

BILLET D'ÉTAT No. XXXIII, 2009

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PROJET DE LOI

ENTITLED

The Wastewater Charges (Guernsey) Law, 2009

ARRANGEMENT OF SECTIONS

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SCHEDULE: Wastewater charges

PROJET DE LOI

ENTITLED

The Wastewater Charges (Guernsey) Law, 2009

THE STATES, in pursuance of their Resolutions of the 11th February, 2009^a and of the 31st October, 2007^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Wastewater charges payable.

1. Each charge specified in the Schedule is payable for each property liable to the charge by the person liable to that charge in accordance with this Law.

Properties liable to charges.

2. (1) The following properties are liable to the wastewater charges–
- (a) **metered property** - any property supplied with water by the Department by way of a metered supply, and
 - (b) **unmetered chargeable property** - any property, other than a metered property, that –

^a Article XIV of Billet d'État No. II of 2009.

^b Article I of Billet d'État No. XXI of 2007.

- (i) falls within property reference B1.1, B1.2, B2.1, B2.2, B3.1 or B3.2 in Part I of Schedule 1 to the TRP Ordinance, or
- (ii) is of a kind or description prescribed by the States by Ordinance.

(2) Where –

- (a) any metered property, or
- (b) any unmetered chargeable property supplied with water by the Department otherwise than by measure,

is supplied with water by the Department by way of 2 or more pipes that enter the boundary of the property and are each connected to a main, that property is liable to a corresponding multiple of Charge A and Charge B.

(3) This section is subject to section 3.

Exemptions.

3. (1) A metered property that has neither a drain to a public sewer nor a drain to a cesspool is –

- (a) in the case of a non-domestic property that also has no drain to a septic tank, exempt from all wastewater charges, and
- (b) in the case of a domestic property, exempt from Charge C.

(2) An unmetered chargeable property is exempt from all wastewater charges if –

- (a) it is supplied with water by way of a pipe leading from a metered property, and
- (b) it is not a property supplied with water by the Department otherwise than by measure.

(3) An unmetered chargeable property that is not exempt from wastewater charges under subsection (2) is exempt from Charge C if it has neither a drain to a public sewer nor a drain to a cesspool.

(4) Where, under section 4, the same person is liable to pay wastewater charges in respect of one or more properties shown on a single cadastral map (and sharing a single Cadastre number), that property, or, as the case may be, the aggregate of those properties, is exempt from any more than a single multiple of Charge B –

- (a) regardless whether any other person is also liable (for example, in the case of joint liability) to pay wastewater charges in respect of that property or, as the case may be, any of those properties,
- (b) regardless of the number of pipes that supply that property or, as the case may be, those properties from a main, and
- (c) despite any other provision of this Law.

(5) Where, under subsection (4), an aggregate of properties is exempt from any more than a single multiple of Charge B, Charge B shall be divided equally amongst each of those properties and payable accordingly.

(6) For the avoidance of doubt, nothing in subsection (4) limits or otherwise affects the liability of the property or any of the properties referred to in that subsection to Charge C, and the appropriate multiples of Charge A, in accordance with this Law and subject to any exemption under subsection (1), (2) or (3).

(7) The burden of proving that a property is exempt from any wastewater charge under any of subsections (1) to (4) falls on the person claiming the exemption.

(8) Nothing in this section limits or otherwise affects any civil liability or obligation of any person to make any payment in respect of wastewater charges.

(9) In this section "**civil liability or obligation**" means a liability or obligation that arises by agreement or contract, or otherwise than directly under this Law.

Persons liable to pay charges.

4. (1) Subject to subsection (2), the person liable to pay the wastewater charges for a property –

- (a) in the case of a metered property, is the person liable to pay the water charges in respect of the metered water,

- (b) in the case of an unmetered chargeable property supplied with water by the Department otherwise than by measure, is the person liable to pay the water charges in respect of the water, and
- (c) in the case of any other unmetered chargeable property, is the owner of the property.

(2) If two or more persons are liable to pay a wastewater charge in respect of a property, their liability to the charge is joint and several.

(3) In this section, "**owner**", in relation to any property, has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974^c (substituting, for the word "premises", the word "property").

Calculation of Charge C.

5. (1) Charge C shall be calculated as follows –

- (a) for a metered property, Rate 1 x (0.9 x volume of metered water in cubic metres), and
- (b) for an unmetered chargeable property, Rate 2 x (number of assessable units of that property as determined under the TRP Ordinance).

^c Ordres en Conseil, Vol. XXIV, p. 372.

(2) Despite subsection (1)(a), any person liable to pay Charge C for a non-domestic metered property may, in writing, ask and agree with the Department to pay a reduced amount in respect of Charge C, if he can show to the Department's satisfaction that no more than 85 % of metered water by volume is, in aggregate, discharged to a public sewer, cesspool or septic tank.

(3) A reduced amount agreed under subsection (2) shall be calculated –

- (a) on the basis that the 0.9 multiplier in subsection (1) (a) reflects the presumption that 90% of metered water in respect of the property is, in aggregate, discharged to a public sewer, cesspool or septic tank, and
- (b) making an appropriate allowance for the percentage volume of metered water that is not so discharged, averaged over a period of 3 months or any other period agreed between the person making the request and the Department.

(4) An agreement under subsection (2) is subject to –

- (a) any conditions agreed between the person referred to in that subsection and the Department, and
- (b) any conditions prescribed by the States by Ordinance,

(5) For the avoidance of doubt, a nil amount may be agreed under subsection (2), if it is shown to the Department's satisfaction that none of the metered water is discharged to a public sewer, cesspool or septic tank.

(6) Unless the Department has agreed in writing to a reduced amount under subsection (2), it shall be taken to have refused a request made under that subsection upon the earlier of –

- (a) giving the requestor written notice of the Department's refusal, or
- (b) the expiry of 6 months from the date of the request.

(7) On or before the refusal of a request, the Department shall serve the requestor a notice in writing stating that the requestor or any other person aggrieved by that refusal may appeal against that refusal in accordance with section 10 within a period of 28 days after the date of that refusal.

(8) In this section, –

"discharged" means discharged through any drain;
and

"Rate 1" and **"Rate 2"** refers to the respective rate specified in paragraph (c) of the Schedule.

Owner or occupier may request or require separate metered supply.

6. Nothing in section 5 limits or otherwise affects the right of any owner or occupier of a property to ask or require the Department to provide a metered supply to any part of that property, in accordance with, and subject to any charges imposed by or under, the States Water Supply Laws (including, for the avoidance of doubt, charges for the installation of a meter and for the cost of extending, laying or fixing pipes and apparatus).

Inspections, measurements and tests.

7. (1) Any person authorised in writing by the Department may, on producing his written authorisation if requested, enter any property at any time between 10 a.m. and 4 p.m. of any day for any purpose specified in subsection (3).

(2) A person entering a property under subsection (1) may, for any purpose specified in subsection (3) –

(a) carry out inspections, measurements and tests on the property, drains, water fittings, drain fittings, other things, wastewater or any other kind of water found on the property, and

(b) without limiting paragraph (a), take away or photograph any samples of land, drains, water fittings, drain fittings, other things, wastewater or any other kind of water found on the property.

(3) Subsections (1) and (2) refer to the following purposes –

(a) to determine whether the property or any other property is exempt, or continues to be exempt, from any wastewater charge under this Law,

(b) to determine the percentage volume of metered water that is, or is not, discharged to a public sewer, cesspool or septic tank from the property or any other property, for the purposes of section 5(2) to (5), or

- (c) any other purpose connected with the enforcement or implementation of this Law.

(4) Nothing in this section limits or otherwise affects any rights or powers of the Department conferred by or under any condition referred to in section 5(4).

Charges to be paid on service of account.

8. (1) A person liable to pay a wastewater charge in respect of any property shall pay the charge in the manner and at such times and intervals required by the Department by a written account served on the person.

(2) An account under subsection (1) shall include the following information –

- (a) the charge due and payable by the person,
- (b) the period within which that charge must be paid, not being less than 14 days after the date of the account,
- (c) the property and period of time for which that charge is payable,
- (d) the calculations made and rates used (if any) in determining that charge, and
- (e) a statement that that person or any other person aggrieved by the account may at any time –
 - (i) request the Department in writing to formally

review the account under section 9, and

- (ii) make written and oral representations to the Department for the purposes of the review.

(3) The Department may recover a charge payable by any person under this section as a civil debt due and payable by the person to the Department.

(4) Where water charges and wastewater charges are set out in the same bill or other account, and the person paying that account pays less than the total of all those charges, the payment made shall be credited to the water charges (unless the Department decides otherwise) until those charges are fully paid, before any amount left over is credited to the wastewater charges.

Review by Department of account.

9. (1) If any person referred to in section 8(2)(e) requests the Department in writing to formally review an account, the Department shall review the account taking into account any representations made by the person.

(2) Within 28 days of a written request to formally review an account, the Department shall –

- (a) confirm or vary that account, or revoke it and issue a new account (without the statement required by section 8(2)(e)), and
- (b) serve on that person a notice in writing stating –
 - (i) the Department’s decision and the reasons for it,

- (ii) that that person or any other person aggrieved by the decision may appeal that decision in accordance with section 10 within a period of 28 days after the date the notice is served, and
- (iii) that if that person does not make an appeal in accordance with subparagraph (ii), that decision (and the confirmed, varied, or re-issued account) is final and conclusive.

(3) Without limiting its scope, a review of an account may, at the request of the person asking for the review, include a review of all or any of the following –

- (a) the amount of the charge specified in the account,
- (b) whether the person on whom the account is served (as opposed to someone else) is liable to that charge,
- (c) whether the property specified in that account is liable to that charge, or exempt from it.

(4) For the avoidance of doubt, nothing in this section –

- (a) precludes an informal review or examination of the account by an officer, employee or agent of the Department, before a request is made for a formal review of the account under this section, or

- (b) limits or otherwise affects any person's liability or obligation to pay water charges.

Right of appeal.

10. (1) This section applies where the Department –

- (a) has refused to agree on a reduced amount for Charge C under section 5, or
- (b) has notified its decision following a review of an account under section 9.

(2) Where this section applies, any person aggrieved by the refusal referred to in subsection (1)(a) or, as the case may be, the decision referred to in subsection (1)(b), may appeal that refusal or decision to the Royal Court in accordance with this section.

(3) An appeal against a refusal or a decision may be made on any of the following grounds –

- (a) the refusal or decision was *ultra vires* or there was some other error of law,
- (b) the refusal or decision was unreasonable,
- (c) the refusal or decision was made in bad faith,
- (d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(4) An appeal must be made –

(a) within a period of 28 days after –

(i) the date of the refusal, in the case of an appeal against a refusal, or

(ii) the date on which notice of the decision was served under section 9(2)(b), in the case of an appeal against a decision, and

(b) by summons served on the Department stating the grounds and material facts on which the appellant relies.

(5) At the appellant's request, the Court may suspend or modify, on such terms and conditions as the Court thinks just, –

(a) the effect of the refusal,

(b) the effect of the decision, and

(c) for the avoidance of doubt, any liability that arises directly under this Law to pay an account issued by the Department for wastewater charges.

(6) On an appeal, the Department may apply to the Court, by

summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and on hearing the application the Court may -

(a) dismiss the appeal or the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just.

(7) On determining an appeal, the Court may -

(a) set the refusal or the decision in question aside and, if the Court considers it appropriate to do so, remit the matter to the Department with such directions as the Court thinks fit, or

(b) confirm that refusal or decision, in whole or in part.

(8) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(9) Subsection (6) is without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^d.

(10) In this section, "**Royal Court**" or "**Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may

^d Order No. IV of 2007.

appoint one or more assessors to assist it in the determination of any matter before it.

Purposes to which wastewater charges may be put.

11. (1) All wastewater charges payable under this Law shall be paid to the Department and used in accordance with this section.

(2) The Department shall use the monies collected in respect of Charge A and Charge C to help offset the costs (including fixed costs) of running the public sewerage network.

(3) The Department shall use the monies collected in respect of Charge B to fund investigations into wastewater treatment options for the Island.

(4) Nothing in this section precludes the Department –

(a) using an agent to collect one or more of the wastewater charges, or

(b) whether or not an agent is used, deducting a reasonable part of the monies collected to offset the costs of collecting those charges.

Charge B may lapse after 4 years.

12. Unless it is renewed or extended by a resolution or Ordinance of the States, Charge B lapses on the fourth anniversary of this Law coming into force.

Determination of property references and assessable units.

13. (1) Where, under any provision of this Law, it is necessary to

determine –

- (a) whether a property falls within a property reference in Part I of Schedule 1 to the TRP Ordinance, or
- (b) the number of assessable units of any property under that Ordinance,

the determination of the States of Guernsey Treasury and Resources Department in force under the TRP Ordinance at the relevant point in time is conclusive as to the matter.

(2) Subsection (1) is subject to the outcome of any review or appeal under the TRP Ordinance.

Service of documents.

14. (1) Any document to be served for the purposes of this Law is validly served, in the case of an individual or body, by being left at, or sent by post to, the address of the individual or body for the time being notified to the Department as the address for service, 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 Island, by being left at, or sent by post to, that office,
- (c) in the case of a body corporate without a registered

office in the Island, by being left at, or sent by post to, its principal or last known principal place of business in the Island 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 the address for the time being notified to the Department as the address for service to him, 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 Island or, if there is no such place, its principal or last known principal place of business elsewhere, and
- (e) in the case of the Department, by being left at, or sent by post to, its principal offices in the Island.

