certified by or on behalf of the Department as being correct is, in any legal proceedings for the recovery of property tax, conclusive evidence of what is shown on the Map.

*Notification, information and miscellaneous powers*

**Notification to owner of property reference, etc, of property and changes to**

**Register.**

**14.** (1) The Department shall, by notice in writing served on the owner of any real property in the Islands, as soon as is reasonably practicable after the commencement of this Ordinance, inform him of the Department's decision as to -

- (a) the plan area of the property and the number of assessable units thereof,
- (b) the property reference into which the property falls, and
- (c) the ownership of the property.

(2) Where the Department decides that -

- (a) there has been a change in the plan area of any real property and the number of assessable units thereof,
- (b) there has been some other change in -
  - (i) any real property (including any alteration or addition to it), or
  - (ii) the purposes for which any real property is used,

which affects the property reference into which it falls,  
or

- (c) there has been a change in the ownership of any real property,

and that the Register should be amended to reflect that change, the Department shall by notice in writing served on the owner of the property, as soon as is reasonably practicable after the change comes to the Department's attention, inform him of the Department's decision.

(3) Where Schedule 1 ("property references and rates of tax") is amended by an enactment and in consequence thereof the Department decides that any real property now falls into a property reference different from that into which it fell immediately before the amending enactment came into force, the Department shall, by notice in writing served on the owner of the property, as soon as is reasonably practicable after the amending enactment comes into force, inform him of the Department's decision.

(4) For the avoidance of doubt a decision of the Department under this section is a relevant decision within the meaning of section 28.

(5) A notice of the Department under this section may contain such ancillary, supplementary and incidental information as the Department thinks fit.

**Duty to notify change of plan area or change of property reference.**

**15.** (1) The owner of any real property in the Islands shall inform the Department of -

- (a) any change in the plan area of the property which affects or may affect the amount of property tax due in respect of it, and

(b) any other change in -

(i) the property (including any alteration or addition to it), or

(ii) the purposes for which the property is used,

which affects or may affect the property reference into which it falls,

as soon as it is reasonably practicable to do so and in any case not later than the 30<sup>th</sup> September next following the change.

For the avoidance of doubt, this obligation has effect whether or not the change required planning permission.

(2) The information shall be provided in such form and manner (if any) as the Department may require.

(3) The information shall be accompanied by such other information and documents as the Department may reasonably require for the purpose of performing its functions under this Ordinance.

(4) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Duty to notify ownership of real property.**

**16.** (1) If a person becomes the owner of any real property in the Islands he shall inform the Department of that fact as soon as it is reasonably practicable to do so and in any case within a period of 28 days immediately following the date of -

- (a) the registration of the conveyance or other instrument pursuant to which he acquired ownership, or
- (b) the event as a result of which he acquired ownership.

If a person does not know at the time that he has become the owner of any real property, the duty imposed by this subsection arises on the date on which he first learns of the fact.

(2) The information shall be provided in such form and manner (if any) as the Department may require.

(3) The information shall include the name and address of the owner and particulars of the real property and shall be accompanied by such other information and documents as the Department may reasonably require for the purpose of performing its functions under this Ordinance.

(4) Where a will of the real property of a deceased person is registered, the person effecting registration shall (without prejudice to the duty of any other person under this section) within a period of 28 days immediately following registration give the Department notice of the will, informing it of the name and address of each devisee and particulars of the real property inherited.

(5) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Provision of information as to real property, etc.**

17. (1) Without prejudice to sections 15 and 16, the Department may by notice in writing require an owner or former owner of real property in the Islands to provide such information and documents relating to the real property or the ownership thereof as the Department may reasonably require for the purpose of performing its functions under this Ordinance.

(2) The information and documents shall be provided in such form and manner (if any) as the Department may require.

(3) If there is any change to any information provided to the Department under this section or under section 15 or 16 by or on behalf of any person (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), that person shall inform the Department of the change as soon as is reasonably practicable and in any case within a period of 28 days after the date on which he learns of the change.

(4) Where a person is required by or under this section or section 15 or 16 to produce any documents, the Department may -

- (a) if the documents are produced, take copies of them or extracts from them and require that person to provide an explanation of them, and
- (b) if the documents are not produced, require that person to state, to the best of his knowledge and belief, where

they are.

(5) A person who without reasonable excuse fails to comply with this section or any requirement under it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(6) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him in criminal proceedings except -

- (a) in proceedings for an offence under subsection (5) or section 50(1), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it,

and, for the avoidance of doubt, proceedings for the recovery of property tax and any penalty or interest in respect thereof are not criminal proceedings.

**Power to enter real property.**

**18.** (1) A person authorised in writing by the Department ("**an authorised person**") may, on production of some duly authenticated document showing his authority and with such other persons (if any) as may be necessary, at any reasonable time enter any real property in the Islands and carry out such inspection and measurement of the property as may be reasonably necessary for the purposes set out in subsection (2).

(2) The purposes are -

- (a) to determine the plan area, property reference and



ownership of the real property, and

- (b) to ascertain anything else relevant to that determination or to the performance of the Department's functions under this Ordinance.

(3) Notwithstanding subsection (1), and except in cases of emergency, an authorised person is not entitled to demand admission as of right to a building which is occupied unless 24 hours' written notice has been given to the occupier.

(4) A person who -

- (a) fails without reasonable excuse to comply with a requirement imposed by, or to answer a question asked by, an authorised person for the purpose of enabling him to exercise a power conferred by this section, or
- (b) wilfully obstructs such a person in the exercise of any such power,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Power of Bailiff to grant warrant.**

**19.** (1) If the Bailiff, within the meaning of subsection (2), is satisfied by information on oath -

- (a) that a person authorised under section 18 has at any

reasonable time been refused admission to any real property in the Islands,

- (b) that for any other reason it would be impracticable, if a warrant were not granted, to obtain access to any such real property,
- (c) that a person has committed an offence under section 18(4),
- (d) that a person has failed to comply with any requirement imposed by or under section 15, 16 or 17, or
- (e) that any information or document furnished pursuant to any such requirement is inaccurate or incomplete,

he may grant a warrant conferring the powers set out in section 20.

(2) In this section the "**Bailiff**" means -

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
- (b) in any other case, the Bailiff, Deputy Bailiff, Lieutenant-Bailiff or Juge Délégué.

**Powers conferred by Bailiff's warrant.**

**20.** (1) A warrant under section 19 authorises any officer of police,

together with any other person named in, or of a class or description specified in, the warrant (including, without limitation, any officer, servant or agent of the Department) -

- (a) to enter any real property specified in the warrant, using such force as may be reasonably necessary for the purpose,
- (b) to carry out such inspection and measurement of the real property as may be reasonably necessary for the purposes of -
  - (i) determining the plan area, property reference and ownership of the property, and
  - (ii) ascertaining anything else relevant to that determination or to the performance of the Department's functions under this Ordinance, and
- (c) to require any person named in, or of a class or description specified in, the warrant to answer any questions relevant to the purposes set out in paragraph (b).

(2) A warrant under section 19 ceases to be valid on the expiration of 28 days immediately following the day on which it was granted.

(3) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any

power conferred by a warrant under section 19 is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(4) A statement made by a person in response to a requirement imposed under a warrant granted under section 19 may not be used in evidence against him in criminal proceedings except -

- (a) in proceedings for an offence under subsection (3) or section 50(1), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it,

and, for the avoidance of doubt, proceedings for the recovery of property tax and any penalty or interest in respect thereof are not criminal proceedings.

**Power to estimate liability to property tax in cases of failure to co-operate.**

21. (1) Where the Department is satisfied that it has not been reasonably possible to enter any real property in the Islands and carry out such inspection and measurement of the property as may be reasonably necessary for the purposes of determining its plan area and property reference, it may estimate the plan area of the property and determine the property reference into which, in its opinion, the property falls on the basis of any relevant information available to it.

(2) Subsection (1) applies notwithstanding the provisions of sections 19 and 20 and whether or not an application has been made for a warrant under section 19.

(3) Where subsection (1) applies, property tax is payable in

respect of the real property on the basis of the Department's estimate and opinion; and the provisions of this Ordinance apply accordingly.

