

# PROJET DE LOI

ENTITLED

## **The Children (Sark) Law, 2016 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from the Greffier, La Chasse Marette, Sark, GY10 1SF.*

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\* No. VIII of 2016; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017 (Sark Ordinance No. I of 2017). This Law is prospectively amended by the Child Protection (Sark) Law, 2020 (No. \*\* of 2020).

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## **The Children (Sark) Law, 2016**

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## **The Children (Sark) Law, 2016**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 20<sup>th</sup> January 2016, 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 Sark.

### **PART I PRELIMINARY**

#### **Key definitions.**

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

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

(3) Subject to any provisions to the contrary of, or made under, this Law –

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

(i) the genetic father of that child (whether or not he has parental responsibility in respect of the child), or

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

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

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

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

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

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

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

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

- (a) take into consideration such of the child welfare principles set out in subsection (2) as may be relevant to the circumstances or matter in relation to which the function is being carried out, and
- (b) having taken those principles into account, carry out the function, having regard to the overriding principle that the child's welfare is the paramount consideration.

(2) The principles (the "**child welfare principles**") for the

purpose of subsection (1) are –

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

to be provided or exercised in respect of a child by reasonable parents,

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



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

- (i) the requirements of subsection (1), and
  - (ii) the need to minimise that immediate risk,
- (b) where the Court makes a variation order under section 22, or
- (c) where the function is a decision relating to the prosecution of any criminal offence.

**The child welfare checklist.**

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

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

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

of the child,

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

## PART II

### PARENTAL RESPONSIBILITY

#### **Definition of "parental responsibility".**

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

- (a) the duties –
  - (i) to safeguard and promote the child's health, education, development and welfare,
  - (ii) to provide care, direction, guidance and control,

in a manner appropriate to the age and understanding of the child,

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

public authority except in accordance with this Law or any other enactment.

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

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

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

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

(b) the father (referred to hereinafter as an "**unmarried father**") shall not have parental responsibility in respect of that child, unless he acquires it under section 6.

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

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

(i) the Court pursuant to a power created under or deriving from –

(A) this Law, or

(B) any other enactment, or

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

- (b) to the provisions of this Law or any other enactment, or any rule of law, under which –
  - (i) a person may acquire, be granted, or deprived of, parental responsibility, or
  - (ii) parental responsibility is affected in some other manner.

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

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

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

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

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

- (a) upon registration as that child's father under any enactment relating to the registration of births,
- (b) upon the making in his favour of –
  - (i) a parental responsibility order, or

- (ii) a residence order,
  - (c) by written agreement with that child's mother –
    - (i) in such form, and
    - (ii) if the Chief Pleas think fit, registered in such manner,
- as may be prescribed by Ordinance of the Chief Pleas made under this paragraph,
- (d) by marriage to the child's mother subsequent to the child's birth, or
  - (e) if he acquires parental responsibility, or its equivalent, under the law of any part of the British Isles, other than Sark.

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**NOTE**

*The following Ordinance has been made under section 6:*

*Children (Parental Responsibility Agreement) (Sark) Ordinance, 2017.*

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**Others who may acquire parental responsibility.**

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

- (a) any person in whose favour a residence order is made,

- (b) a guardian, when his appointment as such takes effect under section 12, and
- (c) any person in whose favour a parental responsibility order is made.

**Shared parental responsibility.**

8. (1) A person who has shared parental responsibility in respect of a child may exercise the right under section 4(c) without the consent of any other person having shared parental responsibility in respect of the child, except in relation to the following issues –

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

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

- (a) any of the issues set out in subsections (1)(a) to (f), or
- (b) any other issue that arises under section 4,

an application may be made to the Court, by any one of those persons, to determine the issue under section 16(1)(c).

**Further provisions relating to parental responsibility.**

9. (1) A person who has parental responsibility in respect of a child may not surrender, or transfer to any other person, any part of that responsibility, but may arrange for some, or all, of it to be discharged by another person acting on his behalf.