(2) If a person on whom a document is to be served for the purposes of this Law 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 for the appointment of a person to act as guardian for the purposes of this Law.

(3) 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.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service.

(5) Where two or more persons are liable to pay wastewater charges for any property, service of a document on one of them in accordance with the provisions of this section is deemed, for the purposes of this Law, to be service on all of them.

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

(7) 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 a day that is not a business day.

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

(9) Without prejudice to any other provision of this section, a document relating to any property in the Island which is to be served for the purposes of this Law on the owner or occupier of that 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.

(10) If the name of the owner or occupier of any property on whom a document is to be served for the purposes of this Law 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 property (describing it) to which the document relates.

(11) In this section –

"business day" means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday, or
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e;

^e Ordres en Conseil Vol. XVII, p. 384; vo. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

"by post" means by registered post, recorded delivery service or ordinary letter post; and

"serve" includes "give"; and cognate expressions shall be construed accordingly.

Power to amend Law by Ordinance.

15. (1) The States may by Ordinance amend all or any of the following provisions of this Law, in relation to the subject matter specified for the relevant provision –

- (a) section 3, in relation to exemptions from wastewater charges,
- (b) section 4, in relation to the persons liable to pay wastewater charges,
- (c) section 5, in relation to the calculation of Charge C,
- (d) section 11, in relation to the uses to which wastewater charges may be put, and
- (e) section 14, in relation to service of documents.

(2) Nothing in subsection (1) limits or otherwise affects any other provision of this Law conferring power to make Ordinances.

General provisions as to Ordinances.

16. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance made under this Law, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, consequential amendments to this Law and any other enactment).
- (2) Any power conferred by this Law to make an Ordinance 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 different provision for the same case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions, or
- (iv) different provision for different classes, descriptions and categories of properties, persons, or charges.

(3) Without prejudice to the generality of subsections (1) and (2), an Ordinance under this Law -

- (a) may make provision under the powers conferred by this Law notwithstanding the provisions of any other enactment for the time being in force,
- (b) may empower the Department, and any other person, body, authority or department (including, without limitation, the Royal Court and any other court of the Island), to make subordinate legislation, codes or guidance as to matters in relation to which an Ordinance may be made under this Law,
- (c) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (d) without prejudice to the generality of paragraphs (a) to (c), may make any such provision of any such extent as might be made by Projet de Loi.

Consequential amendments.

17. (1) The definition of "fee" in section 6(1) of the Fees, Charges

and Penalties (Guernsey) Law, 2007^f is amended by inserting, after the word "States", the words "or any rate to be used in the calculation of such a charge, penalty or other amount".

(2) Part A of the Schedule to the Fees, Charges and Penalties (Guernsey) Law, 2007^g is amended by inserting, after the entry relating to the Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000^h, the following entry –

| | | |
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| "Wastewater Charges (Guernsey) Law, 2009 | Charge A and Charge B of the wastewater charges; Rate 1 and Rate 2 specified in the Schedule for the purposes of calculating Charge C | Public Services Department" |
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(3) The amendment made by subsection (2) shall be regarded for all purposes as if it is effected by Ordinance made by the States under section 1(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007ⁱ.

Interpretation.

18. (1) In this Law, unless the context requires otherwise –

"**account**" means an account for wastewater charges;

"**assessable unit**" has the meaning given by section 2 of the TRP

^f Order in Council No. VII of 2008.

^g Order in Council No. VII of 2008.

^h Order in Council No. V of 2000.

ⁱ Order in Council No. VII of 2008.

Ordinance;

"cesspool" means a pool or pit that collects wastewater from one or more properties where it is held until such time as it can be removed for treatment or disposal through the public sewerage network;

"Charge A", **"Charge B"**, and **"Charge C"** refers to the respective charge specified in the Schedule;

"Department" means the States of Guernsey Public Services Department;

"document" means any notice or account, but excludes a summons;

"domestic", in relation to a property, refers to a property that is not a non-domestic property;

"drain", in relation to a property, –

- (a) means a channel, conduit or pipe running from the property and used for the conveyance of wastewater from the property, and
- (b) includes a drain shared with, or running through, any other property;

"enactment" means any Law, Ordinance or subordinate legislation;

"Island" means the island of Guernsey;

"**this Law**" includes any Ordinance or subordinate legislation made under it;

"**main**" means a pipe vested in the Department and used by the Department for the purpose of making a general supply of water available to customers of the Department (as opposed to the purpose of providing a supply to a particular property);

"**metered property**" means property of the kind described in section 2(1)(a);

"**metered supply**", in relation to a property, means a pipe that –

- (a) enters the boundary of the property,
- (b) is connected to a main, and
- (c) is fitted with a meter to measure and charge for the quantity of water supplied from the main;

"**metered water**", in relation to a metered property, means the water supplied by the Department to the property by way of the metered supply;

"**non-domestic**", in relation to a property, refers to a property falling within any property reference between B4.1 to B12.1, or L1.1 to L5.1 (inclusive of all those references) in Part I of Schedule 1 to the TRP Ordinance;

"**property**" means any particular land, building or other property that–

- (a) is immovable property under the law of the Island; and
- (b) has been or is eligible to be allocated a separate property reference under the TRP Ordinance;

and, for the avoidance of doubt, a land parcel, a multi-sided building or a cluster of buildings may each contain two or more properties, and two or more properties may be shown on the same cadastral map (and share the same Cadastre number);

"public sewer" has the meaning given by section 5 of the Sewerage (Guernsey) Law, 1974^j;

"public sewerage network" means the system of collectors, pipelines, conduits and pumps maintained by the Department to conduct wastewater from the point of generation to the place of disposal or treatment;

"serve", in relation to a document, has the meaning given by section 14; and cognate expressions shall be construed accordingly;

^j Ordres en Conseil, Vol. XXIV, p. 372,

"States Water Supply Laws" means the States Water Supply Laws, 1927 to 1997^k and includes the Water Charges Ordinance, 1991^l;

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

"TRP Ordinance" means the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007^m;

"unmetered chargeable property" means property of the kind described in section 2 (1) (b);

"wastewater" means –

- (a) water that has been used, for example for drinking, washing, cleaning, bathing or flushing, or
- (b) water supplied to a property, whether by the Department or otherwise, even if that water has not been used;

^k Ordres en Conseil Vol. VIII, p. 112, as amended by Ordres en Conseil Vol. XI, p. 236; Vol. XV, p. 272; Vol. XXVI, p. 536; Vol. XXX, pp. 118 and 219; and Vol. XXXIII, p. 133;

^l Recueil d'Ordonnances, Tome XXV, p. 287, as amended by Recueil d'Ordonnances, Tome XXIX, p. 594.

^m Recueil d'Ordonnances, Tome XXXII, p. 504, as amended by Ordinance No. X of 2008.

"**wastewater charge**" or "**charge**" means a charge referred to in section 1 and specified in the Schedule; and

"**water charges**", in respect of any property, means charges imposed by or under the States Water Supply Laws for the supply of water to the property by the Department.

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

Citation.

19. This Law may be cited as the Wastewater Charges (Guernsey) Law, 2009.

Commencement.

20. This Law comes into force on a date to be specified by the States by Ordinance.

Sections 1, 5, and 18(1)

SCHEDULE
WASTEWATER CHARGES

- (a) **Charge A:** £30 per year for each property, or, where section 2(2) applies, for each pipe referred to in that section.
- (b) **Charge B:** £50 per year for each property, or, where section 2(2) applies, for each pipe referred to in that section.
- (c) **Charge C:** calculated in accordance with section 5, using –

| | | |
|--------|---|--------|
| Rate 1 | - | £0.61 |
| Rate 2 | - | £0.13. |

PROJET DE LOI

ENTITLED

The Reform (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolutions of the 28th September, 2007^a and the 30th September, 2009^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou:-

Amendment of Law of 1948.

1. The Reform (Guernsey) Law, 1948, as amended^c is further amended as follows.

2. In Article 3 -

(a) in paragraph (1) -

(i) for "paragraphs (2), (3), (4) and (5)" substitute
"paragraphs (4) and (5)",

^a Article XVIII of Billet d'État No. XX of 2007.

^b Article XI of Billet d'État No. XXI of 2009.

^c 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, p. 84; Vol. XIX, p. 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; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; No. III of 1998; No. X of 1998; No. XIII of 2003; No. III of 2004; No's. II and XX of 2007; No. XIII of 2008; the Royal Court (Reform) (Guernsey) Law, 2008 (No. XXII of 2008); also amended by Recueil d'Ordonnances Tome XXIX, p. 406; and Ordinance XXVI of 2008.

- (ii) for "twenty members" substitute "a number of voting Members equal to the nearest whole number above one half of the number of voting Members for the time being specified in Article 1",
 - (c) paragraphs (2) and (3) are repealed, and
 - (d) in paragraphs (4) and (5) for "Notwithstanding the provisions of paragraphs (1), (2) and (3)" substitute "Without prejudice to paragraph (1)".
3. In Article 20F(2)(e)(i)^d after "a reprimand" insert "or caution".

Amendment of Law of 1972.

4. The Reform (Amendment) (Guernsey) Law, 1972, as amended^e is further amended as follows.

5. For section 16 substitute the following -

"States employees and public officers may not be States Members.

16. (1) A States employee or public officer who is elected under the provisions of the principal Law to hold office as a member of the States of Deliberation may not take before the Royal Court the oaths required to be taken under Article 19 of the principal Law unless and until

^d Article 20F was inserted by No. II of 2007.

^e Ordres en Conseil Vol. XXIII, p. 476; Vol. XXVI, p. 255; Vol. XXXIV, p. 397; and No. XIII of 2003; also amended by Recueil d'Ordonnances Tome XXIX, p. 427; and Tome XXXI, p. 666.

he ceases to be a States employee or public officer (as the case may be).

(2) A member of the States of Deliberation who has taken the oaths referred to in subsection (1) must resign as such a Member before commencing employment as a States employee or commencing office as a public officer."

6. In section 18 -

(a) after the definition of "office of the States" insert the following definition -

"public officer" means a person who is -

- (a) the holder of judicial office in any court in the island of Guernsey,
- (b) a member of the regular armed forces,
- (c) a member of the Guernsey Financial Services Commission,
- (d) the Director General of the Guernsey Financial Services Commission,
- (e) the Director General of Utility Regulation,
- (f) the Data Protection Commissioner,
- (g) the Public Trustee, or

- (h) the holder of any other office specified by Ordinance of the States, ", and
- (b) in the definition of "States employee" after the words "employed by the States of Guernsey" insert "(whether on a full time or part time basis)".

Citation.

- 7. This Law may be cited as the Reform (Guernsey) (Amendment) Law, 2009.

The Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2009

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975, as amended^a, and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. The agreement relating to the exchange of information with respect to taxes and the allocation of taxing rights with respect to certain income of individuals, which provides, under Chapter II (The Exchange of Information with Respect to Taxes), for the obtaining and exchanging of information in relation to tax made between the States of Guernsey and the Government of New Zealand, signed at London on the 21st July, 2009, is, pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2009.

Commencement.

3. This Ordinance shall come into force on the 9 December 2009.

^a Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of the Income Tax (Guernsey) (Amendment) Law, 2005 (No. XVII).

The Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009

ARRANGEMENT OF SECTIONS

1. Purpose.
2. Child born from donated sperm to woman married at time of procedure.
3. Child born from donated sperm in other circumstances.
4. Child born from procedure following death of man providing sperm.
5. Sperm donor not to be treated as father.
6. Person treated as father under section 2 or 3 to be so treated for all purposes.
7. Persons not to be treated as father.
8. Effect of sections 2 to 7.
9. Relationship with birth registration Laws.
10. Meaning of approved service provider.
11. Meaning of written consent or withdrawal of consent in sections 3, 4 and 5.
12. Meaning of prohibited degrees of relationship.
13. Consequential amendments to 1935 Law and 1925 Law.
14. Interpretation.
15. Application.
16. Extent.
17. Citation.
18. Commencement.

Schedule: Consequential amendments to 1935 Law and 1925 Law

The Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 28th October 2004^a, and in exercise of the powers conferred on them by sections 109, 119, 120 and 123 of the Children (Guernsey and Alderney) Law, 2008^b and all other powers enabling them in that behalf, hereby order:-

Purpose.

1. The purpose of this Ordinance is to provide for the parentage of children born as a result of assisted reproduction in certain circumstances.

Child born from donated sperm to woman married at time of procedure.

2. (1) This section applies where a woman gives birth to a child as a result of assisted reproduction and –

(a) at the time of the implantation, insemination or other procedure that resulted in the birth of the child, the woman was married, and

(b) the procedure was performed using sperm that was not her husband's.

(2) The woman's husband shall be treated as the father of the child unless at the time of the implantation, insemination or other procedure that resulted in the birth of the child, he did not consent or had withdrawn consent –

^a Billet d'État No. XVII of 2004.

^b Order in Council No. XIV of 2009.

- (a) to the procedure, or
- (b) to being treated as the father of any child resulting from the procedure.

Child born from donated sperm in other circumstances.