## PART II

### THE TAX ON REAL PROPERTY APPEALS PANEL & TRIBUNAL

#### Establishment of the Panel.

**22.** (1) The States shall, on the recommendation of the Department, draw up and maintain a panel to be called the Tax on Real Property Appeals Panel ("**the Panel**").

(2) The Panel shall consist of such number of persons as in the opinion of the States is necessary for the purpose of hearing and determining appeals against decisions of the Department described in section 28 ("**relevant decisions**").

(3) The States shall designate one member of the Panel as Chairman of the Panel and another as deputy Chairman thereof.

(4) The following persons may not be appointed to the Panel -

- (a) any member of the States of Deliberation or the States of Election within the meaning of the Reform (Guernsey) Law, 1948<sup>d</sup>,
- (b) any member of the States of Alderney,
- (c) any Constable or Douzenier,

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<sup>d</sup> Ordres en Conseil Vol. XIII, p. 288; No. V of 1993; No. X of 1998.

- (d) any procureur or overseer of the poor or member of a parochial outdoor assistance board, and
- (e) any member of the judiciary of the Islands.

**Appointment and constitution of the Tribunal.**

**23.** (1) A tribunal to be called the Tax on Real Property Appeals Tribunal ("**the Tribunal**") shall be appointed from the membership of the Panel for the purpose of hearing and determining appeals against relevant decisions.

(2) The Tribunal shall, subject to any provision to the contrary in this Ordinance, consist of three persons.

(3) The Chairman of the Panel or, if he is unavailable, the deputy Chairman thereof shall -

- (a) from the membership of the Panel, appoint the members of the Tribunal who are to hear and determine any appeal against a relevant decision, and
- (b) nominate one of the members so appointed to chair the Tribunal,

and for the avoidance of doubt the Chairman or deputy Chairman may so appoint and nominate himself.

**Confidentiality of information.**

**24.** (1) A member of the Panel shall not disclose or cause or permit the disclosure of any document or information which relates to the business or

affairs of any person and which is acquired by him in the course of performing his functions as a member of the Panel or of the Tribunal, except -

- (a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired, or
- (b) to the extent that the disclosure is necessary -
  - (i) to enable him to perform his functions as a member of the Panel or of the Tribunal,
  - (ii) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings, or
  - (iii) to comply with an order of a court.

(2) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

**Power of Chairman and Tribunal to seek directions.**

**25.** (1) If the Chairman of the Panel (or, if he is unavailable, the deputy Chairman thereof) or the Tribunal believes that it would assist in the proper and lawful performance of their respective functions, he (or it) may apply to the Royal Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court.

(2) On an application under subsection (1) the Royal Court may make such order, on such terms and conditions, as it thinks fit.

(3) An appeal from an order of the Royal Court under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>e</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Procedure and powers of Tribunal.**

**26.** Schedule 4, which is entitled "The Tribunal: procedure and powers" and which lays down -

- (a) the procedure to be followed by, and the powers to be available to, the Tribunal in hearing and determining appeals against relevant decisions, and
- (b) other ancillary matters relating to the Tribunal and its proceedings and powers,

has effect.

**Appointment of Clerk.**

**27.** (1) The Department shall -

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



- (a) appoint a Clerk to the Tribunal, and such number of deputy Clerks, on such terms and conditions, and
- (b) provide such other officers and facilities,

as the Department thinks fit.

(2) The Clerk or a deputy Clerk must be present during all proceedings of the Tribunal, but shall not -

- (a) retire with the Tribunal,
- (b) participate in the Tribunal's deliberations, or
- (c) draft or participate in the drafting of the Tribunal's decisions.

### PART III

#### RELEVANT DECISIONS AND REVIEW THEREOF

##### Meaning of "relevant decision".

**28.** In this Ordinance a "**relevant decision**" means a decision of the Department of any of the following descriptions -

- (a) a decision as to the amount of property tax due in respect of any real property,
- (b) a decision as to the property reference into which any real property falls,

- (c) a decision as to the plan area of any real property or the number of assessable units thereof,
- (d) a decision as to the ownership of any real property,
- (e) a decision to amend or not to amend the Register under section 12(8).

**Notice to be given by Department of relevant decisions.**

**29.** When the Department makes a relevant decision, it shall serve on the person concerned a notice in writing, stating -

- (a) the terms of the relevant decision,
- (b) that the person concerned may, within a period of 28 days beginning on the date of the notice -
  - (i) ask the Department in writing to review the decision, and
  - (ii) make written or oral representations to the Department in respect of the decision, and
- (c) that if the person concerned does not ask the Department to review the decision in accordance with paragraph (b), the decision shall be final,

and in this section and section 30 "**the person concerned**" means the person by whom the right of appeal against the decision is exercisable.

**Review by Department of relevant decisions.**

**30.** (1) If the person concerned, within the 28 day period mentioned in section 29(b), asks the Department in writing to review the relevant decision, the Department shall review the decision, taking into account any representations made by that person, and having done so shall -

- (a) confirm or vary the decision, or rescind it and make a new decision as to the matter in question, and
- (b) serve on the person concerned a notice in writing stating -
  - (i) the terms of, and the grounds for, the decision as confirmed or varied or, as the case may be, the new decision, and
  - (ii) that the person concerned may, within a period of 28 days beginning on the date of the notice, appeal against the decision under section 31.

(2) If the person concerned, within the 28 day period mentioned in section 29(b), does not ask the Department in writing to review the relevant decision -

- (a) the decision is final, and
- (b) the person concerned may not appeal against the decision under section 31.

(3) Where the Department is asked to review a decision relating to the plan area of any real property, the Department may, before undertaking any re-measurement of the property, require the person concerned to pay them their reasonable costs of re-measurement.

(4) If the person concerned does not pay the costs of re-measurement, the Department is not obliged to re-measure the property or to review its decision.

(5) The costs of re-measurement shall be reimbursed by the Department only if the re-measurement of the property establishes that an appeal by the person concerned against the decision would have succeeded on the grounds set out in section 31(5).

(6) Where in accordance with this section the person concerned asks the Department to review a relevant decision, and the Department fails to comply with subsection (1)(a) and (b) within a period of 3 months beginning on the day on which it received the request to review the decision, then for the purposes of Part IV of this Ordinance ("appeals") the Department shall be deemed to have reviewed and confirmed its decision, and to have served on the person concerned notice in writing of the fact, in accordance with this section.

#### PART IV APPEALS

##### **Right of appeal.**

**31.** (1) A person aggrieved by a relevant decision may, subject to the provisions of this Ordinance, and provided that the Department has reviewed the decision in accordance with section 30, appeal against the decision to the Tribunal.

(2) The grounds of an appeal under this section are that the decision was wrong.

(3) An appeal under this section shall be instituted by notice of appeal served on the Clerk stating the grounds and material facts on which the appellant relies.

(4) On an appeal under this section the burden of proof is on the appellant to establish on a balance of probabilities that the relevant decision was wrong.

(5) In the case of an appeal under this section against a decision of the Department as to the plan area of a building which has been externally measured for the purposes of this Ordinance by reference to the Map, the appeal shall be allowed only if the appellant can establish that -

- (a) the co-ordinates of any point of the building measured by reference to the Map have been incorrectly measured by an amount of more than 10 centimetres,
- (b) that error has resulted in an increase in the plan area attributed to the building by the decision, and
- (c) that error has affected the number of assessable units attributed to the building by the decision by more than -
  - (i) 5 assessable units, or
  - (ii) 5% of the total number of assessable units

attributed to the building by the decision,

whichever is the greater.

In this subsection the "building" means the combined group of buildings in respect of which the appeal was instituted.

- (6) The Clerk, on receipt of notice of appeal, shall immediately -
  - (a) transmit it to the Chairman of the Panel requesting him (or, if he is unavailable, the Deputy Chairman of the Panel) to appoint, from the membership of the Panel, a Tribunal constituted by three members to hear and determine the appeal, and
  - (b) transmit it to the Department.