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

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

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

(5) A person who has parental responsibility in respect of a child is not entitled to act in any way which would be incompatible with any order of court



relating to or concerning –

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

**Duration and termination of parental responsibility.**

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

- (a) (for the avoidance of doubt) when that child reaches the age of 18 years,
- (b) upon that child's marriage, or
- (c) upon the making of any order by the Court, or the Royal Court, which has the effect of terminating that person's parental responsibility.

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

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

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

**PART III**

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

**Appointment of guardians.**

11. (1) Subject to subsection (2) and section 12 –
- (a) a parent may appoint any individual to be the guardian of a child in respect of whom the parent has parental responsibility, and
  - (b) any individual who has been appointed as a guardian may himself appoint any other individual to take his place as guardian in the event of his death.
- (2) An appointment under subsection (1)(a) or (b) shall not be valid unless –
- (a) it is made in writing, and either –
    - (i) it is dated and signed by the appointer, or
    - (ii) it is dated and signed by some other person, in the presence, and acting upon the direction of, the appointer, in the presence of 2 witnesses, over the age of 18 years, who themselves sign the appointment, or
  - (b) it is made by will.

**Circumstances in which appointment takes effect.**

12. (1) Subject to subsection (2), the appointment of an individual as a guardian under section 11 takes effect upon the death of the appointer.
- (2) Where a deceased appointer is survived by a parent of the child

to whom the appointment relates, the appointment shall not take effect unless or until

—

- (a) one of the following events occurs –
  - (i) the surviving parent grants consent,
  - (ii) the surviving parent dies,
  - (iii) the Court makes an order giving effect to the appointment under section 13, or
  - (iv) a residence order relating to the child, in favour of a deceased appointer, was in force immediately before that appointer's death, and
- (b) the guardian accepts the appointment.

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

**13.** (1) The Court may by order exercise the powers under subsection (4) where –

- (a) a child has no parent with parental responsibility for him, or
- (b) a surviving parent refuses to grant consent to an appointment under section 12(2)(a)(i).

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

(3) The following persons may apply to the Court for an order under subsection (1) –

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

(4) In any proceedings under this section or any other family proceedings, the Court may by order –

- (a) do any of the following –
  - (i) appoint, or revoke the appointment of, any individual as the guardian of a child,
  - (ii) give effect to the appointment of any individual as the guardian of a child, subject to such limitations, conditions or other matters as it thinks fit,
  - (iii) make a section 16 order, or
  - (iv) make such other provision as it thinks fit, and

- (b) require any person to make financial provision for any child including, without limitation –
  - (i) provision by way of periodical payments, or the payment of a lump sum, to the guardian of the child for the use or benefit of the child, and
  - (ii) such other provision as, subject to section 44, rules of court made by the Court of the Seneschal may provide.

**Revocation of appointment.**

**14.** (1) An appointment under section 11 –

- (a) subject to subsection (2), may be revoked by way of revocation made by, or at the direction of, the appointer, and
- (b) unless a contrary intention appears, is revoked –
  - (i) upon a subsequent appointment under that section, or
  - (ii) where the individual appointed under that section is married to the appointer, upon the making of –
    - (A) a final order on decree of divorce or nullity of marriage,
    - (B) a decree or pronouncement of judicial

separation, or

- (C) a decree of presumption of death and dissolution of marriage,

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

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

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

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

**Parental responsibility of guardians.**

15. A guardian whose appointment is effective under this Part shall have parental responsibility in respect of the child to whom his appointment relates, subject to such limitations, conditions or other matters (if any) as are ordered by the Court under section 13(4).