3. (1) This section applies where a woman gives birth to a child as a result of assisted reproduction provided to her by an approved service provider, and—

- (a) no person is required to be treated as the father of the child under section 2,
- (b) the assisted reproduction services were provided to the woman and a man together,
- (c) the child was born as a result of assisted reproduction using sperm that was not the man's, and
- (d) the conditions specified in subsection (2) are satisfied.

(2) The conditions are that, at the time of the implantation, insemination or other procedure that resulted in the birth of the child -

- (a) the man had given the approved service provider written consent to being treated as the father of any child resulting from the assisted reproduction services provided to the woman,

- (b) the woman had given the approved service provider written consent to the man being so treated,
- (c) neither the man nor the woman had, since giving the written consent referred to in paragraph (a) or (b), withdrawn that consent by giving notice to the approved service provider,
- (d) the woman and the man are not within the prohibited degrees of relationship to each other, and
- (e) the man remained alive.

(3) Where this section applies, the man shall be treated as the father of the child.

(4) In this section -

"**man**" means the man referred to in subsection (1)(b), and

"**woman**" means the woman who gives birth to the child.

Child born from procedure following death of man providing sperm.

4. (1) This section applies where a woman gives birth to a child as a result of assisted reproduction, and -

- (a) the implantation, insemination or other procedure that resulted in the birth of the child was performed after the death of the man whose sperm was used in the procedure, and

- (b) no person is required to be treated as the father of the child under section 2 or 3.

(2) The deceased man whose sperm was used in the procedure shall be treated as the father of the child for the purposes of registration of birth under any birth registration law if –

- (a) the woman has elected in writing within 6 months following the birth of the child for the man to be treated as the father of the child, and
- (b) the conditions specified in subsection (3) are satisfied.

(3) The conditions are that –

- (a) the woman and the man were not within the prohibited degrees of relationship to each other, and
- (b) at the time of the implantation, insemination or other procedure that resulted in the birth of the child –

- (i) the man's identity was known to the woman, and

- (ii) the man had given written consent, and had not withdrawn consent –

- (A) to the use of his sperm for the provision of assisted reproduction to

the woman concerned after his death,
and

- (B) to being treated as the father of any
resulting child.

(4) Where this section applies, the deceased man whose sperm was used in the procedure shall not be treated as the father of the child except in the circumstances specified in subsection (2).

(5) A man treated as the father of a child under subsection (2) shall be so treated only for the purposes specified in that subsection, and for no other purpose.

Sperm donor not to be treated as father.

5. (1) This section applies where –

- (a) a woman gives birth to a child as a result of assisted reproduction provided to the woman by an approved service provider,
- (b) no person is required to be treated as the father of the child under section 2, 3 or 4(2), and
- (c) the man who provided the sperm from which the child was born had not sought the use of his sperm for the purpose of him, or him and the woman (or another person) together, receiving assisted reproduction services.

(2) Where this section applies, the sperm donor shall not be treated as the father of that child in the circumstances set out in subsection (3) or (4).

(3) The circumstances are that, at the time of the implantation, insemination or other procedure that resulted in the birth of that child –

(a) the approved service provider –

(i) believed that the sperm donor had given written consent to the use of his sperm for assisted reproduction, and

(ii) had no reason to believe that the sperm donor had withdrawn consent, and

(b) either –

(i) the sperm had been used in accordance with the terms of that consent, or

(ii) the consent had been given on condition –

(A) that someone else, other than the sperm donor, should be treated as the father of any resulting child, or

(B) that the sperm donor would not be treated as the father of any resulting child.

(4) The circumstances are that, the sperm donor is required not to be treated as the father of that child, or is otherwise regarded not to be the father of that child, under any enactment or other law –

- (a) under which the approved service provider is licensed or otherwise authorised to provide the assisted reproduction services concerned, or
- (b) otherwise having effect in the country or territory where the approved service provider is located.

(5) In this section, "**sperm donor**" means the man referred to in subsection (1)(c).

Person treated as father under section 2 or 3 to be so treated for all purposes.

6. Where a man is required to be treated as the father of a child under section 2 or 3, –

- (a) the man shall be so treated for all purposes, for example for –
 - (i) registration of birth under any birth registration Law,
 - (ii) the Law or any other enactment, and
 - (iii) inheritance of land or any other real or personal property, and

- (b) no other person is to be treated as the father of the child.

Persons not to be treated as father.

7. Where section 4(4), 5(2) or 6(b) requires a person not to be treated as the father of any child, that person shall not be so treated for any purpose (including any purpose specified in section 6(a)(i), (ii) or (iii)).

Effect of sections 2 to 7.

8. (1) Sections 2 to 7 have effect subject to –

- (a) any adoption order to the contrary, and
- (b) any provision to the contrary in any Ordinance made under the Law.

(2) Subject to subsection (1), sections 2 to 7 have effect despite anything to the contrary in –

- (a) section 2(3) of the Law,
- (b) any other enactment, or
- (c) any rule of customary law or other rule of law.

Relationship with birth registration Laws.

9. (1) Any reference (howsoever expressed) in a birth registration Law to an act of intercourse resulting in the birth of a child (for example, in section

2(1) of the Legitimacy (Guernsey) Law, 1966^c) shall be construed in any case where section 2, 3, 4 or 5 applies to mean the implantation, insemination or other procedure resulting in the birth of the child.

(2) Except as provided by the amendments made by section 13 and the Schedule, nothing in this Ordinance –

(a) requires any person –

(i) declaring or registering the birth of a child, or

(ii) declaring or registering the name of a person as the father of a child,

under a birth registration Law to declare or state that the declaration or registration is made or done in reliance upon this Ordinance, or

(b) requires the Registrar to enquire whether any conditions or other requirements specified in this Ordinance have been met, or whether this Ordinance applies in relation to a birth, before accepting a declaration, registering the birth, or registering the name of a person as father of any child, under a birth registration Law.

^c Ordres en Conseil Vol. XX, p. 267.

(3) In subsection (2)(b), "**Registrar**" has the meaning given to it by the relevant birth registration Law.

Meaning of approved service provider.

10. In this Ordinance, "**approved service provider**", in relation to assisted reproduction or assisted reproduction services, means –

- (a) any person approved to provide the assisted reproduction or assisted reproduction services concerned in the island of Guernsey or Alderney by an order made by the Department for this purpose, or
- (b) any person licensed or otherwise authorised to provide the assisted reproduction or assisted reproduction services concerned under -
 - (i) the Human Fertilisation and Embryology Act 1990^d,
 - (ii) any analogous enactment in force elsewhere in the British Isles, or
 - (iii) the laws of any country or territory that is approved by an order made by the Department for this purpose.

^d An Act of Parliament, Chapter 37 of 1990, as amended by the Human Fertilisation and Embryology Act 2008, an Act of Parliament, Chapter 22 of 2008.

Meaning of written consent or withdrawal of consent in sections 3, 4 and 5.

11. In sections 3(2), 4(3)(b) and 5(3), a reference to written consent or withdrawal of consent –

- (a) means a consent, or (as the case may be) withdrawal, in writing signed by the person giving or making it, but
- (b) where that person is unable to sign because of illness, injury, physical disability or any other reason, a consent or (as the case may be) withdrawal in writing shall be taken to comply with paragraph (a) if it is signed at the direction of that person, in the presence of that person, and in the presence of at least one witness who attests the signature.

Meaning of prohibited degrees of relationship.

12. For the purposes of section 3(2)(d) and 4(3)(a), two persons are within prohibited degrees of relationship if marriage between them is forbidden, and is void or voidable, under –

- (a) the Law entitled "Loi sur les empêchement au mariage à cause de parenté et sur l'établissement de la juridiction civile dans les causes matrimoniales, 1936"^e registered on 21 March 1936, or

^e Ordres en Conseil, Vol. X, p. 310, as varied by the Marriage (Enabling) (Guernsey) Law, 1961 (Ordres en Conseil, Vol. XVIII, p. 314).

- (b) any other enactment or customary law relating to prohibited degrees of relationship for the purposes of marriage, in force in respect of the island of Guernsey or Alderney.

Consequential amendments to 1935 Law and 1925 Law.

13. The 1935 Law and the 1925 Law are respectively amended in the manner specified in the Schedule.

Interpretation.

14. (1) In this Ordinance, unless the context requires otherwise, -

"approved service provider" has the meaning given by section 10;

"assisted reproduction" has the meaning given by section 109(3) of the Law;

"assisted reproduction services" means services provided to bring about the birth of a child by way of assisted reproduction;

"birth registration Law" means -

- (a) the 1925 Law,
- (b) the 1935 Law,
- (c) the Legitimacy (Guernsey) Law, 1966^f, or

^f Ordres en Conseil Vol. XX, p. 267.

- (d) any other enactment relating to the registration of births in force in respect of the island of Guernsey or Alderney;

"the 1925 Law" means the Law entitled "Loi relative à l'enregistrement des naissances et décès dans l'Île de Auregny" registered on 31 October 1925^g;

"the 1935 Law" means the Law entitled "Loi relative à l'enregistrement des naissances et décès dans le Baillage de l'Île de Guernesey" registered on 9 March 1935^h;

"the Law" means the Children (Guernsey and Alderney) Law, 2008ⁱ;

"prohibited degrees of relationship" has the meaning given by section 12; and

"written consent" and **"withdrawal of consent"** have the respective meanings given by section 11.

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

^g Ordres en Conseil Vol. VII, p. 417.

^h Ordres en Conseil Vol. X, p. 20.

ⁱ Order in Council No. XIV of 2009.

(3) The Interpretation (Guernsey) Law, 1948^j applies to the interpretation of this Ordinance throughout the islands of Guernsey and Alderney.

(4) Unless the context requires otherwise, an expression used in this Ordinance has the same meaning as in the Law.

Application.

15. (1) This Ordinance applies to a child born as a result of assisted reproduction only if –

(a) the implantation, insemination or other procedure that resulted in the birth of the child was performed after this Ordinance comes into force, and

(b) at the time of the birth, one or more of the following persons are ordinarily resident in Guernsey or Alderney–

(i) the woman giving birth to the child,

(ii) the man who, on the wording of section 2, 3 or 4, is to be treated as the father of the child, or

(iii) the man who, on the wording of section 5, is not to be treated as the father of the child.

(2) Subject to subsection (1), this Ordinance applies regardless of

^j Ordres en Conseil Vol. XIII, p. 355.

where the assisted reproduction services were provided, or where the implantation, insemination or other procedure that resulted in the birth of the child was performed.

Extent.

16. This Ordinance applies to the islands of Guernsey and Alderney.

Citation.

17. This Ordinance may be cited as the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009.

Commencement.

18. This Ordinance comes into force on the 4th January, 2010.

SCHEDULE

CONSEQUENTIAL AMENDMENTS TO 1935 LAW AND 1925 LAW

Amendments to 1935 Law

| Provisions | Amendment |
|---------------------|---|
| Articles 2(1) and 3 | Immediately after "Form A in the Schedule to this Law" in each article, insert "or, where a man is to be treated as the father of that child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm), Form A1 in that Schedule". |
| Article 2 | <p>Immediately after paragraph (3), insert the following paragraph –</p> <p style="padding-left: 40px;">"(3A) Nothing in paragraph (3) prevents or otherwise restricts the Registrar from entering in the register the name of a deceased man as the father of an illegitimate child where –</p> <p style="padding-left: 80px;">(a) that man is to be treated as the father of that child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm), and</p> |

| Provisions | Amendment |
|----------------|---|
| | (b) the condition in article 4A(2) is satisfied." |
| New Article 4A | <p>Immediately after Article 4, insert the following article –</p> <p><u>"Registration of father by virtue of section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009.</u></p> <p>4A. (1) Despite any other provision of this Law, the Registrar shall not enter in the register as the father of a child the name of a man who is to be treated as the father of the child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm) unless the condition in paragraph (2) of this article is satisfied.</p> <p>(2) The condition is that –</p> <p>(a) the mother has requested the Registrar to make the entry in the register and has produced the relevant documents, or</p> <p>(b) in the case of the death, sickness or absence from the Island of the mother, another person has made the request</p> |

| Provisions | Amendment |
|------------|---|
| | <p>and produced the relevant documents.</p> <p>(3) In this article, "the relevant documents" means –</p> <p>(a) the election in writing and the written consent, referred to in section 4(2)(a) and (3)(b)(ii) respectively, of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009,</p> <p>(b) a certificate of a registered medical practitioner (within the meaning of the Doctors, Dentists, and Pharmacists Ordinance, 1987), or a qualified medical practitioner in any country or territory, as to the medical facts concerned, and</p> <p>(c) any other documentary evidence that the Registrar considers appropriate.".</p> |
| Schedule | Immediately after Form A, insert the following form – |

| Provisions | Amendment |
|------------|---|
| | <p style="text-align: center;">"FORM A1</p> <p>Date of Birth.....</p> <p>Name of Child.....</p> <p>Sex of Child.....</p> <p>Name of Father.....</p> <p style="text-align: center;"><i>(pursuant to section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009)</i></p> <p>Name of Mother before Marriage.....</p> <p>Place of birth of Child.....</p> <p>Rank, state or profession of Father.....</p> <p>Signature of Declarant</p> <p style="text-align: center;">Qualification.....</p> <p style="text-align: center;">Residence.....</p> <p>This declaration, together with the documents and evidence required for registration of the father under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009, must be delivered to the Registrar within 30 days of the birth, by a person of at least 16 years of age."</p> |