**Time for appealing.**

- 32. (1) The Tribunal shall not hear and determine an appeal against a relevant decision unless notice of appeal under section 31 is served on the Clerk -
  - (a) before the end of a period of 28 days beginning on the date of the notice of the decision required to be served by the Department on the person aggrieved under section 30(1)(b), or
  - (b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the person aggrieved served on the Clerk, allow in a case where it is satisfied that it was

not reasonably practicable for notice of appeal to be presented within that period.

(2) The Clerk, on receipt of an application for further time under subsection (1)(b), shall immediately transmit it to the Chairman of the Panel requesting him (or, if he is unavailable, the Deputy Chairman of the Panel) to appoint, from the membership of the Panel, a Tribunal (constituted by a single member) to hear and determine the application.

(3) Where the Tribunal, on an application under subsection (1)(b), decides that further time should or should not be allowed for the service of notice of appeal -

- (a) the Tribunal's decision is subject to appeal in accordance with section 36, and
- (b) if the Tribunal (or the Royal Court on appeal under section 36) determines that further time should be allowed for the service of notice of appeal, the single member of the Tribunal shall not be appointed as one of the members of the Tribunal who are to hear and determine the appeal.

**Form of notice of appeal and application.**

33. (1) A notice of appeal under section 31 and an application for further time under section 32(1)(b) -

- (a) shall be served on the Clerk in the form set out in Part I or (as the case may be) Part II of Schedule 5, and

- (b) shall be supported by such information and documents, verified in such manner, as the Clerk may require.

(2) At any time after receipt of a notice of appeal or an application for further time, the Clerk may require the appellant or applicant to furnish such additional information and documents, verified in such manner, as the Clerk thinks fit.

**Refusal by Tribunal to hear appeals or applications.**

**34.** (1) The Tribunal may refuse to hear and determine an appeal under section 31 or an application for further time under section 32(1)(b) -

- (a) in default of compliance by the appellant or applicant with any provision of, or any requirement imposed under, section 33, or
- (b) if the appeal or application appears to the Tribunal to be frivolous or vexatious.

(2) The Tribunal shall refuse to hear and determine an appeal under section 31 against, or an application for further time under section 32(1)(b) in respect of, a relevant decision if the Department has not reviewed the decision in accordance with section 30.

**Powers of Tribunal on appeal.**

**35.** (1) On an appeal under section 31, the Tribunal may -

- (a) dismiss the appeal, or
- (b) quash the relevant decision to which the appeal relates,



and, where the Tribunal quashes the decision, it may remit the matter to the Department with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal.

(2) The effect of a relevant decision to which an appeal under section 31 relates is not, except where the Tribunal orders otherwise, suspended in consequence of the bringing of the appeal.

(3) The Department may, where an appeal under section 31 has been instituted, apply to the Tribunal, by notice served on the appellant and the Clerk, for an order that the appeal be dismissed for want of prosecution, and on hearing such an application the Tribunal may -

- (a) dismiss the appeal or dismiss the Department's application (in either case on such terms and conditions as the Tribunal may direct), or
- (b) make such other order as the Tribunal considers just.

#### **Appeals from Tribunal to Royal Court.**

36. (1) A person aggrieved by a decision of the Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal therefrom to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the proceedings from presenting his case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 25 or 37.

**Reference of points of law to Royal Court.**

37. A question of law arising in connection with the hearing and determination by the Tribunal of an appeal under section 31 or an application for further time under section 32(1)(b) may, if the Tribunal thinks fit, be referred for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

**Appeal from Royal Court to Court of Appeal.**

38. (1) An appeal from a decision of the Royal Court made on an appeal under section 36 or on a reference under section 37 lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>f</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Interpretation of Tribunal's decisions.**

39. (1) Any party to an appeal under section 31 which has been decided by the Tribunal may, within a period of 28 days immediately following the date of the Tribunal's decision (or such other period as the Tribunal may in its absolute discretion allow), apply to the Tribunal for a determination of any question as to the interpretation of the decision.

(2) The Tribunal shall, before making such a determination, hear

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

any representations of the parties as to the question in issue.

(3) The determination of the Tribunal on an application under subsection (1) shall be stated in writing to the parties and has effect as if it were an original decision.

## PART V

### GENERAL PROVISIONS AND INTERPRETATION

#### **Amnesty for tax on rateable value, etc.**

**40.** (1) The Department shall waive any liability of any person to any tax due in respect of any real property under the provisions of the Tax on Rateable Values (Guernsey) Law, 1976<sup>g</sup> (or any Ordinance under it) which has not been paid at the date of commencement of this Ordinance in accordance with those provisions.

(2) Subsection (1) applies only in respect of a non-payment or under-payment of tax attributable to a failure on the part of the owner of the real property to declare, in accordance with the provisions mentioned in that subsection -

- (a) an alteration or addition to the property which would have resulted in an increase in the rateable value thereof, or
- (b) a change of the category of the property which would have resulted in an increase in the tax on rateable value payable in respect thereof.

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<sup>g</sup> Ordres en Conseil Vol. XXVI, p. 86; and No. II of 1995.

(3) Subsection (1) does not apply in cases where the non-payment or under-payment is attributable to the fraud, wilful misconduct or gross negligence of the owner.

(4) References in this section to the owner of any real property include, where there is more than one owner thereof, references to any of them.

**Effect of legislation on planning laws.**

**41.** (1) For the avoidance of doubt, the property reference into which any real property is considered to fall for the purposes of this Ordinance is not relevant to the determination of the use or use class of that property for the purposes of the planning Laws (and vice versa).

(2) The "planning Laws" means the Land Planning and Development (Guernsey) Law, 2005<sup>h</sup>, the Building and Development Control (Alderney) Law, 2002<sup>i</sup> and any Ordinance or regulation under them.

**Prohibition against disclosure of information.**

**42.** (1) Subject to sections 43 and 44, any document or information acquired by any person in connection with the operation of this Ordinance or any regulations under it shall not be disclosed, except -

- (a) to the extent necessary to enable the Department to perform its functions,
- (b) for the purposes of civil proceedings in connection with the operation of this Ordinance,

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<sup>h</sup> No. XVI of 2005.

<sup>i</sup> No. XII of 2003.

- (c) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,
- (d) with the consent of the person to whom it relates and (if different) the person from whom it was acquired,
- (e) to comply with an order of a court,
- (f) to the extent that its disclosure is expressly authorised or required by or under any enactment relating to the Department's functions, or
- (g) in accordance with section 43(1).

(2) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(3) This section and section 43 do not apply to members of the Panel in respect of documents and information described in section 24.

**Exchange of information with Environment Department.**

**43.** (1) Any document or information referred to in section 42(1) may also be disclosed to any member, officer or servant of the Environment Department to enable that Department to carry out its functions or to investigate matters of relevance to its functions.

In this section and section 44 "Environment Department" means -

- (a) the States Environment Department, or
- (b) the States of Alderney Building and Development Control Committee.

(2) Any document or information acquired by the Environment Department in connection with the operation of any enactment administered by it may be disclosed to any member, officer or servant of the Department to enable the Department to carry out its functions, or to investigate matters of relevance to its functions, under this Ordinance or any regulations under it.

This subsection is without prejudice to any other power of the Environment Department to disclose information and documents.

(3) Information disclosed under subsection (1) or (2) shall not be further disclosed except as mentioned in paragraphs (a) to (f) of section 42(1).

Those paragraphs have effect as if references to the Department and this Ordinance included references to the Environment Department and any enactment administered by it.

(4) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (3) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both.

**Further provisions as to disclosure.**

**44.** (1) In proceedings against a person for an offence under section 42 or 43 it is a defence for him to show -

- (a) that he took all reasonable steps and exercised all due diligence to avoid committing the offence, or
- (b) that he did not know and had no reason to suspect that the document or information in question was to be regarded as confidential.

(2) The Department and the Environment Department may, when disclosing any document or information to any person pursuant to section 42 or 43 -

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that document or information by that person or by any other person who may obtain it from him,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that the confidentiality of the document or information is protected,

as the Department or Environment Department thinks fit.

**Guidance.**

**45.** (1) The Department may issue such guidance as it considers appropriate in connection with the administration of this Ordinance and any matter

relating to it.

(2) Guidance under this section may, without limitation, give examples and explanations of -

- (a) how the plan area of real property in the Islands will be measured, and
- (b) how the number of assessable units, and the charge to property tax, in respect of any such real property will be calculated.

