

PROJET DE LOI

ENTITLED

The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 *

[CONSOLIDATED TEXT]

NOTE

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

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* No. IX of 1997; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406). This Law was repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 26th day of September, 1996^a, 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.

Use of secure accommodation.

1. (1) Subject to the following provisions of this section, a juvenile who is in the care of the Board may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("**secure accommodation**") unless it appears –

(a) that –

- (i) he has a history of absconding and is likely to abscond from any other description of accommodation, and
- (ii) if he absconds, he is likely to suffer significant harm, or

^a Article XVIII of Billet d'État No. XXII of 1996.

- (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

(2) The States may by Ordinance –

- (a) specify a maximum period –

- (i) beyond which a juvenile may not be kept in secure accommodation without the authority of the Court, and

- (ii) for which the Court may authorise a juvenile to be kept in secure accommodation,

- (b) empower the Court from time to time to authorise a juvenile to be kept in secure accommodation for such further period as the Ordinance may specify, and

- (c) provide that applications to the Court under this section shall be made only by the Board.

(3) It shall be the duty of the Court hearing an application under this section to determine whether any relevant criteria for keeping a juvenile in secure accommodation are satisfied in his case.

(4) If the Court determines that any such criteria are satisfied, it shall make an order authorising the juvenile to be kept in secure accommodation and specifying the maximum period for which he may be so kept.

(5) On any adjournment of the hearing of an application under this section, the Court may make an interim order permitting the juvenile to be kept during the period of the adjournment in secure accommodation.

(6) The States may by Ordinance provide that –

- (a) this section shall or shall not apply to any description of juveniles specified in the Ordinance,
- (b) this section shall have effect in relation to juveniles of a description specified in the Ordinance subject to such modifications as may be so specified,
- (c) such other provisions as may be so specified shall have effect for the purposes of determining whether a juvenile of a description specified in the Ordinance may be placed or kept in secure accommodation.

(7) The giving of an authorisation under this section shall not prejudice any power of any court to give directions relating to the juvenile to whom the authorisation relates.

Review of cases.

2. (1) The States may by Ordinance require the case of each juvenile who is kept in secure accommodation whilst in the care of the Board to be reviewed in accordance with the provisions of the Ordinance.

(2) An Ordinance under subsection (1) may, in particular, make provision –

- (a) as to the manner in which each case is to be reviewed,
- (b) as to the considerations to which the Board are to have regard in reviewing each case,
- (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews,
- (d) requiring the Board, before conducting any review, to seek the views of –
 - (i) the juvenile,
 - (ii) his parents,
 - (iii) any person who is not a parent of his but who has parental responsibility for him,
 - (iv) any other person who has had care of the juvenile, whose views the Board considers should be taken into account,
- (e) requiring the Board to notify details of the result of the review and of any decision taken by it in consequence of the review to the persons listed in paragraph (d); and
- (f) requiring the Board to monitor the arrangements which it has made with a view to ensuring that it complies with the Ordinance.

General provisions as to Ordinances.

3. (1) An Ordinance under section 1 or 2 may –
- (a) be amended or repealed by a subsequent Ordinance thereunder, and
 - (b) contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.
- (2) Any power conferred upon the States by section 1 or 2 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 classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Appeals.

4. (1) An appeal against the making of, or refusal to make, an order under section 1 shall lie to the Royal Court.

(2) On an appeal under subsection (1), the Royal Court may make any order necessary to give effect to its determination of the appeal.

(3) Section 14 of the Magistrate's Court (Guernsey) Law, 1954^b applies to an appeal under this section as it applies to an appeal under the said section 14.

NOTE

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

Interpretation.

5. (1) In this Law –

"the Board" means the States [Health and Social Services Department],

"the Court" means the Juvenile Court,

^b Ordres en Conseil, Vol. XVI, p. 103.

"development" means physical, intellectual, emotional, social or behavioural development,

"harm" means ill-treatment or the impairment of health or development,

"health" means physical or mental health,

"juvenile" means a person who is under the age of 17 years,

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

(2) In this Law, where the question of whether harm suffered by a juvenile is significant turns on the juvenile's health or development, his health or development shall be compared with that which could reasonably be expected of a similar juvenile.

NOTES

In section 5, the words in square brackets in the definition of the expression "the Board" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 8, with effect from 6th May, 2004.

The functions, rights and liabilities of the Children Board and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Health and Social Services Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 8, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Citation.

6. This Law may be cited as the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997.

Commencement.

7. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions and different purposes.

NOTE

The Law was brought into force on 25th June, 1997 by the Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 (Commencement) Ordinance, 1997, section 1.