Amendments to 1925 Law

| Provisions | Amendment |
|-------------------------------------|--|
| Articles 1(1) and 3 of the 1925 Law | Immediately after "Form A of the Schedule annexed to this Law" in Article 1(1) and "Form A" in Article 3, insert "or, where a man is to be treated as the father of that child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm), Form A1 of the Schedule". |
| Article 1 | <p>Immediately after paragraph (3), insert the following paragraph –</p> <p style="padding-left: 40px;">"(3A) Nothing in paragraph (3) prevents or otherwise restricts the Registrar from entering in the register the name of a deceased man as the father of an illegitimate child where –</p> <p style="padding-left: 80px;">(a) that man is to be treated as the father of that child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm), and</p> <p style="padding-left: 80px;">(b) the condition in article 4A(2) is satisfied."</p> |
| New Article 4A | <p>Immediately after Article 4, insert the following article –</p> <p style="text-align: center;"><u>"Registration of father by virtue of section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009."</u></p> |

| Provisions | Amendment |
|------------|--|
| | <p data-bbox="579 329 1356 763">4A. (1) Despite any other provision of this Law, the Registrar shall not enter in the register as the father of a child the name of a man who is to be treated as the father of the child under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 (Child born from procedure following death of man providing sperm) unless the condition in paragraph (2) of this article is satisfied.</p> <p data-bbox="772 846 1161 880">(2) The condition is that –</p> <p data-bbox="863 963 1356 1223">(a) the mother has requested the Registrar to make the entry in the register and has produced the relevant documents, or</p> <p data-bbox="863 1305 1356 1626">(b) in the case of the death, sickness or absence from the Island of the mother, another person has made the request and produced the relevant documents.</p> <p data-bbox="676 1709 1356 1798">(3) In this article, "the relevant documents" means –</p> <p data-bbox="863 1881 1356 1915">(a) the election in writing and</p> |

| Provisions | Amendment |
|------------|--|
| | <p>the written consent, referred to in section 4(2)(a) and (3)(b)(ii) respectively, of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009,</p> <p>(b) a certificate of a registered medical practitioner (within the meaning of the Doctors, Dentists, and Pharmacists Ordinance, 1987), or a qualified medical practitioner in any country or territory, as to the medical facts concerned, and</p> <p>(c) any other documentary evidence that the Registrar considers appropriate."</p> |
| Schedule | <p>Immediately after Form A, insert the following form –</p> <p style="text-align: center;">"FORM A1</p> <p>Date of Birth.....</p> <p>Name of Child.....</p> <p>Sex of Child.....</p> <p>Name of Father.....</p> <p style="text-align: center;"><i>(pursuant to section 4(2) of the Assisted</i></p> |

| Provisions | Amendment |
|------------|---|
| | <p data-bbox="676 329 1353 421"><i>Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009)</i></p> <p data-bbox="580 443 1353 477">Maiden name of Mother.....</p> <p data-bbox="580 499 1353 533">Birthplace of child.....</p> <p data-bbox="580 555 1353 589">Rank, state or profession of Father.....</p> <p data-bbox="580 611 1353 645">Signature of Declarant</p> <p data-bbox="580 667 1353 701">Qualification.....</p> <p data-bbox="580 723 1353 757">Residence.....</p> <p data-bbox="485 779 1353 1055">This declaration, together with the documents and evidence required for registration of the father under section 4(2) of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009, shall be delivered to the Registrar by a person over sixteen years of age."</p> |

The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009

ARRANGEMENT OF SECTIONS

PART I

OFFICE OF THE CHILDREN'S CONVENOR

1. Functions of the Children's Convenor.
2. Delegation of functions and powers.
3. Appointment of Deputy Children's Convenor.
4. Proof of documents.

PART II

CHILDREN'S CONVENOR AND TRIBUNAL BOARD

5. Functions of the Children's Convenor and Tribunal Board.
6. Allowances and expenses of Board members.
7. Appointment of secretary and other officers.
8. Revocation of appointment of member of the Board.

PART III

THE PRESIDENT AND THE CHILD, YOUTH AND COMMUNITY TRIBUNAL

9. Application of this Part.
10. Functions of the President.
11. Appointment of Deputy President.
12. Terms and conditions of appointment of members of Tribunal.
13. Oath of office.
14. Duties of members of the Tribunal.
15. Revocation of appointment of members of the Tribunal.
16. Selection of members for hearings before, and constitution, of the Tribunal.
17. Practice and procedure of Tribunal.

PART IV

CHILDREN'S CONVENOR MEETING

18. Meaning of Children's Convenor meeting for this Part.
19. Persons who may attend Children's Convenor meeting.
20. Issues to be considered or determined at Children's Convenor meeting.
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The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 28th October, 2004^a and 25th November, 2009^b, and in exercise of the powers conferred on them by sections 24(3), 31(1)(c), 34, 69(3), and (5), 71(2), 73, 85, 119 and 120 of the Children (Guernsey and Alderney) Law, 2008^c and all other powers enabling them in that behalf, hereby order:-

PART I OFFICE OF THE CHILDREN'S CONVENOR

Functions of the Children's Convenor.

1. (1) The provisions of this Part have effect in relation to the Office of the Children's Convenor established under section 30 of the Children (Guernsey and Alderney) Law, 2008 ("**the Law**").

(2) In addition to functions conferred under the Law, the functions of the Children's Convenor are -

- (a) promptly to investigate each referral or notification under Part VII of the Law,
- (b) to prepare and conduct, or arrange for the preparation and conduct of -

^a Article XVII of Billet d'État No. XVII of 2004.

^b Article ** of Billet d'État No. ** of 2009.

^c Order in Council No. XIV of 2009.

- (i) cases or issues referred to the Juvenile Court for decision from the Tribunal,
 - (ii) appeals against decisions of the Tribunal, and
 - (iii) appeals against decisions of the Juvenile Court,

under Part VII of the Law,
- (c) to manage the administration of the business of the Office of the Children's Convenor,
- (d) to maintain a record of -
 - (i) all referrals and notifications made to the Office, and
 - (ii) all decisions made by the Children's Convenor concerning referrals and notifications,

under Part VII of the Law,
- (e) to carry out the functions set out in the First Schedule,
- (f) to prepare, and submit to the Board, an annual report concerning the activities of the Children's Convenor during the course of the year in question,
- (g) to prepare, and submit to the Board, a business plan setting out the actual, and estimated, expenditure incurred, or to be incurred, during the period or periods to which the plan relates,

- (h) to carry out such other functions as may reasonably be required by the Board from time to time, and
- (j) to do such other things as appear to him to be necessary, expedient or incidental to the carrying out of his functions.

Delegation of functions and powers.

2. (1) The Children's Convenor may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be carried out in his name by any person named or described in the instrument, other than -

- (a) this power of delegation, and
- (b) his obligation under section 1(2)(f) to submit an annual report to the Board,

(2) A function carried out by a delegate pursuant to an arrangement made under this section is for all purposes carried out by the Children's Convenor; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Children's Convenor.

(3) An arrangement made under this section for a function to be carried out by a delegate -

- (a) may be varied or terminated at any time by the Children's Convenor, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and
- (b) does not prevent the function being carried out by the Children's Convenor while the arrangement subsists.

Appointment of Deputy Children's Convenor.

3. Without prejudice to the generality of section 2, the Children's Convenor may appoint any person as Deputy Children's Convenor with full authority to carry out the Children's Convenor's functions during any period during which the Children's Convenor is unavailable; and the provisions of sections 2(2) and 2(3) shall apply in relation to an appointment under this section as they apply to an arrangement under section 2(1).

Proof of documents.

4. (1) In any legal proceedings (including, without limitation, proceedings before the Royal Court) any document purporting to be issued by or on behalf of the Children's Convenor or to be signed by the Children's Convenor, or any person authorised by the Children's Convenor -

- (a) shall be received in evidence,
- (b) shall, unless the contrary is proved, be deemed -
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Children's Convenor or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) subject to subsection (2), shall be conclusive evidence of the matters stated therein.

(2) Subsection (1)(c) does not apply in relation to a statement of fact made by the Children's Convenor in support of any condition for referral of a matter to the Tribunal for consideration and determination.

PART II
CHILDREN'S CONVENOR AND TRIBUNAL BOARD

Functions of the Children's Convenor and Tribunal Board.

5. (1) The provisions of this Part have effect in relation to the Board (referred to in this Ordinance as "**the Board**") established under section 31 of the Law and members of the Board.

(2) In addition, and subject to, its other functions conferred under the Law, the functions of the Board are -

- (a) to approve and publish its own constitution and procedures,
- (b) to receive and publish the Children's Convenor's and the President's annual reports,
- (c) to receive and approve any business plan submitted by the Convenor,
- (d) to monitor the budget of the Convenor and the Tribunal and to secure the resources required to ensure that the Convenor, the President, the Tribunal and members of the Tribunal can carry out their respective functions under the Law,
- (e) to assist and support the Convenor in the discharge of his functions under the Law, and
- (f) to provide the President with such assistance and support as he may request in the carrying out of his functions.

(3) For the avoidance of doubt, a decision of the Board concerning the manner in which -

(a) the Children's Convenor, the President or members of the Tribunal shall carry out their, or its, respective functions under the Law, or

(b) a hearing before the Tribunal shall be conducted,

shall have no effect.

Allowances and expenses of Board members.

6. There shall be paid to the members of the Board such allowances as the Department may determine, together with such reasonable and necessary travelling and other expenses incurred by them in connection with the exercise of their functions under the Law.

Appointment of secretary and other officers.

7. The Board may appoint -

(a) a secretary, and

(b) such other officers,

on such terms and conditions and with such functions as the Board thinks fit for the discharge of its functions.

Revocation of appointment of member of the Board.

8. The Department may, by resolution, revoke the appointment of any person it has appointed as a member of the Board on the grounds of permanent incapacity, misbehaviour or neglect of duty.

PART III
THE PRESIDENT AND THE CHILD, YOUTH AND COMMUNITY TRIBUNAL

Application of this Part.

9. The provisions of this Part have effect in relation to -
- (a) the Office of the President of the Child, Youth and Community Tribunal (referred to in this Ordinance as "**the Office of the President**") established under section 32 of the Law,
 - (b) the Child, Youth and Community Tribunal established under section 33 of the Law (referred to in this Ordinance as "**the Tribunal**"), and
 - (c) members of the Tribunal.

Functions of the President.

10. In addition to his other functions conferred under the Law, the functions of the President are -
- (a) to manage the work of the Tribunal,
 - (b) to monitor and develop the performance of members of the Tribunal,
 - (c) to represent the Tribunal and the members of the Tribunal,
 - (d) to prepare, develop, maintain, issue and implement, in consultation with the Board, procedures, guidance, policies and practices relating to -

- (i) the selection of potential members of the Tribunal for appointment by the Royal Court,
 - (ii) the handling of complaints made about members of the Tribunal, in conjunction with arrangements agreed by the Royal Court, and
 - (iii) the training of members and potential members of the Tribunal,
- (e) to prepare, and submit to the Board, an annual report concerning the activities of the Tribunal during the course of the year in question, and
 - (f) to carry out such other functions as may reasonably be required by the Board from time to time.

Appointment of Deputy President.

11. (1) The Royal Court may appoint any member of the Tribunal as Deputy President of the Tribunal (referred to in this Ordinance as "**the Deputy President**") with full authority to carry out the President's functions during any period during which the President is unavailable.

(2) A function carried out by the Deputy President is for all purposes carried out by the President; and every decision taken or other thing done by the Deputy President has the same effect as if taken or done by the President.

(3) An appointment made under this section -

- (a) may be terminated at any time by the Royal Court, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

and

- (b) does not prevent the function from being carried out by the President while the appointment subsists.

Terms and conditions of appointment of members of Tribunal.

12. (1) The terms and conditions of the appointment of the members of the Tribunal shall be such as may from time to time be agreed between the Board and the members, provided that none of those terms and conditions shall be construed so as to create a contract of employment or agency between the States and the members.

(2) A member of the Tribunal 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.

Oath of office.

13. The President and members of the Tribunal shall, upon appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the Royal Court in the terms set out in the Second Schedule, or in words to the like effect.

Duties of members of the Tribunal.

14. In addition to their other functions conferred under the Law, the members of the Tribunal are under a duty -

- (a) to attend hearings before the Tribunal and meetings as reasonably required by the President,
- (b) to attend and complete any course of training as required by the President,
- (c) to inform the President of any issue concerning –

(i) any hearing before, or

(ii) any function of,

the Tribunal that appears, to the member concerned, to be likely adversely to affect the fair and efficient operation of the Tribunal,

(d) to declare any conflict of interest,

(e) to inform the President, or in the case of a member who is the President, the Royal Court of any matter that may adversely affect their fitness, or ability, to discharge their functions,

(f) to discharge their functions fairly, impartially and independently and

(g) to carry out such other functions as may reasonably be required by the Board from time to time.

Revocation of appointment of members of the Tribunal.

15. (1) The Royal Court may revoke the appointment of any person it has appointed as a member of the Tribunal on the grounds of permanent incapacity, misbehaviour or neglect of duty.