(3) Guidance under this section -

- (a) must be taken into account by the Department in exercising its functions under this Ordinance but, unless the guidance provides otherwise -
  - (i) it is not binding on the Department or on any other person,
  - (ii) it is merely indicative of the Department's likely approach to any particular issue,
  - (iii) it does not prejudice the Department's discretion to decide any particular case differently according to its merits, and
  - (iv) it does not relieve any person of any duty, obligation, restriction or liability imposed by or



under this Ordinance,

- (b) may, subject to the limitations set out in paragraph (a), be received in proceedings under this Ordinance, and
- (c) may contain provision which is incidental, supplementary or ancillary to the provisions of this Ordinance and any regulations under it.

**Performance of functions by officers, etc.**

**46.** (1) The Department may arrange for any of its functions under this Ordinance (other than those under this section) to be performed in its name by any of its officers.

(2) A function performed pursuant to an arrangement under subsection (1) is for all purposes performed by the Department; and every decision taken or other thing done pursuant to such an arrangement has the same effect as if taken or done by it.

(3) An arrangement under subsection (1) -

- (a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the performance of the function by the Department whilst the arrangement subsists.

(4) This section is without prejudice to the provisions of the

Public Functions (Transfer and Performance) (Guernsey) Law, 1991<sup>j</sup>.

(5) The Department must from time to time consider the advisability of making arrangements under subsection (1) and under the provisions mentioned in subsection (4) and review any such arrangements previously made by it.

**Repeal and amendment of enactments.**

**47.** (1) The enactments listed in Schedule 2 are repealed.

(2) The enactments listed in Schedule 3 are amended in accordance with the provisions of that Schedule.

**Service of documents.**

**48.** (1) Any document to be served for the purposes of this Ordinance is validly served, in the case of an individual or body, by being left at, or sent by post to, their address for the time being entered in the Register or, if there is no such address -

- (a) in the case of an individual, by being delivered to him or by being left at, or sent by post to, his usual or last known place of abode,
- (b) in the case of a body corporate with a registered office in the Islands, by being left at, or sent by post to, that office,
- (c) in the case of a body corporate without a registered

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<sup>j</sup> Order in Council No. XXI of 1991.

office in the Islands, by being left at, or sent by post to, its principal or last known principal place of business in the Islands or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

(d) in the case of an unincorporated body -

(i) by being served on any partner, member, manager, director or other similar officer thereof at their address for the time being entered in the Register or, if there is no such address, in accordance with paragraph (a), or

(ii) by being left at, or sent by post to, the body's principal or last known principal place of business in the Islands or, if there is no such place, its principal or last known principal place of business elsewhere,

(e) in the case of the Department, by being left at, or sent by post to, its principal offices in Guernsey,

and in this section the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.

(2) If a person notifies the Department of an address for service within the Islands for the purposes of this Ordinance, any document to be served on that person may be served by being left at, or sent by post to, that address.

(3) If a person on whom a document is to be served for the purposes of this Ordinance is an infant or person under guardianship, the document shall be served on his guardian; and, if there is no guardian, the Department may apply ex parte to the Royal Court or, in Alderney, the Court of Alderney for the appointment of a person to act as guardian for the purposes of this Ordinance.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle or, in the case of service in Alderney, the Alderney Official Gazette.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Where the ownership of any real property is vested in two or more persons, service of a document on one of them in accordance with the provisions of this section is deemed, for the purposes of this Ordinance, to be service on all of them.

(7) No document to be served on the Department under this Ordinance shall be deemed to have been served until it is received.

(8) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Ordinance to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting, and

(b) in the case of a document sent elsewhere by airmail,

on the seventh day after the day of posting,

excluding in each case any non-business day.

(9) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) Without prejudice to any other provision of this section, a document relating to any real property in the Islands which is to be served for the purposes of this Ordinance on the owner or occupier of that real property may be served -

- (a) by being left at, or sent by post to, that property, or
- (b) where the foregoing is impracticable, by being affixed to some conspicuous part of or about that property.

(11) If the name of the owner or occupier of any real property on whom a document is to be served for the purposes of this Ordinance cannot after reasonable inquiry be ascertained, the document may be served by addressing it to the person on whom it is to be served by the description of "**owner**" or "**occupier**" of the real property (describing it) to which the document relates.

(12) In this section -

**"document"** means any notice, account or other document other than a summons, and

**"served"** includes given.

**General provisions as to subordinate legislation.**

**49.** (1) The Department may by regulation make provision for the purpose of carrying this Ordinance into effect.

This subsection is without prejudice to any other provision of this Ordinance conferring power to enact regulations or orders (and vice versa).

(2) Any regulation or order under this Ordinance -

(a) may be amended or repealed by a subsequent regulation or, as the case may be, order hereunder, and

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including (in the case of a regulation, and without limitation) provision amending or modifying any enactment (including this Ordinance).

(3) Any power conferred by this Ordinance to make a regulation or order 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.

(4) Regulations of the Department under this Ordinance 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 to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(5) The Department shall, before making any regulations under this Ordinance, consult the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed regulations; but a failure to comply with this subsection does not invalidate the regulations.

**Penalties for false information.**

**50.** (1) If a person -

- (a) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, this Ordinance, or

- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Department for the purpose of performing its functions under this Ordinance,

does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,



then he is guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable -
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) In relation to offences tried before the Court of Alderney, the penalties stipulated by subsection (2)(b) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004<sup>k</sup>.

**Criminal liability of directors, etc.**

**51.** (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body or any person purporting to act in any such capacity, he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

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<sup>k</sup> Order in Council No. III of 2005.

**Proceedings against unincorporated bodies.**

**52.** (1) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance shall be paid from the funds of the body.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of the body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

**Defence of due diligence.**

**53.** In any proceedings for an offence under this Ordinance, it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself

and by any person under his control.

**Interpretation.**

**54.** (1) In this Law, unless the context requires otherwise, and subject to the provisions of regulations under subsection (2) -

**"appeals"** includes applications and other proceedings,

**"assessable unit"** : see section 2,

**"building"** means a building or other structure falling within a property reference specified in column 1 of Part I of Schedule 1,

**"Cadastre"** means -

- (a) in relation to Guernsey and Herm, the Cadastre prepared and for the time being in force under the Cadastre Law, 1947<sup>l</sup> (called "the 1947 Cadastre" in that Law),
- (b) in relation to Alderney, the record of assessments of rateable value made and for the time being in force under the Alderney Rateable Values Assessment Ordinance, 1949<sup>m</sup>,

**"Chief Officer"** means the Chief Officer of the Department,

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<sup>l</sup> Ordres en Conseil Vol. XIII, p. 78.

<sup>m</sup> Recueil d'Ordonnances Tome X, p. 1.

**"Clerk"** means the Clerk to the Tribunal appointed by the Department under section 27, and includes any deputy Clerk so appointed,

**"copy", "extract" or "representation"**, in relation to any entry on the Map or in the Register which is not in documentary form, means a copy, extract or representation in a legible form in which it can be taken away,

**"costs of a hearing"** : see paragraph 5(3) of Schedule 4,

**"a department"** means any department, council or committee of the States of Guernsey or the States of Alderney, however styled,

**"the Department"** means the Treasury and Resources Department,

**"document"** includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production, however expressed, include references to the production of a copy of the information in legible form,

**"enactment"** means any Law, Ordinance, Act of Parliament and Order in Council, and any subordinate legislation made thereunder,

**"extract"** : see definition of **"copy"**, **"extract"** or **"representation"** above,

**"information"** includes data, however recorded,

**"Islands"** means the Islands of Guernsey, Alderney and Herm,

**"land"** means real property other than a building,

**"Map"** : see section 13,

**"non-business day"** means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Guernsey or, as the case may be, the States of Alderney under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>n</sup>,

**"officer of police"** means -

- (a) in relation to Guernsey and Herm, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of the salaried police force of the Island of Guernsey, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law,

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<sup>n</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

2004<sup>0</sup>,

**"owner"**, in relation to real property, means -

- (a) where the real property is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour the order was made,
- (b) where the real property is not the subject of such saisie proceedings but is the subject of a vested right of usufruct or a droit d'habitation, the usufructuary or (as the case may be) the habitant,
- (c) where the real property is not the subject of such saisie proceedings, vested right of usufruct or droit d'habitation -
  - (i) where the real property is held in trust, the trustees, or
  - (ii) where the real property is not held in trust, the beneficial owner,

and related expressions shall be construed accordingly,

**"Panel"** means the Tax on Real Property Appeals Panel established under section 22,

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<sup>0</sup> Order in Council No. III of 2005.