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

**Contact, residence, specific issue, prohibited steps and parental responsibility orders ("section 16 orders").**

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

- (a) a residence order, being an order settling the arrangements as to the person with whom a child is to live,
- (b) a contact order, being an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the child and that named person otherwise to have contact with one another,
- (c) a specific issue order, being an order made for the purpose of determining a specific question that has arisen, or may arise, in connection with any aspect of parental responsibility for a child,

- (d) a prohibited steps order, being an order that no action of the kind specified in the order may be taken without the consent of the Court,
  - (e) a parental responsibility order, being an order granting a person parental responsibility for a child.
- (2) In this Law, a "**section 16 order**" means –
- (a) any order referred to in subsection (1), and
  - (b) any order varying or discharging any order under any of subsections (1)(a) to (e).

**Persons who may apply for a section 16 order.**

- 17.** (1) Subject to sections 18 and 19 –
- (a) the following persons are entitled to apply for a section 16 order in respect of a child –
    - (i) any person with parental responsibility for the child,
    - (ii) (where not entitled under subparagraph (i)) the father of the child, and
    - (iii) with leave of the Court, any person including, for the avoidance of doubt, the child himself, and
  - (b) the following persons (where not otherwise entitled



under paragraph (a)) are entitled to apply for a residence order, a contact order or a parental responsibility order in respect of a child –

- (i) any person with whom the child has lived for a cumulative period of at least one year (the "**cumulative period**") in any continuous period, ending immediately upon the making of the application, of at least two years; provided that part of the cumulative period falls within the period of 3 months immediately preceding the making of the application,
- (ii) any person who has the written consent of all persons with parental responsibility for the child, and
- (iii) such other class or description of persons as, subject to section 44, rules of court made by the Court of the Seneschal may provide.

(2) A person not otherwise entitled to make an application without leave under this section is entitled to apply for the variation or discharge of a section 16 order if –

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

**Further provisions as to applicants.**

**18.** No person, other than an individual, may apply for or be granted –

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

under this Part.

**Further provisions relating to section 16 orders.**

**19.** (1) Where the Court has power to make a section 16 order it may make –

- (a) an interim order at any stage of any proceedings even though it is not in a position to dispose finally of those proceedings, and
- (b) a financial provision order.

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

(3) Any section 16 order may contain such directions, conditions, limitations or provisions as the Court thinks fit.

(4) For the purposes of this section, a "**financial provision order**" means an order requiring any person, who has parental responsibility in relation to a child, to pay –

- (a) to the child, or

- (b) to a person for the use or benefit of the child,

such periodical payments, for such period (not extending beyond the child's eighteenth birthday, or the day on which the child ceases to be in full time education, whichever is the later), or such lump sum (whether or not in addition to such periodical payments), as the Court may determine.

- (5) The Schedule shall have effect in relation to financial provision orders.

**Duration and effect of section 16 orders.**

**20.** (1) Subject to any enactment, or relevant court order, to the contrary, a section 16 order (other than an interim order) shall have effect until the child to whom the order relates –

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

- (2) A section 16 order shall cease upon the making, in respect of the child concerned, of an adoption order.

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

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

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

**Powers of Royal Court to exercise powers of Court of the Seneschal.**

21. The Royal Court may exercise in respect of any child in any family proceedings before the Royal Court, all the powers which are exercisable in respect of a child by the Court of the Seneschal under this Law.

**Power to vary trusts.**

22. (1) Where –

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

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

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

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

**Appeals from decisions of Court of the Seneschal.**

23. (1) An appeal from any decision of the Court of the Seneschal under this Law shall lie to the Royal Court.

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

- (a) within a period of 21 days immediately following the date of the decision of the Court of the Seneschal, and
- (b) in such manner, and upon such grounds, as rules of court may provide.

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**NOTE**

*The following Rules have been made under section 23:*

*Family Proceedings (Sark) Rules, 2021.*

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

24. (1) Where the Royal Court is seised of any matter sitting in an appellate capacity under this Law, it may by order confirm, reverse, vary or substitute the decision of the Court of the Seneschal against which an appeal has been made, and –

- (a) remit the matter back to the Court of the Seneschal, or
- (b) make such other order in the matter as it thinks fit.