(2) Before exercising its power under subsection (1) the Royal Court shall, in the case of any member other than the President, consult with the President.

Selection of members for hearings before, and constitution, of the Tribunal.

16. (1) Whenever a matter is referred to the Tribunal for consideration and determination or review, the President shall -

- (a) select the members of the Tribunal who will hear the matter, and
- (b) nominate one of those members to act as chairperson,

and for the avoidance of doubt the President may so select and nominate himself.

(2) A hearing before the Tribunal shall take place before 3 members of the Tribunal, one of whom shall be of a different gender from the other 2.

Practice and procedure of Tribunal.

17. (1) The practice and procedure, and the principles concerning practice and procedure, described in the Third Schedule shall have effect in relation to a hearing before the Tribunal.

(2) The President may from time to time, following consultation with the Board -

- (a) by written direction make rules of practice and procedure, provided that they are not inconsistent with the practice and procedure, and the principles concerning practice and procedure, described in the Third Schedule, and
- (b) issue written guidance relating to the practice and procedure, and the principles concerning practice and procedure, described in the Third Schedule.

PART IV

CHILDREN'S CONVENOR MEETING

Meaning of Children's Convenor meeting for this Part.

18. For the purposes of this Ordinance a "**Children's Convenor meeting**" means a meeting convened under section 42(2) of the Law or paragraph 5 of the First Schedule.

Persons who may attend Children's Convenor meeting.

19. (1) The persons who may attend a Children's Convenor meeting are -

- (a) the child to whom the meeting relates,
- (b) any individual who has parental responsibility for the child,
- (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has care of the child,
- (d) the legal representative of any person described in paragraph (a), (b) or (c),
- (e) where a community parenting order is in force in respect of the child, a representative of the Department,
- (f) a supporter, and
- (g) such other person as the Children's Convenor may think fit.

(2) Subject to subsection (3), for the purposes of this Ordinance, "**supporter**" means a person who accompanies a party to the proceedings for the purposes of assisting and supporting the party at a hearing before the Tribunal.

(3) A person who is a party to the proceedings may not be the

supporter of another party.

Issues to be considered or determined at Children's Convenor meeting.

20. The issues to be considered or determined at a Children's Convenor meeting are -

- (a) any question concerning who should be -
 - (i) a party to the proceedings,
 - (ii) given notice of the referral under section 42(1) of the Law, or
 - (iii) entitled or permitted to attend any hearing before the Tribunal,
- (b) the extent to which -
 - (i) the condition for referral stated by the Children's Convenor, or
 - (ii) the statement of fact made by the Children's Convenor in support of any such condition,

is, or is not, accepted by any person referred to in section 21(1), and
- (c) any other issues the determination, or consideration of which, is necessary or desirable to ensure the speedy resolution of any matter which may fall to be determined, or considered, at any hearing before the Tribunal.

Prescribed persons for purposes of section 42(3) of the Law.

21. (1) Subject to subsection (2), the persons prescribed for the purposes of section 42(3) of the Law are -

- (a) where the child is aged 12 years or more, the child,
- (b) where -
 - (i) the child is aged less than 12 years, and
 - (ii) one or more of the conditions under section 35(2)(c), (e) or (g) of the Law apply,
 the child,
- (c) where it is a party to the proceedings, the Department, and
- (d) any other party to the proceedings.

(2) Where it appears to the Children's Convenor that any prescribed person lacks the capacity to understand any -

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

the prescribed person will be treated for the purposes of section 42(3) of the Law, as not having accepted any such condition or statement.

EXTENT OF DUTIES OF THE STATES AND STATES DEPARTMENTS

States' duty to identify children in need.

22. The States shall take reasonable steps to identify the extent to which there are children in need in Guernsey and Alderney.

Duty of Departments to publish information about services.

23. A department of the States which provides services to any child in need -

- (a) shall publish information about those services, and
- (b) shall take such steps as are reasonable and practicable in the circumstances to ensure that those who may benefit from those services have access to information relating to those services.

Assessment of need.

24. Where it appears that a child is in need in Guernsey or Alderney the Department or, by agreement with the Department, the Education Department, may make arrangements to assess the extent to which the child is in need.

Duty to investigate.

25. (1) The Department shall have a duty to investigate circumstances in which compulsory intervention may be necessary, except where the duty arises wholly or mainly as a result of a child's failure to attend school, in which case the Education Department shall be responsible for discharging the duty.

(2) A department of the States (other than the Department) shall make such inquiries as it considers necessary and practicable, when any concern about a child comes to its attention, in order to determine whether or not the concern is sufficiently serious that the Department ought to be notified.

(3) A department of the States which carries out inquiries under subsection (2) shall -

(a) record -

(i) the nature of the concern referred to it,

(ii) the inquiries it has carried out, or caused to be carried out,

(iii) the decision reached as to whether or not to notify the Department, and

(iv) the reason for that decision, and

(b) where it decides that the Department ought to be notified, so notify the Department immediately.

(4) Whenever the Department receives notification under subsection (3)(b), it shall initiate such initial inquiries, in accordance with Departmental procedures, as it considers necessary and practicable in order to ascertain whether it needs to institute an investigation.

(5) If the Department, having made initial inquiries, considers that the matter falls within section 35(2)(g) of the Law, it may refer the matter to the Education Department in accordance with Departmental procedures.

(6) If the Department decides that an investigation is not necessary it shall record -

(a) the inquiries it has carried out, or caused to be carried out,

- (b) the reason for the decision it has reached, and
- (c) any advice given, or services offered, to the child or the child's family.

(7) The Department may provide information about the outcome of its initial inquiries and any investigation it has instituted in accordance with Departmental procedures.

(8) The Department shall carry out an investigation in accordance with Departmental procedures whenever -

- (a) having made initial inquiries, it considers it is necessary to institute an investigation, or
- (b) a police officer exercises any power in relation to a child under section 64 of the Law.

(9) The Department, when carrying out an investigation shall -

- (a) make or cause to be made all necessary enquiries in order to decide what action should be taken to ensure the provision of adequate care, protection, guidance or control for the child,
- (b) see or cause the child to be seen unless it is satisfied that it already has sufficient information about the child,
- (c) ascertain the child's wishes, feelings and views in a manner appropriate to the child's age and understanding unless the Department is satisfied that it already has sufficient relevant information, and

- (d) decide whether compulsory intervention may be required.

(10) The Department shall so far as is practicable and consistent with the child's welfare, ascertain and take account of the child's wishes and feelings about the action proposed to be taken.

(11) If the Department decides to institute an investigation, it shall record -

- (a) the inquiries it has carried out, or caused to be carried out,
- (b) the decision it has reached concerning the child to whom the investigation relates, and
- (c) the reason for the decision.

(12) If, having concluded an investigation, the Department is satisfied that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child, it must refer the matter to the Children's Convenor.

(13) If, during the course of an investigation, access to a child is denied, or information about the child's whereabouts is required, the Department shall -

- (a) apply to the court for an emergency child protection order, or
- (b) refer the matter to the Children's Convenor,

unless it is satisfied that the child's welfare can be protected without making such an application or referral.

PART VI

PROVISION OF SERVICES FOR CHILDREN IN NEED AND THEIR FAMILIES

Services provided by the States.

26. (1) When discharging the duty under section 24(1) of the Law, services may be provided by the Department, or another department of the States on behalf of the Department, for any member of a child's family with a view to safeguarding or promoting the child's welfare.

(2) Services under subsection (1) may be provided in whole, or in part -

- (a) by the Department or any other department of the States, or
- (b) by any other person or body authorised for the purpose by the Department or any other department of the States.

(3) Services under subsection (1) may include the provision, or facilitating the provision, of accommodation, assistance in kind or, exceptionally, in cash or other direct payments and may be provided unconditionally or conditionally, including upon conditions as to repayment of any payments.

(4) When providing, or arranging for the provision of, services under subsection (1) the States and any department of the States responsible for that provision, or the arrangement of that provision, shall have regard, so far as is reasonable or practicable, to –

- (a) the religion, racial origin, cultural and linguistic background and views of any child likely to receive, or intended to benefit from, the provision of those services, and
- (b) the views of –
 - (i) the parents of any such child,
 - (ii) any person with parental responsibility in relation to that child,
 - (iii) a father without parental responsibility in relation to that child, and
 - (iv) any person who cares for that child.

(5) The Department, or any other department of the States on its behalf, shall take such steps as are reasonable and practicable through the provision of services under subsection (1) to prevent, or reduce the degree of, the need for compulsory intervention in respect of the children of Guernsey and Alderney.

States provision for disabled children or children affected by disability within the family.

27. (1) In addition to any services provided under any other provision of this Part the Department may open and maintain a register of disabled children within Guernsey and Alderney.

(2) The Department, or any other department of the States on its behalf, shall -

- (a) provide such services as are reasonable and practicable to -

- (i) minimise the adverse effect on disabled children of their disabilities, and to
- (ii) give disabled children the opportunity to lead lives which fulfil their potential.

(3) The Department, or any other department of the States on its behalf, shall provide such services or assessments as are reasonable and practicable for a child who is adversely affected by the disability of any other person –

- (a) in the child's family, or
- (b) who cares for the child.

States provision of accommodation in order to protect a child.

28. (1) If it appears that compulsory intervention may be needed in respect of a child who is living on particular premises, due to the actions of another person who is living on those premises, the Department, or any other department of the States on its behalf, may, in addition to any services provided under any other provision of this Part, assist or facilitate that other person in obtaining alternative accommodation.

(2) Assistance under subsection (1) may be provided by means of cash or direct payments and may be provided unconditionally or conditionally, including upon conditions as to repayment of any payments.

States provision for children in need.

29. In addition to any services provided under any other provision of this Part, the Department shall take such steps as are necessary, reasonable and practicable to ensure that the following services are provided for children in need -

- (a) advice, guidance and counselling,

- (b) health and social services,
- (c) occupational, social, cultural and recreational activities,
- (d) community provision, and
- (e) such other services as the Department may consider necessary to meet the needs of those children.

Provision for child protection register.

30. The Department may establish and maintain a register of children who are subject to a child protection plan in accordance with procedures and guidance issued by the Child Protection Committee.

PART VII
SECURE ACCOMMODATION

Age restrictions on placement of a child in secure accommodation.

31. A child who has not attained the age of 13 years shall not be -

- (a) placed in secure accommodation under section 71 of the Law, or
- (b) made subject to a secure accommodation order,

without the prior approval of Her Majesty's Procureur.

Placement of child by Department in secure accommodation.

32. (1) A child who has attained the age of 13 years may only be placed in secure accommodation under section 71 of the Law where -

- (a) the Chief Officer consents,

- (b) the criteria set out in section 69(2) of the Law are met, and
 - (c) one of the criteria set out in subsections (2)(a) to (d) is met.
- (2) The criteria for the purposes of subsection (1)(c) are -
- (a) the Department has parental responsibility for the child,
 - (b) the child is subject to a care requirement or an interim care requirement,
 - (c) the child has not attained the age of 16 years and a person having parental responsibility for him consents to the placement, or
 - (d) the child has attained the age of 16 years and consents to the placement.

Maximum period in secure accommodation.

33. (1) Subject to section 34, a child may be placed in secure accommodation under section 71 of the Law for a period not exceeding 72 hours in aggregate (whether or not consecutive) in any period of 28 consecutive days.

(2) A child may be made subject to a secure accommodation order on one occasion without further authorisation by the relevant court for a period not exceeding 28 days (which shall not include any period of placement in secure accommodation under section 71 of the Law).

(3) Where a child has been made subject to a secure accommodation order and is placed within the Bailiwick, he may be made subject to

such an order for such further period as the relevant court thinks fit, provided that he may not be so placed for any continuous period exceeding 3 months (which period shall include any period mentioned in subsection (2)).

(4) Where a child has been made subject to a secure accommodation order and is placed outside the Bailiwick, he may be made subject to such an order for such further period as the relevant court thinks fit, provided that he may not be so placed for any continuous period exceeding 6 months without further authorisation by the relevant court (which period shall include any period mentioned in subsection (2)).

(5) Where the Department proposes to transfer a child subject to a secure accommodation order between a placement in the Bailiwick and a placement outside the Bailiwick, or vice versa, for a period of more than 14 days during the currency of that order, it shall bring the matter before the Juvenile Court to review the length of the secure accommodation order, having regard to all the circumstances.

Computation of time.

34. Where –

- (a) a child is placed in secure accommodation under section 71 of the Law at any time between 12 midday on the day before and 12 midday on the day after a public holiday or a Sunday,
- (b) during that period the maximum period under section 33(1) expires, and
- (c) the child had, in the 27 days before the day on which he was placed in secure accommodation, been placed and kept in such accommodation for an aggregate period of more than 48 hours,

the maximum period does not expire until 12 midday on the first day, which is not itself a public holiday or a Sunday, after the public holiday or a Sunday.

Review of placement in secure accommodation.

35. (1) Where a child has been made subject to a secure accommodation order for a continuous period exceeding 8 days, the Department shall convene a Secure Review Panel ("**the Panel**") to which it will appoint at least three persons, one of whom must be independent of the Department.