**"plan area"** : see section 5,

**"prescribed"** means prescribed by this Ordinance or by any regulation under it,

**"property reference"**, in relation to real property, means the property reference specified in column 1 of Part I of Schedule 1 into which the real property falls,

**"property tax"** means the tax payable in accordance with the provisions of this Ordinance in respect of real property in the Islands,

**"real property"** means land, buildings and other property constituting immovable property under the law of Guernsey,

**"Register"** and **"registration"** : see section 12,

**"relevant decision"** : see section 28,

**"representation"** : see definition of **"copy"**, **"extract"** or **"representation"** above,

**"Royal Court"** means the Royal Court sitting as an Ordinary Court,

**"States"** means the States of Guernsey,

**"tariff reference"**, in relation to real property, means the tariff reference specified in column 3 of Part I of Schedule 1 applicable to the real property,

"**Tribunal**" means the Tax on Real Property Appeals Tribunal established under section 23,

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>P</sup>,

"**year**" means a calendar year.

(2) The Department may by regulation -

- (a) amend subsection (1) by adding any definition to it or by removing or varying any definition set out in it, and
- (b) make provision which is incidental, supplementary or ancillary to any definition for the time being set out in it.

(3) Reference in this Ordinance to any real property include references to any part of that real property.

(4) The Interpretation (Guernsey) Law, 1948<sup>Q</sup> applies to the interpretation of this Ordinance and any regulation or order under it throughout the Islands.

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<sup>P</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>Q</sup> Ordres en Conseil Vol. XIII, p. 355.



(5) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Extent.**

**55.** This Ordinance has force of law in the Islands of Guernsey, Alderney and Herm.

**Citation.**

**56.** This Ordinance may be cited as the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007.

**Commencement.**

**57.** This Ordinance shall come into force on the 1<sup>st</sup> January, 2008.

## SCHEDULE 1

## PROPERTY REFERENCES AND RATES OF TAX

## PART I

## PROPERTY REFERENCES SUBJECT TO PROPERTY TAX

## (A)

## GUERNSEY REAL PROPERTY

## GUERNSEY BUILDINGS

<b>1</b> <b>Property</b> <b>Reference</b>	<b>2</b> <b>Property</b> <b>Description/Usage</b>	<b>3</b> <b>Tariff</b> <b>Reference</b>
B1.1	Domestic (whole unit) Local Market	C
B1.2	Domestic (flat) Local Market	C
B1.3	Domestic (glasshouse) Local Market	C
B1.4	Domestic (outbuildings) Local Market	C
B2.1	Domestic (whole unit) Open Market	D
B2.2	Domestic (flat) Open Market	D
B2.3	Domestic (glasshouse) Open Market	D
B2.4	Domestic (outbuildings) Open Market	D
B3.1	Domestic (whole unit) Social Housing	F
B3.2	Domestic (flat) Social Housing	F
B3.3	Domestic (glasshouse) Social Housing	F

B3.4	Domestic (outbuildings) Social Housing	F
B4.1	Hostelry and food outlets	H
B4.2	Self-catering accommodation	H
B4.3	Motor and marine trade	E
B4.4	Retail	E
B4.5	Warehousing	E
B4.6	Industrial and workshop	E
B4.7	Recreational and sporting premises	E
B5.1	Utilities providers	H
B6.1	Office and ancillary accommodation (regulated finance industries)	E
B6.2	Office and ancillary accommodation (non-regulated finance industries)	E
B7.1	Horticulture (building other than a glasshouse)	C
B8.1	Horticulture (glasshouse)	A
B9.1	Agriculture	C
B10.1	Publicly owned non-domestic	F
B11.1	Exempt (Buildings)	F
B12.1	Buildings – Penal Rate	G

### GUERNSEY LAND

<b>1</b> Property Reference	<b>2</b> Property Description/Usage	<b>3</b> Tariff Reference
L1.1	Communal (flat) Local Market	E
L1.2	Communal (flat) Open Market	E
L1.3	Hostelry and food outlets	E
L1.4	Self-catering accommodation	E

L1.5	Motor and marine trade	E
L1.6	Retail	E
L1.7	Warehousing	E
L1.8	Industrial	E
L1.9	Recreational and sporting premises	E
L1.10	Office and ancillary accommodation (regulated finance industries)	E
L1.11	Office and ancillary accommodation (non-regulated finance industries)	E
L1.12	Utilities providers	E
L2.1	Approved development site	E
L3.1	Domestic Local Market	A
L3.2	Domestic Open Market	A
L3.3	Horticulture	A
L3.4	Agriculture	A
L3.5	Domestic Social Housing	F
L3.6	Publicly owned non-domestic	F
L4.1	Exempt (Land)	F
L5.1	Land – Penal Rate	G

**(B)****ALDERNEY REAL PROPERTY****ALDERNEY BUILDINGS**

<b>1 Property Reference</b>	<b>2 Property Description/Usage</b>	<b>3 Tariff Reference</b>
B1.1A	Domestic (whole unit)	C
B1.2A	Domestic (flat)	C
B1.3A	Domestic (glasshouse)	C
B1.4A	Domestic (outbuildings)	C

B2.1A	Domestic (whole unit) Social Housing	F
B2.2A	Domestic (flat) Social Housing	F
B2.3A	Domestic (glasshouse) Social Housing	F
B2.4A	Domestic (outbuildings) Social Housing	F
B3.1A	Hostelry and food outlets	H
B3.2A	Self-catering accommodation	H
B3.3A	Motor and marine trade	E
B3.4A	Retail	E
B3.5A	Warehousing	E
B3.6A	Industrial and workshop	E
B3.7A	Recreational and sporting premises	E
B4.1A	Utilities providers	H
B5.1A	Office and ancillary accommodation (regulated finance industries)	E
B5.2A	Office and ancillary accommodation (non-regulated finance industries)	E
B6.1A	Horticulture (building other than a glasshouse)	C
B7.1A	Horticulture (glasshouse)	A
B8.1A	Agriculture	C
B9.1A	Publicly owned non-domestic	F
B10.1A	Exempt (Buildings)	F
B11.1A	Buildings – Penal Rate	G

### ALDERNEY LAND

<b>1</b> <b>Property</b> <b>Reference</b>	<b>2</b> <b>Property</b> <b>Description/Usage</b>	<b>3</b> <b>Tariff</b> <b>Reference</b>
L1.1A	Communal (flat)	E

L1.2A	Hostelry and food outlets	E
L1.3A	Self-catering accommodation	E
L1.4A	Motor and marine trade	E
L1.5A	Retail	E
L1.6A	Warehousing	E
L1.7A	Industrial	E
L1.8A	Recreational and sporting premises	E
L1.9A	Office and ancillary accommodation (regulated finance industries)	E
L1.10A	Office and ancillary accommodation (non-regulated finance industries)	E
L1.11A	Utilities providers	E
L2.1A	Approved development site	E
L3.1A	Domestic	A
L3.2A	Horticulture	A
L3.3A	Agriculture	A
L3.4A	Domestic Social Housing	F
L3.5A	Publicly owned non-domestic	F
L4.1A	Exempt (Land)	F
L5.1A	Land – Penal Rate	G

(C)

**HERM REAL PROPERTY****HERM BUILDINGS**

<b>1</b> <b>Property Reference</b>	<b>2</b> <b>Property Description/Usage</b>	<b>3</b> <b>Tariff Reference</b>
B1.1H	Domestic (whole unit)	C
B1.2H	Domestic (flat)	C
B1.3H	Domestic (glasshouse)	C