(2) For the avoidance of doubt and subject to any rules of court made under this Law, or any other provision of this Law, upon determination of an appeal the costs of and incidental to any appeal proceedings shall be in the discretion

of the Royal Court.

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

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

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

- (a) within a period of 14 days immediately following the date of the decision of the Royal Court, and
- (b) in such manner as rules of court may provide.

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

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

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

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

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

extend the period within which the appeal may be instituted.

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

**Powers to transfer.**

**27.** (1) Where, in the opinion of the court, a transfer under this section is in the best interests of the child –

- (a) the Royal Court may transfer any matter concerning the child of which it is seised under this Law (other than in its appellate capacity) to the Court of the Seneschal in order that the Court of the Seneschal may deal with the matter, and
- (b) the Court of the Seneschal may, with the consent of the Royal Court, transfer any matter concerning the child of which it is seised under this Law to the Royal Court in order that the Royal Court may deal with the matter.

(2) When considering the exercise its powers under this section the court must, except where –

- (a) it is not reasonably practicable, or
- (b) there is an urgent need to exercise the power,

give the parties to proceedings in the matter an opportunity to be heard.

PART VI  
PARENTAGE OF CHILDREN BORN FURTHER TO ASSISTED  
REPRODUCTION AND SURROGACY

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

**28.** (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) 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.**

**29.** (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 28,



- (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.**

**30.** (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 28 or 29.

(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 enactment relating to the registration of births 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.**

**31.** (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 28, 29 or 30(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 28 or 29 to be treated so for all purposes.**

**32.** Where a man is required to be treated as the father of a child under section 28 or 29 –

- (a) the man shall be so treated for all purposes, for example for –

- (i) registration of birth under any enactment relating to the registration of births,
  - (ii) this Law and any other enactment,
  - (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.**

**33.** Where section 30(4), 31(2) or 32(b) requires a person not to be treated as the father of a child, that person shall not be so treated for any purpose (including any purpose specified in section 32(a)(i), (ii) or (iii)).

**Effect of sections 28 to 33.**

**34.** (1) Sections 28 to 33 have effect subject to any adoption order to the contrary.

(2) Subject to subsection (1), sections 28 to 33 have effect despite anything to the contrary in –

- (a) section 1(3),
- (b) any other enactment, or
- (c) any rule of customary law or other rule of law.

**Relationship with enactment relating to the registration of births.**

**35.** (1) Any reference (howsoever expressed), in an enactment relating to the registration of births, to an act of intercourse resulting in the birth of a child shall be construed in any case where section 28, 29, 30 or 31 applies to mean the implantation, insemination or other procedure resulting in the birth of the child.

(2) Except as provided by or under an enactment relating to the registration of births, nothing in this Law –

(a) requires any person –

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

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

under any such enactment to declare or state that the declaration or registration is made or done in reliance upon this Law, or

(b) requires the Registrar to enquire whether any conditions or other requirements specified in this Law have been met, or whether this Law 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 the enactment.

(3) Under subsection (2)(b), "**Registrar**" has the meaning given to it by the relevant enactment relating to the registration of births.

**Meaning of written consent or withdrawal of consent in sections 29, 30 and 31.**

**36.** In sections 29(2), 30(3)(b) and 31(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 a least one witness who attests the signature.

**Meaning of prohibited degrees of relationship.**

37. For the purposes of sections 29(2)(d) and 30(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"<sup>b</sup> registered on the 21<sup>st</sup> March, 1936, or
- (b) any other enactment or rule of customary law relating to prohibited degrees of relationship for the purposes of marriage, in force in respect of Sark.

**Application of Part VI.**

38. (1) This Part applies to a child born as a result of assisted

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<sup>b</sup> Ordres en Conseil, Vol. X, p. 310; Vol. XVIII, p. 314.



reproduction only if –

- (a) the implantation, insemination or other procedure that resulted in the birth of the child was performed after this Part came into force, and
- (b) at the time of the birth, one or more of the following persons are ordinarily resident in Sark –
  - (i) the woman giving birth to the child,
  - (ii) the man who, on the wording of section 28, 29 or 30, is to be treated as the father of the child, or
  - (iii) the man who, on the wording of section 31, is not to be treated as the father of the child.