(2) The Panel will review the placement of the child in such accommodation –

- (a) if he is placed within the Bailiwick, within 14 days and then at intervals not exceeding 28 days where the child continues to be placed in such accommodation, and
- (b) if he is placed outside the Bailiwick, within 28 days and then at intervals not exceeding 3 months where the child continues to be kept in such accommodation.

(3) When reviewing the placement of the child, the Panel shall consider if -

- (a) the criteria for keeping the child in secure accommodation continue to apply,
- (b) the placement in such accommodation continues to be necessary, and
- (c) any other description of accommodation would be appropriate for him,

and in so doing shall have regard to the welfare of the child whose case is being reviewed.

(4) In undertaking the review, the Panel members shall, if practicable, ascertain and take into account the wishes and feelings of -

- (a) the child,
- (b) any mother or father of his,
- (c) any person not being a parent of his but who has parental responsibility for him, and
- (d) any other person who has had care of the child whose views, in the opinion of the members, should be taken into account.

(5) The Panel shall, if practicable, inform all those whose views are required to be taken into account under subsection (4) of the outcome of the review and the reasons for that outcome.

(6) If the Panel determines that the criteria no longer apply for the child to be subject to a secure accommodation order -

- (a) the child must be discharged from secure accommodation within 24 hours (or 48 hours if placed outside the Bailiwick), or
- (b) the matter returned to court on the next working day.

PART VIII SAFEGUARDER SERVICE

Preliminary

Purpose of Part VIII.

36. The purpose of this Part is to give effect to Part XII and other Parts of the Law that relate to or concern Part XII.

Governance and Administration

Status and funding of the Service.

37. Subject to the provisions of this Part, the Service is administratively a part of the Home Department, and shall be funded and supported from the general revenue account of the States.

Safeguarder Service Advisory Committee.

38. (1) There shall be a committee to be known as the Safeguarder Service Advisory Committee (referred to in this Ordinance as "**the Advisory Committee**").

(2) The Fourth Schedule has effect concerning the membership and proceedings of the Advisory Committee.

Functions of the Advisory Committee.

39. The Advisory Committee is responsible for -

- (a) advising on policies and procedures for the Service's functions to be carried out by Safeguarders,
- (b) advising on policies and procedures for the exercise and performance of the functions, powers and duties of Safeguarders,

- (c) ensuring arrangements are in place for monitoring the effectiveness of the services provided by Safeguarders, and
- (d) advising on any other matters that arise in relation to the Service that may be brought to its attention.

Annual report.

40. (1) Within 2 months of the end of each fiscal year, the Service shall make a report to the Home Department with the particulars requested by the Home Department, setting out an account of the Service's activities during that fiscal year.

(2) In subsection (1), "**fiscal year**" means –

- (a) 1 January to 31 December in a calendar year, or
- (b) any other yearly period notified by the Department to the Service.

Safeguarders

Appointment, remuneration, etc. of officers and contractors.

41. (1) The Home Department shall appoint persons called Safeguarders authorised to act on behalf of the Service in carrying out the Service's functions.

(2) A person appointed under subsection (1) shall be appointed either -

- (a) as a States employee, or

(b) as a private contractor.

(3) A person appointed under subsection (1) may be appointed on a full-time, part-time, on-going, periodic or occasional, or any other, basis specified in the letter or contract appointing him to the office or position concerned.

(4) For the avoidance of doubt, any person appointed under subsection (2)(a) shall be treated as an employee of the States for all purposes, for example, with regard to disciplinary matters, dismissal, remuneration, expenses, pensions and other conditions of service.

Responsibility of Home Department to maintain records.

42. The Home Department shall maintain records of all proceedings dealt with by the Service for a minimum of 25 years from completion of those proceedings.

Appointment of Safeguarders in proceedings.

43. (1) When a relevant court, the Tribunal or the Children's Convenor appoints a Safeguarder in any proceedings to investigate and report -

- (a) on a child's welfare generally, or
- (b) on an aspect of the child's welfare specified in the appointment,

the person for the time being responsible for administering the Service shall allocate a named Safeguarder to be the Safeguarder for the purposes of the appointment.

(2) The appointment of a Safeguarder ceases on the earliest of -

- (a) in the case of subsection (1)(b), the completion of the investigation and report on the specified aspect of the child's welfare, unless the appointment is continued by the relevant court, the Tribunal or the Children's

Convenor,

- (b) an order of the relevant court or decision of the Tribunal being made to discharge the Safeguarder or terminate his appointment,
- (c) the conclusion of the proceedings, or
- (d) termination of the Safeguarder's employment or other contract, or his dismissal from the Service.

General duties of Safeguarders.

44. (1) When appointed to family proceedings, a Safeguarder's principal and overriding duty is to promote the interests of the child throughout those proceedings, having regard to the child welfare principles and child welfare checklist.

(2) In carrying out this duty, the Safeguarder -

- (a) shall make all investigations he considers necessary in order for him to carry out this duty,
- (b) shall perform the duties specified in subsection (3) unless otherwise directed or requested by the relevant court, Tribunal or Children's Convenor,
- (c) in any case involving or requiring a child's plan, shall examine whether that plan will promote the child's welfare throughout its childhood, and
- (d) if he becomes aware that any child may be in need of care, protection, guidance or control under Part VII of the Law, shall -

- (i) refer that child to the police or Services for Children and Young People, as appropriate, and
 - (ii) inform the relevant court, Tribunal or Children's Convenor concerned.
- (3) The duties are -
 - (a) meet the child,
 - (b) explain the role of the Safeguarder and the nature of the proceedings in a manner appropriate to the child's age and understanding,
 - (c) ascertain the child's wishes, feelings and views throughout the proceedings,
 - (d) meet and interview either directly or (in exceptional cases) through an agent, the mother and father, other parties to the proceedings and any other persons whom the Safeguarder considers would be able to assist his investigations, or whom the Safeguarder is directed or requested to interview by the relevant court, Tribunal or Children's Convenor,
 - (e) consider providing mediation at all stages of the proceedings, where it is appropriate and resources are available,
 - (f) seek to promote agreement amongst the parties to the proceedings in so far as it is in the best interests of the child,

- (g) if the Safeguarder considers it would safeguard the interests of the child to make another person (including the child concerned) a party to the proceedings, advise the relevant court, Tribunal or Children's Convenor accordingly, giving reasons,
- (h) read all available relevant records and documents and inform the relevant court, Tribunal or Children's Convenor of any records or documents that might assist it,
- (i) prepare and serve any written reports ordered or requested by the relevant court, Tribunal or Children's Convenor,
- (j) when ordered or requested by the relevant court, Tribunal or Children's Convenor, attend hearings or meetings, give advice either orally or in writing and be available to answer questions by the parties or the court, Tribunal or Children's Convenor,
- (k) inform the child of the contents of any report made to the relevant court, Tribunal or Children's Convenor in a manner appropriate to the child's age and understanding,
- (l) inform the child of the outcome of the proceedings in a manner appropriate to the child's age and understanding, and offer the child any appropriate advice and information, and
- (m) provide the relevant court, Tribunal or Children's Convenor with any other assistance that it requires.

(4) For the avoidance of doubt, no Safeguarder may delegate to any person any of his duties under this section without the prior and express approval of the relevant court or (as the case may be) the Tribunal or Children's Convenor who appointed the Safeguarder to the relevant proceedings.

Additional duties and powers of Safeguarders in certain proceedings.

45. (1) This section applies where a Safeguarder is appointed to any proceedings under or in connection with the provisions of Part VII, IX, X, or XI of the Law.

(2) Where this section applies, a Safeguarder shall perform the following additional duties -

- (a) unless an Advocate has already been appointed, consider if it is necessary to appoint an Advocate for the child, having regard to the views of the child, to represent the child in proceedings before the relevant court and the Children's Convenor meeting,
- (b) accept service of documents on behalf of the child unless the child has an Advocate,
- (c) advise the relevant court, Tribunal or Children's Convenor as to the need for any professional expertise in relation to any aspect of the child's welfare, and if so directed by the court or Tribunal, obtain that expertise if available,
- (d) advise the relevant court if the child wishes to instruct the Advocate directly and, if so, whether the child has sufficient understanding to do so, and
- (e) attend all court and hearings before the Tribunal, and

Children's Convenor meetings, unless excused by the court, Tribunal or Children's Convenor.

(3) Where this section applies, a Safeguarder shall also give advice orally or in writing to the relevant court, Tribunal or Children's Convenor on the appropriate way to safeguard the child's welfare, and in particular on the following -

- (a) the child's level of understanding of the proceedings including the child's ability to consent to or refuse to take part in any assessment including medical, psychiatric or psychological assessment directed by the court or Tribunal,
- (b) the participation of the child in any court or hearing before the Tribunal including whether there are any parts of the hearing the child should not attend,
- (c) any reason why the child should not attend the court or hearing before the Tribunal or the Children's Convenor meeting,
- (d) the wishes, feelings and views of the child on any matter relevant to the proceedings,
- (e) the ongoing timetabling and progress of the proceedings,
- (f) the contents of the child's plan and the options available for the child together with a recommendation as to the action the court or Tribunal should take to secure the appropriate option, and
- (g) any other matter relevant to the court's, Tribunal's or Children's Convenor's consideration of the case.

(4) Where this section applies, a Safeguarder may at any time read and take copies of any social work records held by the States concerning a child the subject of those proceedings, subject to legal professional privilege and any order of the relevant court or decision of the Tribunal to the contrary.

Any documents taken under this subsection must be kept secure at all times and further copies must not be taken without the written permission of the Department, the Court, the Tribunal or the Children's Convenor.

(5) No Safeguarder may use or disclose information in those records for any purpose other than to exercise or perform the functions, powers or duties of the Safeguarder, and any copies taken by the Safeguarder shall be destroyed at the latest of –

- (a) the end of the relevant proceedings,
- (b) the end of any appeal or appeals from those proceedings,
or
- (c) the end of any time permitted for appeal from those proceedings.

(6) For the avoidance of doubt, no Safeguarder may delegate to any person any of his duties or powers under this section without the prior and express approval of the relevant court, Tribunal or Children's Convenor who appointed the Safeguarder to the relevant proceedings.

Miscellaneous

Interpretation of Part VIII.

46. (1) In this Part, unless the context otherwise requires –

"**functions**" includes responsibilities imposed by or under this Part,

"**member of the Committee**" or "**member**" means a member of the Advisory Committee,

"**the Service**" means the Safeguarder Service, and

"**Services for Children and Young People**" means the part, or directorate, of the Department known by that name and includes any successor to that part or directorate, however titled or styled.

(2) A reference in this Part to an enactment, or any provision or part of it, is a reference to it as amended, or re-enacted or re-made (with or without modification), extended, or applied.

Transitional provision for Safeguarders.

47. On the commencement of this Ordinance, every person holding appointment as a Safeguarder immediately before the commencement of this Ordinance shall be deemed to have been so appointed under section 41(1).

PART IX

AMENDMENTS TO LAW

Amendment of section 2 of the Law.

48. In section 2(3) of the Law for "108" substitute "109".

Amendment of section 9(1)(b) of the Law.

49. In section 9(1)(b) of the Law, for "73" substitute "75".

"Children's Convenor Board" and amendment of section 31 of the Law.

50. (1) In the Law, for "Children's Convenor Board", wherever appearing, substitute "Children's Convenor and Tribunal Board".

(2) In section 31(1) of the Law -

(a) immediately after paragraph (b), insert -

"(c) to assist and support the President with the carrying out of his functions, as and when requested," and

(b) re-letter paragraph "(c)" as paragraph "(d)".

Amendment of section 42 of the Law.

51. (1) In section 42(3) of the Law in paragraph (a) immediately after "Children's Convenor", insert "under section 35(2)".

(2) In sections 42(3) and (4) of the Law, for "ground", wherever appearing, substitute "condition".

Amendment of section 44 of the Law.

52. For section 44(2)(b) of the Law, substitute –

"(b) either -

(i) the condition for referral -

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

(B) has been determined by the Juvenile Court,

under section 42(3), or

(ii) the condition has not been accepted or determined under

subparagraph (i), but the Tribunal is satisfied that the welfare of the child requires immediate compulsory intervention to ensure the provision of adequate care, protection, guidance or control."

Amendment of section 46 of the Law.

53. In section 46(4) of the Law -

- (a) delete "or" where it appears at the end of paragraph (b),
- (b) for the full stop at the end of the provision substitute a comma, and
- (c) immediately after paragraph (c) insert -

"or
- (d) in the case of an interim care requirement, if the Tribunal or the Juvenile Court discharges the child's case."

Amendment of section 67 of the Law.

54. In section 67(2) of the Law -

- (a) in paragraph (b) for "101 or 104" substitute "99 or 102",
- (b) immediately after paragraph (c)(iii) insert –

"(iv) an exclusion order," and

- (c) renumber subparagraph "(iv)" as "(v)".

Amendment of section 69(1) of the Law.

55. In section 69(1) of the Law, for "sections 70 and 72" substitute "section 71".

Amendment of sections 76 and 78 of the Law.

56. In sections 76(c) and 78(1) of the Law, for "121" substitute "122".

Amendment of section 115 of the Law.

57. In section 115(1) of the Law -

- (a) delete "and" where it appears at the end of paragraph (a),
- (b) for the full stop at the end of the provision substitute a comma, and
- (c) immediately after paragraph (b) insert -

"(c) any meeting convened under section 42(2).".