B1.4H	Domestic (outbuildings)	C
B2.1H	Domestic (whole unit) Social Housing	F
B2.2H	Domestic (flat) Social Housing	F
B2.3H	Domestic (glasshouse) Social Housing	F
B2.4H	Domestic (outbuildings) Social Housing	F
B3.1H	Hostelry and food outlets	H
B3.2H	Self-catering accommodation	H
B3.3H	Motor and marine trade	E
B3.4H	Retail	E
B3.5H	Warehousing	E
B3.6H	Industrial and workshop	E
B3.7H	Recreational and sporting premises	E
B4.1H	Utilities providers	H
B5.1H	Office and ancillary accommodation (regulated finance industries)	E
B5.2H	Office and ancillary accommodation (non-regulated finance industries)	E
B6.1H	Horticulture (building other than a glasshouse)	C
B7.1H	Horticulture (glasshouse)	A
B8.1H	Agriculture	C
B9.1H	Publicly owned non-domestic	F
B10.1H	Exempt (Buildings)	F
B11.1H	Buildings – Penal Rate	G

### HERM LAND

<b>1</b> <b>Property Reference</b>	<b>2</b> <b>Property Description/Usage</b>	<b>3</b> <b>Tariff Reference</b>
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L1.1H	Communal (flat)	E
L1.2H	Hostelry and food outlets	E
L1.3H	Self-catering accommodation	E
L1.4H	Motor and marine trade	E
L1.5H	Retail	E
L1.6H	Warehousing	E
L1.7H	Industrial	E
L1.8H	Recreational and sporting premises	E
L1.9H	Office and ancillary accommodation (regulated finance industries)	E
L1.10H	Office and ancillary accommodation (non-regulated finance industries)	E
L1.11H	Utilities providers	E
L2.1H	Approved development site	E
L3.1H	Domestic	A
L3.2H	Horticulture	A
L3.3H	Agriculture	A
L3.4H	Domestic Social Housing	F
L3.5H	Publicly owned non-domestic	F
L4.1H	Exempt (Land)	F
L5.1H	Land – Penal Rate	G

## PART II

### REAL PROPERTY EXEMPT FROM PROPERTY TAX

1. Buildings used principally for religious ceremony.
2. Cemeteries.
3. Highways.



4. Quays and breakwaters of harbours.
5. Airport "airside" runways, taxiways, aprons and airfield.
6. Moveable site structures and installations put in place for the duration of civil engineering, construction works or some other temporary purpose.

However, this exemption shall expire, and shall not recommence, in relation to any structure or installation which has been in place for a period of, or periods totalling, 12 months or such longer total period as the Department may direct in any particular case.

7. Real property used principally for open community use, other than when leased, in part or in entirety, to a third party for domestic purposes or the purposes of a business, trade or undertaking, in which case the property or that part of the property is subject to the same tariff reference for that property description/usage as if it were not exempt.
8. Real property held by the National Trust and La Société Guernesiaise, other than when leased, in part or entirety, to a third party for domestic purposes or the purposes of a business, trade or undertaking, in which case the property or that part of the property is subject to the same tariff reference for that property description/usage as if it were not exempt.
9. Land areas in the process of reclamation until the date when formal planning development permission is granted.
10. Such other property so designated by regulation made by the Department.

PART III  
INTERPRETATION OF SCHEDULE 1

1. In this Schedule, unless the context requires otherwise, the following expressions have the following meanings (and related expressions shall be construed accordingly) -

**"agricultural"** property includes -

- (a) land covered or uncovered by buildings which is used or capable of being used for agricultural purposes, and
- (b) any building used in connection with the use of land for agricultural purposes,

but does not include any real property which is domestic property, horticultural property, publicly owned non-domestic property or tourist property,

**"agricultural purposes"** includes -

- (a) dairy farming,
- (b) livestock breeding and keeping,
- (c) production of any consumable produce,

- (d) production of ferns, plants, flowers and bulbs not for the purposes of a business, trade or undertaking in those items, and
- (e) use of land as -
  - (i) grazing, meadow or pasture land, or
  - (ii) orchard or woodland,

**"airfield"** includes, but is not limited to, any runway shoulder, runway strip, grass park and runway end safety area,

**"approved development site"** means any real property which is subject to -

- (a) a current planning permission issued by the States of Guernsey Environment Department, or
- (b) a current development permission issued by the States of Alderney Building and Development Control Committee,

and which is used solely for the purposes described and authorised in the permission,

**"atrium"** means a structure within a building forming a covered cavity or space the height of which extends through one or more levels,

"**bulbs**" includes corms, rhizomes and tubers but does not include potato tubers,

"**cemetery**" means –

- (a) any land which is exclusively being used for the interment of human remains under any enactment for the time being in force, and
- (b) any building used for any purposes ancillary to such interment,

"**communal**", in relation to land, means communal land which is –

- (a) adjacent to and used in connection with the enjoyment of a whole unit divided into more than one flat, and
- (b) owned by a person other than the owners of those flats,

"**conservatory**" means a building -

- (a) attached to and used in connection with the enjoyment of a domestic dwelling house, and
- (b) the walls and roof of which are predominantly of glass or some other translucent material,

"**domestic**" property means –

(a) that part of a building comprising a dwelling house,  
owned -

(i) privately,

(ii) by any Parish, or

(iii) by the States of Guernsey or States of Alderney  
and

(b) land which is -

(i) adjacent to or under, and used in connection  
with the enjoyment of, a dwelling house,

(ii) owned publicly or privately, and

(iii) not -

(A) communal or exempt land, or

(B) an approved development site,

**"dwelling house"** means any building wholly or principally used or  
usable for the purposes of human habitation,

**"exempt"** means real property listed in Part II of this Schedule,

**"flat"** -

- (a) means any dwelling house that –
  - (i) is separate and self-contained, and
  - (ii) forms part of a building from some other part of which it is divided horizontally,

and includes an apartment, and

- (b) includes -
  - (i) any pool house, garage, shed, conservatory or other building used in connection with the enjoyment of a flat as such, and
  - (ii) gardens and other land adjoining a flat, the aggregate area of which does not exceed 1 vergée,

**"food outlet"** means any building from which food is provided for the purposes of a business, trade or undertaking for consumption –

- (a) on the premises (whether indoors or outdoors),
- (b) elsewhere, or
- (c) both,

**"glasshouse"** –

- (a) includes any structure which would be a glasshouse were it not for the fact that in the construction thereof translucent material other than glass has been used,
- (b) in relation to horticulture, means a glasshouse used for the production of any consumable produce or the production of ferns, plants, flowers or bulbs for the purposes of a business, trade or undertaking, and includes any building adjacent to any such glasshouse and used in connection with the trade carried on thereat, and
- (c) in relation to a domestic dwelling house, means a glasshouse with a plan area of 10 square metres or more situated upon domestic land and not used for the purposes of a business, trade or undertaking,

**"highway"** means any public or private road, including the carriageways, verges and footpaths thereof, and shared driveways,

**"home"** means any building used or intended to be used principally for the –

- (a) reception of pregnant women or of women immediately after childbirth, or
- (b) provision of nursing or accommodation for -
  - (i) persons suffering from any illness, injury or disability,

(ii) the elderly, or

(iii) both,

**"horticultural"** property –

(a) includes a glasshouse or other building used for horticulture, and

(b) in relation to land, means any land used -

(i) for the production of any consumable produce, or

(ii) the production of ferns, plants, flowers or bulbs for the purposes of a business, trade or undertaking in those items, or

(iii) as market gardens or nursery grounds,

but does not include any domestic property,

**"hostelry"** means –

(a) any tourist property from which food is provided for consumption on the premises (whether indoors or outdoors),

(b) any public house, or



- (c) any social club,

**"industrial"** property means real property used for the manufacture of any machinery or goods, and which is not motor trade or marine trade property,

**"local market"** refers to real property not inscribed in the Housing Register maintained by the States Housing Department under the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>r</sup>,

**"marine trade"** property includes any real property used for the sale, display or repair of any marine vehicle,

**"motor trade"** property includes any real property used –

- (a) for the sale, display, repair and valeting of any motor vehicle, and
- (b) by any tyre or exhaust factor,

**"open community use"** means any real property that is available for free and unfettered use by the general public,

**"open market"** refers to real property inscribed in the Housing Register maintained by the States Housing Department under the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>s</sup>,

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<sup>r</sup> Order in Council No. IV of 1994.