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

## PART VII

### GENERAL AND MISCELLANEOUS PROVISIONS

#### **Reporting of proceedings under this Law.**

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

(2) Where this subsection applies –

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

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

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

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

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

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

- (a) summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5

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

on the uniform scale, or both, or

- (b) conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or both.

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

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

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

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

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

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

by a child.

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

41. On disposing of any application for an order under this Law, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Law of any specified kind may be made with respect to the child concerned by the person named in the order without leave of the court.

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

42. Where, in relation to any matter or issue –

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

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

**General provisions as to subordinate legislation.**

43. (1) Any Ordinance, order or rule made under this Law –

- (a) may be amended or repealed by a subsequent Ordinance, order or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, in the case of an Ordinance, provisions repealing, amending or modifying any

enactment.

(2) Any power conferred by this Law to make, or issue, any Ordinance, order or rule may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Rules of court.**

**44.** (1) For the avoidance of doubt, the Royal Court has power to make rules of court under Part V.

(2) In addition to rules of court made under powers created under any other provision of this Law, rules of court made by the Royal Court under this

section may provide for all procedural, practical and incidental matters which may be necessary for bringing this Law into effect including, without limitation, ensuring the anonymity of children, and where appropriate the families of children, who may be involved in any family proceedings.

(3) The powers of the Court of the Seneschal to make rules of court under this Law are in addition to any other powers of the Court to make rules: provided that any rules made under this Law shall not come into force unless and until approved by the Royal Court.

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**NOTE**

*The following Rules have been made under section 44:*

*Family Proceedings (Sark) Rules, 2021.*

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**Interpretation.**

**45.** (1) In this Law –

**"adoption order"** includes –

- (a) an adoption order made in any part of the British Isles,  
and
- (b) an adoption order made by a court of competent jurisdiction under the law of a country or territory prescribed by regulations of the States of Guernsey [Committee for Health & Social Care] under section 122(1) of the Children (Guernsey and Alderney) Law,

2008<sup>d</sup>,

**"Advocate"** means an Advocate of the Royal Court of Guernsey,

**"appointer"** means a person who appoints another person as a guardian under Part III,

**"approved service provider"**, in relation to assisted reproduction or assisted reproduction services has the meaning given under section 10 of the Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009<sup>e</sup> and includes any person approved to provide the assisted reproduction or assisted reproduction services concerned in Sark by an order made by the [Medical & Emergency Services Committee] of the Chief Pleas,

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

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

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

**"enactment relating to the registration of births"** includes –

- (a) the Law entitled "Loi relative à l'enregistrement des naissances et décès dans le Bailliage de l'Île de

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<sup>d</sup> Order in Council No. XIV of 2009; Ordinance Nos. XI and XLVIII of 2009.

<sup>e</sup> Recueil d'Ordonnances Tome XXXIII, p. 685.

Guernesey" registered on 9<sup>th</sup> March 1935<sup>f</sup>,

- (b) the Legitimacy (Guernsey) Law, 1966<sup>g</sup>,
- (c) any other enactment relating to the registration of births in force in respect of Sark,

**"British Isles"** means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland,

**"Chief Pleas"** means the Chief Pleas of Sark,

**"child"** means a person under the age of 18 years,

**"child welfare checklist"**: see section 3(1),

**"child welfare principles"**: see section 2(2),

**"compulsory intervention"** means intervention in the family life of a child by a public authority irrespective of the consent of –

- (a) the child,
- (b) the child's parents, or
- (c) any person having an interest in the child that amounts to family life,

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<sup>f</sup> Ordres en Conseil Vol. X, p. 20.