Amendment of section 122 of the Law.

58. In section 122(1) of the Law -

- (a) immediately after the definition of "Advocate", insert -

""**Alderney**" means the Island of Alderney"", and
- (b) for the definition of "guardian" substitute -

""**guardian**": see section 2(6),".

PART X
MISCELLANEOUS AND GENERAL

Interpretation.

59. (1) In this Ordinance, unless the context requires otherwise, the following words and expressions shall be construed in accordance with this subsection and the other provisions of this Ordinance referred to in relation to them in this subsection -

"the Advisory Committee": see section 38,

"chairperson" in relation to a Tribunal, means the member of the Tribunal nominated as such under section 16(1)(b),

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

"Children's Convenor meeting" : see section 18,

"child protection plan" means a multi-agency child protection plan prepared by the Department and designed to protect the child to which the plan relates,

"Departmental procedures" means such procedures as the Department may by resolution determine,

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

"interim care requirement" means a care requirement made on an interim basis under section 44(2) of the Law,

"**the Law**" means the Children (Guernsey and Alderney) Law, 2008^d,

for the purposes of Part VII, "**the Panel**" has the meaning given in section 35,

a "**party to the proceedings**" means any person described in paragraph 1 of the Third Schedule,

"**prescribed person**": see section 21, and

"**secure accommodation order**" has the meaning given in section 69 of the Law and, for the avoidance of doubt, includes an interim secure accommodation order made under section 69(4) of the Law.

(2) Unless the context requires otherwise, an expression used in this Ordinance has the same meaning as in the Law.

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

Citation.

60. This Ordinance may be cited as the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009.

Commencement.

61. This Ordinance shall come into force on the 4th January 2010.

^d Approved by the States of Deliberation on 30th January 2008 and the States of Alderney on 19th March 2008

FIRST SCHEDULE
FUNCTIONS OF CHILDREN'S CONVENOR

*Functions relating to referrals, Children's Convenor meetings and hearings before
the Tribunal*

Notice of referral to the Tribunal.

1. Where the Children's Convenor has referred a matter to the Tribunal under section 42(1) of the Law he shall, in relation to any person who is a prescribed person for the purposes of the proceedings -

- (a) serve on that person a statement setting out -
 - (i) the condition for referral of the matter to the Tribunal, and
 - (ii) the facts in support the condition, and
- (b) inform that person in writing (or orally, where it is not possible or practicable to inform the person in writing) of his right to be legally represented at the meeting.

Notice of Children's Convenor meeting.

2. Where the Children's Convenor arranges for a Children's Convenor meeting to be held he shall, where possible at least 7 days before the date of the meeting, inform those persons who may attend the meeting under paragraph 4 of the Third Schedule in writing (or orally, where it is not possible or practicable to inform the person in writing) of -

- (a) the date and time of the meeting,

- (b) the place at which the meeting is to be held, and
- (c) the issues to be considered at the meeting.

Notice of hearing before Tribunal.

3. The Children's Convenor shall, where possible at least 7 days before the date of the hearing, give notice in writing (or orally, where it is not possible or practicable to give notice in writing) to those persons entitled to receive notice of hearings before the Tribunal under paragraph 2 of the Third Schedule of -

- (a) the date and time of the hearing,
- (b) the place at which the hearing is to be held, and
- (c) the purpose of the hearing.

Special provisions relating to notice.

4. (1) The Children's Convenor must ensure that a child who is -

- (a) a party to any proceedings, or
- (b) a prescribed person,

is given notice of any Children's Convenor meeting, and any hearing before the Tribunal, in a manner appropriate to the child's age and understanding.

(2) The Children's Convenor is not obliged to give notice to, or inform a child who is -

- (a) a party to any proceedings, or
- (b) a prescribed person,

where the Convenor is satisfied that the child would not be capable of understanding the notice or information, as the case may be.

(3) Where it is not possible for the Children's Convenor to inform, or give notice to, any person or provide documents to any person at least 7 days before any meeting or hearing under paragraph 2, 3 or 9, he must so inform, give notice or provide documents as soon as reasonable practicable before the meeting or hearing, as the case may be.

Children's Convenor meeting to be arranged prior to any hearing before the Tribunal.

5. In the case of a review under paragraph 9 of the Third Schedule, or the case of a child referred by the Children's Convenor to the Tribunal under section 79(2) of the Law, the Children's Convenor may arrange for a Children's Convenor meeting to be held prior to the holding of the hearing before the Tribunal concerning the review or case, where the Children's Convenor believes that it is necessary or desirable to ensure the speedy resolution of the review or case.

Power to withhold information.

6. (1) Where, in carrying out his functions under this Ordinance, the Children's Convenor -

- (a) considers that the disclosure of the whereabouts of any person may place that person at risk of serious harm (whether or not physical harm), or
- (b) is aware that the Tribunal has ordered that any place where a child is to reside shall not be disclosed to -
 - (i) a person specified in the order, or
 - (ii) any class of persons specified in the order,

he may withhold such information as is necessary to prevent such disclosure.

(2) Where, in carrying out his functions under this Ordinance, the Children's Convenor considers -

- (a) in the case of a child -
 - (i) it is in the best interests of the child, or
 - (ii) it is appropriate given the child's age and understanding, or
- (b) in the case of any other person concerned in any proceedings relating to the child –
 - (i) it is in the best interests of the child, or
 - (ii) it is necessary in order to protect that person against the risk of serious harm (whether or not physical harm),

that any information contained within a document should be withheld from the child, or other person, as the case may be, the Convenor shall not be under any obligation to disclose that information to that child or other person.

Power to withdraw or amend statement of condition etc. and record of Children's Convenor meeting.

7. (1) The Children's Convenor may, at any time, withdraw or amend any statement of -

- (a) the condition for referral of a matter to the Tribunal, and

- (b) the facts in support the condition,

that he has prepared for the purposes of any matter referred to the Tribunal under section 42(1) of the Law.

(2) At the conclusion of a Children's Convenor meeting, the Children's Convenor shall prepare a record of the meeting which records -

- (a) in the case of a matter referred by the Children's Convenor to the Tribunal under section 42(1) of the Law -

- (i) any condition for referral, and facts in support, which are agreed by the prescribed persons,
- (ii) any condition for referral, and facts in support, which are not agreed by the prescribed persons, and
- (iii) the identity of those prescribed persons who agree, and those who do not agree, and

- (b) in all cases -

- (i) any issue that the Convenor considers should be referred to the Juvenile Court for consideration and determination, and
- (ii) any information that the Convenor, any party to the proceedings or any legal representative attending the meeting believes will assist the Juvenile Court or the Tribunal, as the case may

be, in any hearing relating to the child to whom the meeting relates.

Notice to Juvenile Court.

8. Where following a Children's Convenor meeting any matter is to be referred to the Juvenile Court for consideration and determination, the Children's Convenor shall, as soon as reasonably practicable, give notice to the Court of the referral and obtain from the Court a date, time and place for the hearing of the matter.

Documents to be provided for Tribunal.

9. (1) Subject to paragraph 6, so far as may be practicable, the Children's Convenor shall, at least 7 days before the date of any hearing before the Tribunal, send to -

- (a) the members of the Tribunal,
- (b) the parties to the proceedings, and
- (c) any Safeguarder appointed in respect of the proceedings,

the documents, or copies of the documents, referred to in subparagraph (2) that are relevant to the hearing.

(2) The documents for the purposes of subparagraph (1) are -

- (a) the record of the Children's Convenor meeting referred to in paragraph 7(2),
- (b) the statement of any condition for referral of the matter to the Tribunal and facts in support,
- (c) where any matter has been referred for determination by the Juvenile Court, notice of the Court's decision,

- (d) any application for review of a care requirement,
- (e) any report prepared by a Safeguarder appointed in respect of the proceedings,
- (f) any chronology of events provided by the Department,
- (g) the child's plan,
- (h) any record of a decision of the Children's Convenor to refer the case of the child to the Tribunal under section 79(2) of the Law,
- (i) any prior or current care requirement,
- (j) any statement or other information contained in a document received from, or on behalf of, the child, and
- (k) any other document that the Children's Convenor considers would assist the Tribunal in its determination of the matter.

Notification of decision.

10. (1) As soon as reasonably practicable after a decision has been taken by the Tribunal disposing of a matter, or the case of a child, under this Ordinance, the Children's Convenor shall –

- (a) send to the persons referred to in subparagraph (2) -
 - (i) a copy of the written record of the decision and the reason for the decision,

- (ii) any care requirement, and
 - (iii) a written notice setting out details of any right of appeal to the Juvenile Court against any decision of a hearing before the Tribunal to make or vary any care requirement or any condition of a care requirement, and
- (b) ensure that the child is informed of the decision in a manner appropriate to the child's age and understanding.
- (2) The persons for the purposes of subparagraph (1) are -
 - (a) the parties to the proceedings (excluding the child to whom the proceedings relate),
 - (b) any Safeguarder appointed in respect of the proceedings,
 - (c) where not a party to the proceedings the Department,
 - (d) in the case of a child referred by the Children's Convenor to the Tribunal under section 79(2) of the Law, the responsible officer of the placement agency, and
 - (e) such other person as the Convenor or the Tribunal think fit.

Record of decisions of Tribunal hearings.

11. The Children's Convenor shall maintain a record of each hearing before the Tribunal in which the following particulars are recorded –

- (a) the date of the hearing,
- (b) the name, address and date of birth of the child to whom the hearing relates,
- (c) the parties to the proceedings,
- (d) the persons who were given notice of the proceedings,
- (e) the persons who attended the proceedings,
- (f) the name of the Safeguarder appointed in respect of the proceedings,
- (g) the issues considered during the course of the hearing, and
- (h) the decision reached in the hearing.

Other powers exercisable by Children's Convenor and in relation to review

Power to suspend condition attached to care requirement.

12. (1) The Children's Convenor may by order suspend any condition of a care requirement imposed by the Tribunal for a period not exceeding 7 days.

(2) The power under subparagraph (1) may be exercised at such times and in such circumstances as the Children's Convenor thinks fit.

(3) Before exercising the power under subparagraph (1), the Children's Convenor shall consult -

- (a) the parties to proceedings relating to the care requirement, and

- (b) where not a party to those proceedings, the Department,

except where it is not practicable to do so.

- (4) The Children's Convenor must -
 - (a) record his reasons for exercising the power under subparagraph (1), and
 - (b) give notice of his decision, and the reasons for it, to -
 - (i) the parties to the proceedings, and
 - (ii) where the Department has been notified under subparagraph (3)(b), the Department.

Power to issue rules of procedure and guidance and prescribe forms.

- 13. The Children's Convenor may -
 - (a) issue rules of procedure governing the manner in which a Children's Convenor meeting is to be conducted,
 - (b) issue written guidance relating to the carrying out of his functions, and
 - (c) prescribe forms for use in connection with -
 - (i) a Children's Convenor meeting, and
 - (ii) any hearing before the Tribunal.

SECOND SCHEDULE

OATH OF OFFICE OF PRESIDENT AND MEMBERS OF TRIBUNAL

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of [President] [a member] of the Child, Youth and Community Tribunal in accordance with law, that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions and that you will not disclose any information received by you in the discharge of those functions except where disclosure is necessary to enable the due discharge of those functions or as permitted under the Children (Guernsey and Alderney) Law, 2008 or in any case required by law."

THIRD SCHEDULE
PRACTICE AND PROCEDURE RELATING TO HEARINGS BEFORE THE
TRIBUNAL

Parties and those to be notified of and entitled to attend hearing

Parties to proceedings.

1. The parties to proceedings before a hearing of the Tribunal are -
 - (a) the child to whom the matter or proceedings relate,
 - (b) any individual who has parental responsibility in respect of the child,
 - (c) any person who appears to be a person who ordinarily (and other than by reason only of his employment) has care of the child, and
 - (d) where a community parenting order is in force in respect of the child, the Department.

Persons entitled to be notified of proceedings.

2. (1) A person who is a party to any proceedings before the Tribunal is entitled to be given notice of -
 - (a) the date and time of any hearing in those proceedings,
 - (b) the place at which the hearing is to be held, and
 - (c) the purpose of the hearing.

(2) Where not entitled under subparagraph (1), the following persons are also entitled to be given notice of the matters and events referred to in that subparagraph -

- (a) the members of the Tribunal selected by the President to hear the matter in question,
- (b) a Safeguarder appointed in respect of the proceedings,
- (c) the Department,
- (d) in the case of a child who is under the upper limit of the compulsory school age, the Education Department,
- (e) in the case of a child referred by the Children's Convenor to the Tribunal, under section 79(2) of the Law, any placement agency involved in the placement of the child, and
- (f) such other person as the Children's Convenor or Tribunal thinks fit.

Persons entitled to receive papers relating to proceedings.

3 A party to the proceedings entitled to be given notice of the matters or events referred to in paragraph 2(1) is, unless the Tribunal determines otherwise, entitled to receive copies of any documents which the Tribunal considers in connection with that hearing.

Hearings to be in private and persons entitled to attend.

4. (1) A hearing in any proceedings before the Tribunal shall be heard in private.

(2) Unless the Tribunal determines otherwise, the following persons are entitled to attend a hearing in any proceedings as of right -

- (a) the parties to the proceedings,
- (b) the Children's Convenor,
- (c) the President,
- (d) any person appointed by the President to monitor the performance of members of the Tribunal,
- (e) any member of the Board,
- (f) any person authorised by the Board, and
- (g) a representative of the Department.