**"outbuildings"** means a shed, barn or any other building used in connection with the enjoyment of a dwelling house and which is –

- (a) used primarily for domestic storage,
- (b) not habitable accommodation, and
- (c) not a domestic garage,

**"penal rate"** means a rate which is applied to a property reference or class or description of real property specified by an Ordinance of the States,

**"pool house"** means a fixed or retractable structure with a plan area of 10 square metres or more situated upon domestic land and used to cover a swimming pool,

**"public road"** means any road, street, lane, alley or passage repairable in whole or in part by the States,

**"publicly owned non-domestic"** property includes any real property-

- (a) principally used by any school,
- (b) comprising a hospital, home or other institution controlled or maintained by the States of Guernsey or the States of Alderney,

<sup>s</sup> Order in Council No. IV of 1994.

- (c) owned by the States of Guernsey or the States of Alderney and used for a purpose which is of benefit to the general public or a section thereof,
- (d) owned by any Parish and used for a purpose which is of benefit to –
  - (i) the general public or a section thereof, or
  - (ii) the residents of the Parish or a section thereof,
- (e) owned or occupied by a charity the income of which is not chargeable to income tax in accordance with section 40(k) of the Income Tax (Guernsey) Law, 1975<sup>t</sup>,
- (f) owned or occupied by any club, association, society or other organisation and used otherwise than for profit for the purposes of that club, association, society or other organisation,

except where that real property is principally used by a third party as real property which would otherwise fall into a property description/usage within

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<sup>t</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; and No's. II and VII of 2006. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

property reference B4, B5, B6, B7, B8 or B9 (or the corresponding property references for Alderney and Herm), in which case it is subject to the same tariff reference for that property description/usage as if it were not publicly owned non-domestic property,

**"recreational and sporting premises"** includes any building used principally for purposes ancillary to sport,

**"regulated finance business"** property means real property owned or occupied for the purpose of carrying on business by -

- (a) a person who carries on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>u</sup> and who holds a licence under section 3 of that Law or an authorisation under section 8 of that Law,
- (b) a person who is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>v</sup>,
- (c) a person who is a licensee within the meaning of the

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<sup>u</sup> Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>v</sup> Order in Council No. XIII of 1994; amended by No's. XVII and XXI of 2002; No. XVI of 2003; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>w</sup> or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>x</sup>,

- (d) a person who is, or who is deemed to be, a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>y</sup>, and
- (e) a person of any other class or description prescribed for the purposes of this section by regulations of the Department,

"**retail**" includes any real property used principally for the purposes of a profession, business or trade, other than any real property falling within any other definition contained in this Part of this Schedule,

"**school**" has the same meaning as in the Education (Guernsey) Law, 1970<sup>z</sup>,

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<sup>w</sup> Order in Council No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>x</sup> Order in Council No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>y</sup> Order in Council No. I of 2001; amended by No. XIV of 2003; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

<sup>z</sup> Ordres en Conseil Vol. XXII, p. 318.

**"self-catering accommodation"** means any tourist property from which food is not provided for the occupier,

**"social housing"** means any domestic property which is currently occupied and which is owned or controlled by –

- (a) the States Housing Department,
- (b) the Guernsey Housing Association, or
- (c) Housing 21,

**"tourist property" –**

- (a) means any dwelling house in respect of which there is in force for the time being a boarding permit issued under the Tourist Law, 1948<sup>aa</sup>, or an accommodation permit issued under the Tourist (Alderney) Law, 1956<sup>bb</sup>, and
- (b) includes -
  - (i) any pool house, garage, shed, conservatory or other building used, whether from time to time or otherwise, in connection with the use of that property under any such permit,

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<sup>aa</sup> Ordres en Conseil Vol. XIII, p. 329.

<sup>bb</sup> Ordres en Conseil Vol. XVII, p. 29.

- (ii) any gardens, car parks and other land under or adjoining that property and used as aforesaid in connection with the use of that property under any such permit,

**"undertaking"** means an undertaking whether or not carried on for profit,

**"utilities provider"** property means any real property owned or occupied by -

- (a) service providers subject to regulation by the Office of the Director General of Utility Regulation established by the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001<sup>cc</sup>,
- (b) Guernsey Gas Limited for the purposes of the production of, distribution of, and payment for, gas and its by-products and ancillary activities,
- (c) Guernsey Water or the Alderney Water Board for the purpose of the collection, storage, purification and distribution of water and obtaining payment for the payment for water and ancillary activities, and
- (d) Alderney Electricity Limited for the purposes of the production of, distribution of and payment for, electric energy and ancillary activities,

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<sup>cc</sup> Order in Council No. XI of 2001.

**"warehousing"** means any building used for the storage, transfer or distribution of goods for the purposes of a business, trade or undertaking,

**"whole unit" –**

(a) means any dwelling house which is not a flat, but includes premises which are divided into more than one flat, and

(b) includes -

(i) any pool house, garage, shed, conservatory or other building used in connection with the enjoyment of a whole unit as such,

(ii) gardens and other land adjoining a whole unit, the aggregate area of which does not exceed 1 vergée,

but does not include any tourist property, and

**"workshop"** means any building used for the repair or maintenance of any machinery or goods, and which is not motor trade or marine trade property.

**2.** The Department may by regulation amend this Part of this Schedule by adding any definition to it or by removing or varying any definition set out in it.



## SCHEDULE 2

### REPEALS

THE ENACTMENTS LISTED IN THIS SCHEDULE ARE REPEALED

#### LAWS

1. The Tax on Rateable Values (Guernsey) Law, 1976<sup>dd</sup>.
2. The Tax on Rateable Values (Amendment) (Guernsey) Law, 1995<sup>ee</sup>.

#### ORDINANCES

3. The Tax on Rateable Values (Guernsey) Ordinance, 1976<sup>ff</sup>.
4. The Tax on Rateable Values (Amendment) (Guernsey) Ordinance, 2006<sup>gg</sup>.

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<sup>dd</sup> Ordres en Conseil Vol. XXVI, p. 86.

<sup>ee</sup> No. II of 1995.

<sup>ff</sup> Recueil d'Ordonnances Tome XX, p. 456.

<sup>gg</sup> Ordinance No. LIII of 2006.

SCHEDULE 3  
AMENDMENTS

THE ENACTMENTS LISTED IN THIS SCHEDULE ARE AMENDED AS FOLLOWS

1. In the Cadastre Law, 1947<sup>hh</sup>, after article 4 insert the following article -

**"No duty to value real property from 1<sup>st</sup> January, 2008.**

**4A.** Notwithstanding the other provisions of this Law and any Ordinance or rule made under it, on and from the 1<sup>st</sup> January, 2008 -

- (a) there is no requirement -
  - (i) for the Cadastre to state the annual rental value or rateable value of any real property, or
  - (ii) for any annual rental value or rateable value already stated therein to be rectified, and
- (b) there is no duty on the Department to determine the annual rental value or rateable value of any real property for the purposes of the preparation or rectification of the Cadastre."

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<sup>hh</sup> Ordres en Conseil Vol. XIII, p. 78; Vol. XIII, p. 381; Vol. XVII, p. 23; Vol. XXVIII, p. 395; and Vol. XXXII, p. 161.

2. In the Alderney (Application of Legislation) Law, 1948<sup>ii</sup>, after section 4 insert the following section -

**"No duty to value real property in Alderney from 1<sup>st</sup> January, 2008.**

**4A.** Notwithstanding section 4 and any Ordinance or rule made under it, on and from the 1<sup>st</sup> January, 2008 -

- (a) there is no requirement -
  - (i) for the record of assessments of rateable value made under Alderney Rateable Values Assessment Ordinance, 1949<sup>jj</sup> to state the rateable value of any real property in Alderney, or
  - (ii) for any assessment of rateable value already stated therein to be rectified, and
- (b) there is no duty on the Department to assess or determine the rateable value of any such real property for the purposes of the preparation or rectification of that record."

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<sup>ii</sup> Ordres en Conseil Vol. XIII, p. 448.

