

PROJET DE LOI

ENTITLED

The Child Protection (Alderney) Law, 1953 *

[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 Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XV, p. 413; as amended by the Uniform Scale of Fines (Alderney) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 306); the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997 (No. II of 1997); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Criminal Justice (Bailiwick of Guernsey) Law, 1979 (Ordres en Conseil Vol. XXVII, p. 172); the Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009).

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THE STATES, in pursuance of their Resolution of the nineteenth day of November, 1952, have approved the following provisions which, subject to the Sanction of Her Majesty in Council, shall have force of law in the Island of Alderney.

Definitions.

1. For the purposes of this Law the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them –

"child" means a person under the age of sixteen years,

"Court" means the Court of Alderney, or the Royal Court of Guernsey, as the case may require,

"Committee" means the Committee of the States appointed to administer Public Assistance.

NOTES

The functions of the Committee under this Law were transferred to the General Services Committee by the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997, section 2, Schedule 2, Part 1, paragraph 3, with effect from 2nd April, 1997, subject to the savings and transitional provisions in section 3 of the 1997 Ordinance.

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 44 (shown, incorrectly, in the printed version of the 2008 Law as paragraph 43), with effect from 4th January, 2010, this Law is one of those specific enactments that the States may repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, by Ordinance made under the said section 123.

Neglect, etc. of child.

2. (1) If any person, who has attained the age of sixteen years and has the custody, charge or care of any child, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, hearing, limb, or organ of the body or any mental derangement) that person shall be guilty of an offence and liable, on conviction, to a fine not exceeding [level 2 on the Alderney uniform scale] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

(2) For the purposes of this section, a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided by the Committee.

(3) A person may be convicted of an offence under this section –

- (a) notwithstanding the actual suffering or injury to health or the likelihood of actual suffering or injury to health, was obviated by the action of another person,
- (b) notwithstanding the death of the child in question.

(4) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to him.

NOTE

In section 2, the words and figure in square brackets in subsection (1) were substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.

Custody, charge and care of child.

3. For the purpose of this Law –

- (a) any person who is the parent or guardian of a child or is legally liable to maintain him shall be presumed to have the custody of him, and as between father and mother the father shall not be deemed to have ceased to have the custody of him by reason only that he has deserted, or otherwise does not reside with, the mother of the child,
- (b) any person to whose charge a child is committed by any person who has the custody of him shall be presumed to have charge of the child,
- (c) any other person having actual possession or control of a child shall be presumed to have the care of him.

Attendance of child before Court.

4. Where in any proceedings under this Law the Court is satisfied that the attendance before the Court of any child in respect of whom an offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Manslaughter—alternative conviction.

5. Upon the trial of any person over the age of sixteen years for the manslaughter of a child of whom he had custody, charge or control, the Court may, if it is satisfied that the accused is guilty of an offence under this Law in respect of such child, find him guilty of such offence.

Taking child out of custody of person convicted, etc.

6. Where a person having the custody, charge or care of a child has been –

- (a) convicted of an offence under this Law in respect of

such child, or

- (b) committed for trial for any such offence, or
- (c) bound over to keep the peace towards such child,

the Court, either at the time of such conviction, committal or binding over, and without requiring new proceedings to be instituted for the purpose, or at any other time, may, if satisfied that it is in the interest of the child, order that the child be taken out of the custody, charge or care of that person and [make –

- (i) a residence order, or
- (ii) a community parenting order,

as if the proceedings under this Law were family proceedings for the purposes of the Children (Guernsey and Alderney) Law, 2008], and the Court may of its own motion or on the application of any person, from time to time renew, vary or revoke any such order.

NOTE

In section 6, the words and figures in square brackets were substituted by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 12(a), with effect from 4th January, 2010, subject to the savings and transitional provisions in section 4 of, and Schedule 2 to, the 2009 Ordinance.

7. (1) [A person in whose favour a residence order has been made, or the [Committee for Health & Social Care] where a community parenting order has been made, in the circumstances described in the said section six, shall], whilst that order is in force, have the like control over the child as if that person or institution were his father or his mother and shall be responsible for his maintenance and the child shall continue in the care of such a person or institution whilst that order is in force notwithstanding that control over the child is claimed by his father, his mother or any other person.

(2) A person who –

[(a) knowingly assists or induces, directly or indirectly, a child to escape –

(i) from a person in whose favour a residence order has been made in the circumstances described in the said section six, or

(ii) the [Committee for Health & Social Care] where a community parenting order has been made in the circumstances described in the said section six, or

(b) knowingly harbours or conceals or prevents from returning to that person or the [Committee for Health & Social Care], a child who has escaped, or knowingly assists in so doing,]

shall be liable to a fine not exceeding [level 1 on the Alderney uniform scale] or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The Court shall have power to make an order requiring the father, the mother, or any other person liable to maintain the child to contribute to his maintenance, whilst any order made under the said section six is in force, such weekly sum as the Court may deem proper.

[(4) An order may be made under the provisions of the last preceding subsection on the application of any person in whose favour a residence order has been made in the circumstances described in the said section six, or subsequently.]

(5) The father, the mother, or any other person responsible for the maintenance and care of a child, who fails or neglects to make the payments specified in an order under subsection (3) of this section shall be guilty of an offence and liable, on conviction, to imprisonment for a term not exceeding eight

days, with or without hard labour, for each weekly sum which he shall have failed to pay.

(6) [Where a residence order is made, in the circumstances described in the said section six,] in respect of a person who has been committed for trial for an offence, the Court shall not have power to make an order on the father, the mother or any other person liable to maintain the child prior to the trial of the person so committed.

(7) The Court making an order under subsection (3) of this section may, in any case where the father, the mother or other person receives a pension or income capable of being attached, or any insurance benefit in respect of such child, after giving the person by whom the pension or income or insurance benefit is payable an opportunity of being heard, further order that such part as the Court may see fit of the pension, income or insurance benefit be paid to the person named by the Court. Such order shall be an authority to the person by whom such pension, income or insurance benefit is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good and valid discharge.

(8) An order under subsection (3) of this section may be made by the Court at a trial of a person for an offence under this Law.

NOTES

In section 7,

first, the words in square brackets in subsection (1), second, paragraph (a) and paragraph (b) of subsection (2), third, subsection (4) and, fourth, the words in square brackets in subsection (6) were substituted by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, respectively paragraph 12(b), paragraph 12(c), paragraph 12(d) and paragraph 12(e), with effect from 4th January, 2010, subject to the savings and transitional provisions in section 4 of, and Schedule 2 to, the 2009 Ordinance;

the words "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 6, with effect from 1st May, 2016;

the words and figure in square brackets in subsection (2) were

substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.

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.

In accordance with the provisions of the Criminal Justice (Bailiwick of Guernsey) Law, 1979, section 2(2), with effect from 21st January, 1980, and subject to the provisions of section 2(3) of that Law, no person shall be sentenced by a Court to imprisonment with hard labour and accordingly the power conferred under subsection (2) and subsection (5) of this section shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before that date.

8. The Royal Court may, in lieu of making an order under section six or under subsection (3) of section seven of this Law, remit the matter to the Court of Alderney, who may then make such an order under the said section six or subsection (3) as might have been made by the Royal Court.

NOTE

The Law received Royal Sanction on 1st April, 1953 and was registered on the Records of the Island of Guernsey and came into force on 25th April, 1953.