(3) The Tribunal may, having consulted those persons attending a hearing in any proceedings, allow the following persons to attend the hearing, or any part of the hearing –

- (a) the author of any report (other than the child's plan) relating to the child, or the child's circumstances,
- (b) any person the Tribunal believes may be able to assist the Tribunal in its consideration and determination of the child's case,
- (c) any member of the Tribunal who has not been selected to hear the matter under section 16(1)(a),
- (d) a prospective member of the Tribunal,

- (e) a student who needs to attend a hearing as part of a course of study,
- (f) a person carrying out legitimate research, and
- (g) any person not falling within subparagraphs (a) to (f) whose attendance the Tribunal believes to be desirable for any reason.

(4) A supporter of a party to the proceedings may attend a hearing in those proceedings.

Powers to proceed in absence of child etc. and to excuse and exclude

Power to excuse attendance at hearing.

5. (1) The Tribunal may excuse from a hearing, or any part of a hearing, in any proceedings -

- (a) any child,
- (b) any other party to the proceedings, and
- (c) any other person entitled to be present at the hearing.

(2) Where the Tribunal exercises its power under subparagraph (1)

-

- (a) the exercise of the power shall not invalidate any decision taken during the hearing, and
- (b) the Tribunal shall give written reasons for its decision to exercise the power.

Power to exclude from hearing.

6. (1) The Tribunal may exclude any person from a hearing before the Tribunal, or any part of a hearing, in any proceedings, for so long as is necessary in the interests of the child, where it is satisfied that -

- (a) it must do so in order to obtain the views of the child in relation to the case before the hearing, or
- (b) the presence of the person in question –
 - (i) is causing, or is likely to cause, significant distress to the child, or
 - (ii) is preventing the proper conduct of the proceedings.

(2) Where the Tribunal exercises the power conferred by subparagraph (1), the chairperson of the hearing shall, after the exclusion has ended, explain to any person who was so excluded the substance of what has taken place in his absence.

*Disposal of proceedings***Consideration of appointment of Safeguarder.**

7. (1) Before disposing of a matter, or the case of a child, under this Ordinance, a Tribunal shall consider whether to appoint, or continue the appointment of, a Safeguarder to protect the interests of the child.

(2) Without prejudice to subparagraph (1), a Tribunal may, at any time during the course of a hearing -

- (a) review the appointment of a Safeguarder,

- (b) take into account any views expressed in relation the appointment of a Safeguarder by any of the parties to the proceedings,
- (c) discharge the appointment of a Safeguarder, and
- (d) request the appointment of a a Safeguarder to replace any Safeguarder whose appointment has been discharged.

Disposal and powers on disposal.

8. (1) Where the provisions of section 44(1) of the Law apply, the Tribunal shall -

- (a) make a care requirement with, or without, any conditions,
- (b) adjourn any hearing for such period as it thinks fit for the purpose of -
 - (i) obtaining further information or reports,
 - (ii) making further investigations,
 - (iii) allowing further time for the proper consideration of information before the hearing, or
 - (iv) enabling any person –
 - (A) who is entitled to attend a hearing under paragraph 4(2), or

(B) who is allowed to attend a hearing under paragraph 4(3),

to attend the adjourned hearing, or

(c) discharge the child's case.

(2) Where the Tribunal adjourns any hearing under subparagraph (1), it may make an interim care requirement with, or without, conditions.

(3) Where the Tribunal is proposing to make a care requirement, or an interim care requirement, subject to conditions and the child to whom the requirement is to relate is subject to -

(a) a community parenting order,

(b) an interim community parenting order, or

(c) a special contact order,

it shall not impose any conditions that are inconsistent with the terms of any of those orders.

Review of care requirement

Review of care requirement.

9. (1) Subject to the succeeding subsections of this paragraph, the Tribunal shall review a care requirement -

(a) where the child to whom the requirement relates is referred by the Children's Convenor to the Tribunal, under section 42(1) of the Law, or

(b) upon the application of -

(i) the child, or any party to the proceedings, at any time after a period of 3 months has expired from the later of the date of the making of the requirement, or any variation or continuation of the requirement,

(ii) the Children's Convenor, or

(iii) the Department.

(2) The Children's Convenor must make an application under subparagraph (1)(b)(ii) -

(a) if the Convenor orders the suspension of a condition attached to a care requirement under paragraph 12, of the First Schedule unless in all the circumstances he considers it not to be practicable, or in the interests of the child or

(b) upon the expiration of the period of 9 months from the later of the date of the making of a care requirement, or any variation or continuation of the requirement, if no review, or other application for review, has taken place or been made.

(3) The Department must make an application under subparagraph (1)(b)(iii) if it believes that a care requirement, or a condition attached to a care requirement -

(a) is no longer required, or

(b) should be varied.

(4) The Department and any other person who is likely to be a party to the proceedings may apply under this paragraph by giving written notice of its intention to make application for a review to the Children's Convenor.

Fixing date for review of care requirement.

10. When the Tribunal makes a care requirement in respect of a child whose case has been referred under section 42(1) of the Law, the Tribunal may fix a date upon which the requirement shall be reviewed under paragraph 9.

Decision, authentication of documents and power to require non-disclosure

Decision.

11. (1) Subject to subparagraph (2), each member of the Tribunal before whom a matter is heard shall give a decision before all those attending the hearing and the decision of the hearing shall be taken by simple majority.

(2) When giving a decision in any matter heard before the Tribunal, each member of the Tribunal before whom the matter is heard shall declare orally the reasons for his decision.

(3) After each member of the Tribunal has given his decision, the chairperson shall inform the persons referred to in subparagraph (4) of -

- (a) the decision in the proceedings,
- (b) the reasons for the decision, and
- (c) the right of the child and any other person to appeal to the Juvenile Court against any decision to make, or vary, a care requirement or an interim care requirement

or any condition of a requirement.

- (4) The persons for the purposes of subparagraph (3) are -
 - (a) the child to whom the decision relates,
 - (b) the other parties to the proceedings,
 - (c) any Safeguarder appointed in respect of the proceedings, and
 - (d) such other person as the Tribunal thinks fit.

Written record and notification of decision.

12. As soon as reasonably practicable after a decision has been made by the Tribunal in any proceedings disposing of the case of a child under this Ordinance, the chairperson shall make, or cause to be made, a written record of the decision and the reasons for the decision.

Authentication of documents.

13. A record of any decision, or any reasons for a decision, or any other writing authorised or required under the Law to be made, given, issued or granted by the Tribunal, or by the chairperson of a Tribunal, shall be sufficiently authenticated if it is signed by the chairperson or, if the chairperson is unavailable, by a member of the Tribunal dealing with the matter to which the record or writing relates.

Power to require non disclosure of place.

14. The Tribunal may order, when making, continuing, varying or revoking a care requirement, or any condition of a care requirement, that any place where the child is to reside in accordance with the requirement shall not be disclosed to any -

- (a) person specified in the requirement, or

- (b) class of persons so specified.

FOURTH SCHEDULE
MEMBERSHIP AND PROCEEDINGS OF ADVISORY COMMITTEE

Members of the Committee.

1. (1) The Committee shall consist of the following members -
 - (a) a representative nominated by each of the following -
 - (i) the Royal Court,
 - (ii) the Home Department,
 - (iii) the Education Department,
 - (iv) the Health and Social Services Department, and
 - (v) the States of Alderney,
 - (b) a representative nominated by the Children's Convenor,
 - (c) any other person appointed by the Committee, for as long as the Committee thinks fit, and
 - (d) the person for the time being responsible for administering the Service, as an *ex officio* member.

(2) Despite subparagraph (1)(d), the person for the time being responsible for administering the Service shall not be regarded as a member for the purposes of -

- (a) voting on any decision or in any election made by the Committee, or
- (b) paragraph 4 or 6(a),

Chairperson of the Committee.

2. (1) The Committee shall elect one of its members as Chairperson annually and when a casual vacancy arises.

(2) A Chairperson so elected shall hold office until the earliest of—

- (a) the anniversary of his election,
- (b) any resignation under subparagraph (3),
- (c) vacating that office under subparagraph (4) or (6), or
- (d) ceasing to be a member for any reason.

(3) The Chairperson may at any time resign his office as Chairperson by giving notice in writing addressed to the Committee.

(4) A member elected to fill a casual vacancy in the office of Chairperson shall be deemed to vacate that office at the expiry of the remainder of the one-year term of office as Chairperson, of the person he was elected to replace.

(5) No representative of an office-holder or a body or other entity specified in paragraph 1(1)(a), (b) or (c) may hold office as Chairperson for any period of time, that in aggregate with any term of office as Chairperson held by a representative of the same office-holder or body or other entity, exceeds 24 months in any 3-year period.

(6) Any person whose term of office as Chairperson exceeds the

limit specified in subparagraph (5) shall be deemed to vacate that office.

(7) Any person appointed a member under paragraph 1(1)(c) or (d) is not eligible to be elected Chairperson.

Resignations.

3. A member appointed under paragraph 1(1)(c) may at any time resign his office by giving notice in writing delivered to the Chairperson.

Expenses, etc. of members.

4. The Committee may pay to its members any expenses and allowances, with the prior and express approval of the Home Department.

Frequency and timing of meetings.

5. (1) The Committee shall meet as often as it considers necessary to properly carry out its functions.

(2) The Chairperson or any 3 members acting jointly may at any time summon a special meeting of the Committee.

Procedure at meetings.

6. At a Committee meeting -

(a) a majority of members forms a quorum,

(b) the person presiding shall be -

(i) the Chairperson, if he is present,

(ii) if the Chairperson is not present, the person elected to chair the meeting by, and from among, the members,

- (c) each member other than the person presiding has one vote, and a decision is carried by a majority vote, and
- (d) the person presiding has an original vote, and in the event of equality in the votes of members present, he shall exercise a casting vote.

Procedural irregularities.

7. The validity of any act or thing done in the exercise or performance of the Committee's functions is not affected by -

- (a) any vacancy in the membership of the Committee,
- (b) any defect in the nomination or qualifications of a person purporting to be a member,
- (c) the presence at, or participation in, any proceedings, of a person who is not entitled to be so present or to so participate, or
- (d) any minor irregularity (not of a nature or scale to cause prejudice, injustice, or hardship to any person) in the convening or conduct of any meeting of the Committee.

Records of meetings, etc.

8. (1) The Chairperson shall ensure that records are made and kept of each meeting (including action points agreed and resolutions made at the meeting).

(2) The Chairperson shall ensure that those records are circulated to members in a timely manner.

(3) In the absence of proof to the contrary -

- (a) a meeting is deemed to be duly convened where there is a quorum,
- (b) all members attending a meeting are deemed to be duly qualified to act, and
- (c) records that appear to be duly signed by the Chairperson (unless subsequently amended and signed by the Chairperson) shall be regarded as sufficient evidence of the matters stated in those records.

Residual power to regulate procedure.

9. Subject to the provisions of Part VIII and this Schedule, the Committee may regulate its own procedure.

Interpretation.

10. In this Schedule –

"**Committee**" means the Advisory Committee, and

"**Service**" means the Safeguarder Service.

The Children (Guernsey and Alderney) Law, 2008 (Commencement) Ordinance, 2009

THE STATES, in exercise of the powers conferred on them by section 126 of the Children (Guernsey and Alderney) Law, 2008^a, hereby order:-

Commencement of Law of 2008.

1. The Children (Guernsey and Alderney) Law, 2008 shall come into force on the 4th January, 2010.

Citation.

2. This Ordinance may be cited as the Children (Guernsey and Alderney) Law, 2008 (Commencement) Ordinance, 2009.

^a Order in Council No.XIV of 2009 and Ordinance No. XIV of 2009.

**The Criminal Justice (Children and Juvenile Court Reform)
(Bailiwick of Guernsey) Law, 2008 (Commencement)
Ordinance, 2009**

THE STATES, in exercise of the powers conferred on them by section 26(2) of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008^a, hereby order:-

Commencement of Law of 2008.

1. The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 shall come into force on the 4th January, 2010.

Citation.

2. This Ordinance may be cited as the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 (Commencement) Ordinance, 2009.

^a Order in Council No.VI of 2009.

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) (Amendment) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 25th day of November, 2009^a, and in exercise of the powers conferred upon them by section 14 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006.

1. The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 ("**the Law**"), is amended as follows.

2. For section 1(3) of the Law substitute –

"(3) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate -

(a) where the order is made by the Magistrate's Court -

(i) when sitting as the Juvenile Court pursuant to the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008, not less than 10 and not more than 180, and

^a Article ** of Billet d'État No. ** of 2009.

^b Orders in Council No. XII of 2007 and Recueil d'Ordonnances Tome XXXII, p. 618.

(ii) in any other case, not less than 40 and not more than 180, and

(b) where the order is made by the Royal Court, not less than 40 and not more than 240."

Interpretation.

3. (1) The provisions of the Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

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

Citation.

4. This Ordinance may be cited as the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) (Amendment) Ordinance, 2009.

Commencement.

5. This Ordinance shall come into force on the 4th January 2010

^c Ordres en Conseil Vol. XIII, p. 355.