<sup>jj</sup> Recueil d'Ordonnances Tome X, p. 1.

SCHEDULE 4  
THE TRIBUNAL: PROCEDURE AND POWERS

**Voting in Tribunal.**

1. (1) Each member of the Tribunal has, subject to subparagraph (2), one vote, and the decisions of the Tribunal shall be taken by a simple majority.

(2) The person chairing the Tribunal has an original vote and also, where there is an equality of votes, a casting vote.

**Procedure in hearings before Tribunal.**

2. Where a Tribunal is appointed to hear and determine an appeal against a relevant decision -

- (a) the Tribunal shall afford the parties a reasonable opportunity of appearing and being heard or, if all parties so elect, of submitting a statement in writing to the Tribunal,
- (b) the Tribunal may admit any evidence given for the purposes of the hearing and determination of the appeal notwithstanding any rule of law relating to hearsay or otherwise as to the admissibility of evidence,
- (c) the parties are entitled to be present during any hearing by the Tribunal of representations made in person, and for the purposes of this subparagraph -

- (i) the appellant may be represented by any person, whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent the appellant, and
  - (ii) the Department may be represented by any person who is legally qualified, by any officer of the Department or by any other person appointed by the Department to represent it,
- (d) the Tribunal shall afford the parties a reasonable opportunity of replying to the representations made by the other party, either by appearing and being heard in person or (if the original representations were made in writing) by a statement in writing,
- (e) the Tribunal shall consider all representations and replies submitted to it by the parties,
- (f) the Tribunal may at any time require either party to furnish further particulars in writing within such time as it may direct with regard to any question referred to it and shall afford the other party a reasonable opportunity of replying in writing,
- (g) the Tribunal may call for such documents and examine

such persons (including the parties) on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Tribunal,

- (h) the parties may, if authorised to do so by the Tribunal, cause a summons to be served on any person, in the same manner as that in which a summons may be served in a civil action before the Royal Court, summoning that person to attend any hearing of the Tribunal to give evidence or produce any document likely to assist the Tribunal in determining any question before it, and a person so summoned is under the same obligation as to the giving of any evidence or the production of any document as if he were summoned to give the evidence or produce the document in a civil action before the Royal Court,
- (i) the Tribunal may adjourn any hearing from time to time as it thinks fit,
- (j) if it is proved to the satisfaction of the Tribunal that the parties have been notified of the place, date and time of a hearing, and one of the parties fails to appear at the hearing, the Tribunal may proceed to determine any matter in dispute in the absence of that party,
- (k) the decision of the Tribunal shall be in writing, signed by the person chairing the Tribunal and transmitted as soon as reasonably practicable to the parties, and

- (l) the Tribunal may, subject to the above provisions -
  - (i) determine its own procedure, and
  - (ii) give such directions, subject to such terms and conditions, as it thinks fit for the purposes of the hearing and determination of the appeal.

**Hearings to be in public.**

3. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise.

(2) The Tribunal may at any time exclude any person from a hearing or any part thereof.

**Powers of Tribunal as to summoning witnesses, etc.**

4. The Tribunal has, for the purposes of hearing and determining an appeal against a relevant decision, the same powers as the Royal Court in respect of-

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by the person chairing the Tribunal is equivalent to a formal process issued in that behalf in an action before

the Royal Court.

**Costs.**

5. (1) The Tribunal may, subject to the provisions of subparagraphs (4) and (5), order that the whole or any part of the costs of a hearing shall be paid by one or more of the parties in such amount or proportion and on such basis as the Tribunal may direct.

(2) An order for costs under subparagraph (1) -

- (a) is enforceable as a judgment debt by the person in whose favour the order was made, and
- (b) carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>kk</sup> from the date of the order until the order is satisfied, and the interest may be recovered by the person in whose favour the order was made as part of the award of costs.

(3) The expression "**costs of a hearing**" (without prejudice to the generality of the expression) includes -

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs,

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<sup>kk</sup> Ordres en Conseil Vol. XXIX, p. 135, amended by Order of the Royal Court No. I of 1996.



- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding and conduct of the hearing and the determination of the appeal incurred by the States (other than as a party to the hearing), and
- (c) the costs, fees, expenses and allowances of the Tribunal and the members thereof.

(4) The Tribunal may not order -

- (a) the payment of costs on a full or partial indemnity basis,
- (b) the giving of security for costs,
- (c) the taxation of costs, or
- (d) the payment of the costs of legal representation of any of the parties.

(5) The Department may by regulation prescribe maximum scales of costs, fees and expenses in relation to the costs of hearings and, where the Department so prescribes a scale in relation to any proceeding or matter, an award of the Tribunal under subparagraph (1) in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed.

(6) The provisions of this paragraph do not apply in relation to the Royal Court and are accordingly without prejudice to the powers of the Royal Court in relation to costs.

**Offences in relation to hearings, etc.**

6. (1) A person who -

(a) in proceedings before the Tribunal, or in making any statement or providing any information or document to the Clerk or the Tribunal when acting in the performance or purported performance of their respective functions -

(i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend,
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so -
  - (i) to take the oath or affirmation,
  - (ii) to produce any document in his possession, custody or power, or
  - (iii) to answer any question put to him,
- (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court, or
- (e) discloses, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before the Tribunal when the Tribunal was sitting in camera,

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) is liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both,

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

(3) In relation to offences tried before the Court of Alderney, the penalties stipulated by subparagraph (2)(b) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004<sup>II</sup>.

**Allowances and expenses of members of Tribunal.**

7. There shall be paid to the members of the Tribunal such allowances as the Department may determine together with the travelling and other expenses incurred by them in connection with the performance of their functions as a member of the Tribunal.

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<sup>II</sup> Order in Council No. III of 2005.

SCHEDULE 5  
FORM OF NOTICE OF APPEAL TO TRIBUNAL AND APPLICATION TO  
TRIBUNAL FOR FURTHER TIME

PART I  
FORM OF NOTICE OF APPEAL TO TRIBUNAL

The Clerk to the Tax on Real Property Appeals Tribunal  
P O Box 43  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

I (full name) .....

of (address) .....  
.....

being aggrieved by a decision of the Treasury and Resources Department given on  
..... [*insert date of decision*], hereby appeal against the decision in  
accordance with section 31 of the Taxation of Real Property (Guernsey and  
Alderney) Ordinance, 2007.

The grounds on which my appeal is made are set out in the statement at the foot of  
this form.

In support of this appeal the following documents are attached :-

*[List all documents sent with this notice of appeal - and if possible please attach a copy of the decision letter from the Department]*

- 
- 
- 
- 
- 

I understand that if I am aggrieved by the decision of the Tribunal on a question of law I may appeal to the Royal Court in accordance with the provisions of section 36.

Signature .....

Date .....

**NB:-** if you wish to be represented by some other person when your appeal is heard by the Tribunal please complete the details of your representative in the space provided -

Name of representative .....

His or her full address .....  
 .....

#### STATEMENT

*[Set out here your grounds of appeal]*

PART II  
FORM OF APPLICATION TO TRIBUNAL FOR FURTHER TIME

The Clerk to the Tax on Real Property Appeals Tribunal  
P O Box 43  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

I (full name) .....

of (address) .....

.....

being aggrieved by a decision of the Treasury and Resources Department given on  
..... [*insert date of decision*], and wishing to appeal against it,  
hereby apply for further time to present my appeal against the decision on the  
grounds that -

*[Please state why it was not reasonably practicable for you to present a notice of  
appeal against the decision within the 28 day period set out in section 32 of the  
Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007. If possible  
please attach a copy of the decision letter from the Department]*

.....

.....

I believe that for the reasons set out above I require a further ..... days in which to present my appeal.

I understand that this application for further time will be determined by the Tax on Real Property Appeals Tribunal constituted by a single member.

I further understand that if I am aggrieved by the decision of the Tribunal on a question of law I may appeal to the Royal Court in accordance with the provisions of section 36.

Signature .....

Date .....

**NB:-** if you wish to be represented by some other person when your application for further time is heard by the Tribunal please complete the details of your representative in the space provided -

Name of representative .....

His or her full address .....  
 .....