<sup>g</sup> Ordres en Conseil Vol. XX, p. 267.



but for the avoidance of doubt, does not include a criminal prosecution,

**"contact order"**: see section 16(1)(b),

**"the Court"** and **"the Court of the Seneschal"** mean the Court of the Seneschal of Sark,

**"Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961,

**"customary law"** includes the common law,

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

**"disability"** means a physical or mental impairment which has a significant adverse effect on a person's ability to carry out normal day-to-day activities,

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

**"family proceedings"** means any proceedings –

- (a) under the inherent jurisdiction of any court in relation to children, or
- (b) under –
  - (i) this Law,

- (ii) the Adoption (Guernsey) Law, 1960<sup>**h**</sup>,
- (iii) the Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales, 1939<sup>**i**</sup>, and
- (iv) any other enactment specified for the purpose in rules of court made by the Court of the Seneschal,

**"father"**: see section 1(3),

**"function"** includes a power and a duty,

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

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

**"mother"**: see section 1(3),

**"parent"**: see section 1(4),

**"parental responsibility"**: see section 4,

**"parental responsibility order"**: see section 16(1)(e),

**"person"** includes any body or authority,

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**h** Ordres en Conseil Vol. XVIII, pg. 192.

**i** Ordres en Conseil Vol. XI, pg. 318.

**"prohibited degrees of relationship"** has the meaning given by section 36,

**"prohibited steps order"**: see section 16(1)(d),

**"public authority"** has the meaning given under section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>j</sup>, and, for the avoidance of doubt, shall include any person authorised to act on behalf of a public authority,

**"residence order"**: see section 16(1)(a),

**"the Royal Court"** means the Royal Court of Guernsey;

**"section 16 order"**: see section 16(2),

**"specific issue order"**: see section 16(1)(c),

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

**"uniform scale"** means the scale of fines from time to time in force under the Uniform Scale of Fines (Sark) Law, 1989<sup>k</sup>,

**"United Kingdom"** means the United Kingdom of Great Britain and Northern Ireland,

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

<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 320.

**"unmarried father"**: see section 5(2), and

**"written consent"** and **"withdrawal of consent"** have the respective meanings given by section 36.

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

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

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## NOTES

*In section 45,*

*the words in square brackets in the definition of the expression "adoption order" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016;*

*the words in square brackets in the definition of the expression "approved service provider" in subsection (1) were substituted by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 2, Schedule 1, paragraph 3, with effect from 14th January, 2017.*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*The functions, rights and liabilities of the Medical Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Medical & Emergency Services Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 1, Schedule 1, paragraph 3, with effect from 14th*

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

*January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.*

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**Citation.**

**46.** This Law may be cited as the Children (Sark) Law, 2016.

**Commencement.**

**47.** This Law shall come into force on the date of its registration on the records of the Island of Sark.

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**NOTE**

*The Law was registered on the records of the Island of Sark and came into force on 2nd August, 2016.*

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SCHEDULE  
FINANCIAL PROVISION ORDERS

Section 19(5)

**Maximum amount of lump sum.**

1. The amount of a lump sum required to be paid by an order under section 19(1)(b) shall not exceed £5,000, or such other sum as the Chief Pleas may prescribe by Ordinance.

**Matters to which Court is to have regard.**

2. (1) The Court, in deciding whether and in what manner to exercise its powers under section 19(1)(b), shall have regard –

- (a) to all the circumstances of the case, first consideration being given to the welfare of the child concerned, and
- (b) in particular to the following matters –
  - (i) the income, earning capacity, property and other financial resources which each party to the proceedings has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect either party to take steps to acquire,
  - (ii) the financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future,
  - (iii) the financial needs of the child,

- (iv) the income, earning capacity (if any), property and other financial resources of the child,
- (v) any physical or mental disability of the child,
- (vi) the standard of living enjoyed by the child, and
- (vii) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained.

**Duration of orders.**

3. (1) An order under section 19(1)(b) ceases to have effect upon the death of the child or the person liable to make the payments under the order.

(2) Where an order ceases to have effect under subparagraph (1), the order may nevertheless be relied upon in relation to any arrears due under it.